



## Statement of decision of the Private Rented Housing Committee under Section 24 (1) of the Housing (Scotland) Act 2006

prhp Ref: PRHP/EB54/56/10

Re: Property at Gardener's Cottage, Glenbogie, Rhynie, Aberdeenshire, AB54 4JA ("the Property")

### The Parties:-

Mrs Irene Blades residing at Gardener's Cottage, Glenbogie, Rhynie, Aberdeenshire, AB54 4JA ("the Tenant")

Robert Malcolm Hunter Brown residing at Glenbogie House, Glenbogie, Rhynie, Huntly (represented by his agent Shane Greig of Messrs Burnett & Reid, 15 Golden Square, Aberdeen, AB10 1WF) ("the Landlord")

### Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord and the Tenants at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

### Background

1. By application dated 15 March 2010 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that the Tenants considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
  - (a) the Property is wind and watertight and in all other respects reasonably fit for human habitation; and
  - (b) the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
3. By letter dated 23 March 2010 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants.
5. Following service of the Notice of Referral the Tenants (by letter dated 30 March 2010), made further written representations to the Committee along with their original application

dated 15 March 2010. The Landlord (by letter dated 9 April 2010), made written representations to the Committee.

6. The Private Rented Housing Committee (comprising Mr Ewan K Miller, Chairman and Legal Member; Mr Colin Hepburn, Surveyor Member; and Mr Michael Scott, Housing Member accompanied by the Clerk, Mr Robert Shea) inspected the Property on the morning of 7 May 2010. The Tenant and the Landlord's agent were present during the inspection.
7. Following the inspection of the Property, and with the agreement of both parties, the Private Rented Housing Committee held a hearing at the Tenant's Property and heard from both the Tenant and the Landlord's agent. The Landlord was represented by their agent Mr Shane Greig of Messrs Burnett & Reid, Solicitors, Aberdeen. The Tenant represented herself.
8. The Tenant submitted as follows:-

Whilst accepting that the Committee could only deal with items of complaint that had been narrated in her application to the Committee, the Tenant nonetheless, wished to highlight the number of previous difficulties with getting the Landlord to do repair works as relevant to the attitude of the Landlord to do the current works complained of. The Tenant also spoke about the difficulty she had suffered during the winter. She advised that significant amounts of water had come in through the three windows she had complained of (lounge, bathroom and kitchen) and had caused damage to her curtains and to the surrounding paintwork. She had had to get up during the night on several occasions to empty out receptacles she was using to collect the water and to dry off the window ledges etc. Whilst she accepted that it had been a harsh winter she nonetheless felt that the Landlord had not dealt with any repair timeously. It was now May yet no work had been done and she was concerned that the issue could arise again.

9. The Landlord's agent submitted as follows:-

The Landlord's agent accepted that there had been water penetration into the Property. The Landlord's agent accepted that some works would be required, however he highlighted the fact that it had been a particularly harsh winter in this area of Aberdeenshire and whilst water penetration had occurred it was quite conceivable that it would not occur again in the normal course of an average winter. The Landlord's agent confirmed that the Landlord was happy to do whatever work was required by the Committee and indicated that those previous items that the Tenant had complained of were not relevant. The Landlord was prepared to deal with the issues complained of in line with any recommendations from the Committee.

#### **Summary of the issues**

10. The issues to be determined are:-

- (a) Whether the lounge, kitchen and bathroom windows were properly wind and watertight.
- (b) Whether the roof was properly wind and watertight and in a reasonable state of repair.
- (c) Whether the guttering and roof over the front porch were in proper working order or in need of repair.

### Reasons for the decision

11. The Committee reached its decision based on the evidence obtained by the Committee at the inspection on 7 May 2010. The Committee inspected the three windows at the Property that the Tenant advised that there had been water ingress in (the lounge, kitchen and bathroom windows). The Committee were satisfied that water ingress had occurred as there was visual evidence of this. From an external inspection of the Property it was not immediately apparent how the water ingress had occurred. The winter had been severe and there had been a significant amount of snowfall on the roof and guttering. It was possible that the guttering had filled with snow that had remained frozen and when the snow had started to melt water had managed to find its way into the Property and in through the windows. Whilst it was possible that this water penetration may not happen again the normal course of events the Committee felt that it was appropriate for the Landlord to obtain an Inspection Report on the roof and to carry out any works recommended by a competent roofer within that report to ensure that any damage that had occurred over the last winter did not cause future water penetration.

The Committee also note that the water ingress had caused water staining around the windows on the paintwork and the Landlord would also require to make this good.

In relation to the front porch the Committee noted that the guttering above the front entrance porch had been removed by the Landlord's workmen during the winter. It had been reinstated but was sitting poorly and propped up by a small piece of wood. In the Committee's view this would require to be repaired or replaced. The porch roof was not in the best of condition and had a heavy covering of moss. The Landlord would require to properly fix the guttering to ensure it is in proper working order or otherwise replace it. The Landlord would also require to make good any missing or loose slates on the porch roof and remove the moss.

In light of the limited number of items needing attention and the relatively minor nature of these the Committee were prepared, in this particular case, to avoid issuing a Repairing Standard Enforcement Order ("RSEO") at this stage. After discussion with the parties, it was agreed that the Landlord's agent would organise a report on the condition of the roof and carry out any repairs recommended by this to try and ensure that no further water ingress occurred, would repair or replace the guttering as appropriate and generally attend to the porch roof. The water staining that had arisen as a result of the water ingress would also be dealt with.

The Committee, after discussion with the parties, agreed that the works would be done by the end of May. If this were the case then a reinspection could occur and the parties would then be issued with a Decision confirming that the Property met the repairing standard (assuming the works had been carried out to the appropriate standard). The Committee subsequently received contrasting reports from the Landlord and Tenant. The Tenant had advised that no works have been carried out whilst the Landlord's agent has advised that a roof inspection did occur and that works were undertaken to the porch roof. In the circumstances, given the conflicting information, the Committee felt obliged to issue an RSEO in line with their original Decision and thereafter would subsequently carry out an inspection to ascertain whether the works had been carried out to an appropriate standard.

### Decision

12. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
13. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
14. The decision of the Committee was unanimous.

**Right of Appeal**

15. A landlord or tenant aggrieved by the decision of the Private Rented Housing committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

**Effect of section 63**

16. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed .....  
Chairperson

**E Miller**

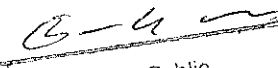
Date..... 21/7/2010 .....



## Repairing Standard Enforcement Order

21/7/2010

Ordered by the Private Rented Housing Committee

Signed   
Notary Public

prhp Ref: PRHP/EB54/56/10

Re: Property at Gardener's Cottage, Glenbogie, Rhynie, Aberdeenshire, AB54 4JA  
("the Property")

Title No: ALL and WHOLE that property known as and forming Gardener's Cottage, Glenbogie, Rhynie being part and portion of the subjects described in Disposition by Susan Mary Bachelor or Brown in favour of Robert Malcolm Hunter Brown recorded in the Division of the General Register of Sasines for the County of Aberdeen on 12 April 2006.

### The Parties:-

Robert Malcolm Hunter Brown residing at Glenbogie House, Glenbogie, Rhynie, Huntly (represented by his agent Shane Greig of Messrs Burnett & Reid, 15 Golden Square, Aberdeen, AB10 1WF) ("the Landlord")

Mrs Irene Blades residing at Gardener's Cottage, Glenbogie, Rhynie, Aberdeenshire, AB54 4JA ("the Tenant")

### NOTICE TO ROBERT MALCOLM HUNTER BROWN ("the Landlord")

Whereas in terms of their decision dated 21 July 2010, the Private Rented Housing Committee determined that the landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the landlord has failed to ensure that the property is:-

- (a) wind and watertight and in all other respects reasonably fit for human habitation;
- (b) the structure and exterior of the property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order

the Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Private Rented Housing Committee requires the landlord:-

- (a) To obtain a report on the roof and guttering of the Property from a reputable roofer with particular reference to the condition of the roof viz a viz ingress of water at the kitchen, bathroom and lounge windows and to carry out any recommendations of the said report to ensure there is no further ingress of water into the Property via the said windows;
- (b) To carry out such decorative works as are necessary to make good damage to paintwork within the Property as a result of previous water ingress;
- (c) To repair or replace the guttering at the front of the porch and to repair or replace any loose or missing slates on the front porch roof and to remove the moss growing on the said roof.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 28 days from the date of service of this Notice.

A landlord or a tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

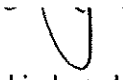
In witness whereof these presents type written on this and the preceding page(s) are executed by Ewan Kenneth Miller, solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, chairperson of the Private Rented Housing Committee at Dundee on 21 July 2010 before this witness:-

**L Johnston**

**E Miller**

\_\_\_\_\_ witness

\_\_\_\_\_  
Chairman

  
Lindsay Johnston  
Whitehall House  
33 Yeaman Shore  
Dundee  
DD1 4BJ

Legal Secretary