



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/IV51/68/13

Re: Property at Altavaig, 3 Flodigarry, Portree, Isle of Skye, IV51 9HZ ("the Property")

Title No: INV4119

The Parties:-

MISS IMOGEN MACQUARRIE residing at Altavaig, 3 Flodigarry, Portree, Isle of Skye, IV51 9HZ ("the Tenant")

SKYE HOLIDAYS LIMITED a company incorporated under the Companies Acts (Company Number 4880840) and, prior to dissolution, having their Registered Office at The Old House, Deanslade Farm, Claypit Lane, Lichfield, Staffordshire, WS14 0AG ("the Landlord")

QUEEN'S AND LORD TREASURER'S REMEMBRANCER, Unit 5, 14 South St Andrew Street, Edinburgh, EH2 2AZ ("the QLTR")

GREATOAK LIMITED, a company incorporated under the Companies Acts (Company Number 02842790) and having its Registered Office at The Old House, Deanslade Farm, Claypit Lane, Lichfield, Staffordshire, WS14 0AG ("Greatoak")

NOTICE TO SKYE HOLIDAYS LIMITED, QLTR and GREATOAK

Whereas in terms of their decision dated 5 July 2013, 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:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (c) The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;
- (d) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

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 produce a clear gas safety certificate from a suitably qualified gas safe registered engineer confirming that the gas installation and appliances at the Property comply in all respects with the relevant regulations.
- (b) To replace the former radiator in the kitchen with a proper working radiator compliant with the repairing standard.
- (c) Subject to any requirements relating to the issue of a gas safety certificate to either repair/redecorate the area where the former vent above the door was or to install a new covering/vent over this.

- (d) To install a hardwired interlinked smoke detection system compliant with the relevant regulations.
- (e) To produce a clear electrical installation condition report over all of the electrical systems within the Property, produced by a suitably qualified electrical engineer.
- (f) To carry out such works of repair or replacement and adjustment to the rear door/frame at the Property, sufficient to render it properly wind and watertight and otherwise compliant with the repairing standard.
- (g) To carry out such works of repair or replacement to the guttering at the Property to ensure it is in proper working order.
- (h) To carry out a levelling of the access road running along the front of the Property and to erect a suitable protective barrier sufficient to significantly reduce the risk of any vehicle or person falling down the slope.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 4 months 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 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 5 July 2013 before this witness:-

L Johnston

witness

E Miller

Chairman

Lindsay Johnston
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



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

prhp Ref: PRHP/IV51/68/13

Re: Property at Altavaig, 3 Flodigarry, Portree, Isle of Skye, IV51 9HZ ("the Property")

The Parties:-

MISS IMOGEN MACQUARRIE residing at Altavaig, 3 Flodigarry, Portree, Isle of Skye, IV51 9HZ ("the Tenant")

SKYE HOLIDAYS LIMITED a company incorporated under the Companies Acts (Company Number 4880840) and, prior to dissolution, having their Registered Office at The Old House, Deanslade Farm, Claypit Lane, Lichfield, Staffordshire, WS14 0AG ("the Landlord")

QUEEN'S AND LORD TREASURER'S REMEMBRANCER, Unit 5, 14 South St Andrew Street, Edinburgh, EH2 2AZ ("the QLTR")

GREATOAK LIMITED, a company incorporated under the Companies Acts (Company Number 02842790) and having its Registered Office at The Old House, Deanslade Farm, Claypit Lane, Lichfield, Staffordshire, WS14 0AG ("Greateoak")

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 Tenant 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 5 April 2013 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 Tenant considered that the Landlord had failed to comply with his duty to ensure that the house 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;
 - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - (c) The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;

- (d) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 13 April 2013 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 the Landlord, Greateak and the Tenant.
 5. Following service of the Notice of Referral, the Tenant made further written representations by letter dated 24 April 2013. The Landlord made representations by letter dated 19 April 2013 and by email of 1 July 2013.
 6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member and Mr R Buchan, Surveyor Member) inspected the Property on the morning of 2 July 2013. The Tenant was present and provided access. The Landlord was neither present nor represented during the inspection.
 7. Following the inspection of the Property the Committee held a Hearing at Tigh Na Sgìre, Park Lane, Portree, IV51 9GB. The Tenant was present and was accompanied by Ms Peggy Semler of Citizens Advice Bureau, Portree. The Landlord was neither present nor represented.
 8. The Tenant submitted that, whilst the Property was generally in good condition, there were a number of issues that needed to be addressed. She had been trying to get the Landlord to carry out works for some considerable period of time without success. One of the Tenant's primary concerns was the boiler and the fact that she had been unable to obtain a gas safety certificate from the Landlord, despite repeated requests. Some works had been carried out but a workman has left a large hole in the wall above the kitchen door where a vent had been previously. The Tenant was also concerned regarding the condition of the electrics within the Property. There were also concerns regarding the smoke detectors and the access road that ran along the front of the Property.
 9. The Landlord/Greateak made a submission to the Committee via an email of 1 July from a Mr Stephen Butler, the General Manager of Greateak. The submission stated that the Tenant had previously requested various works, which had been done. The General Manager was of the view that they had been generous with the provision of many items. In relation to the gas boiler he was of the view that a gas safety certificate was not a legal requirement in this particular case. However, the General Manager had been prepared to try and get one but, despite several attempts, he alleged that it had not been possible to get a company to attend at the Property. In any event he had ordered a new boiler together with a revision to the kitchen heating. The Landlord also submitted that the Tenant was not a tenant. He stated that she was merely an occupier who was in illegal occupation and had asked his solicitors to provide an opinion in relation to this.

Preliminary matters

Preliminary matter 1 - Jurisdiction

10. In light of the Landlord's allegation that the Tenant was not a tenant but merely an illegal occupier the Committee considered it appropriate that this issue be dealt with as a preliminary matter to establish whether the Committee had jurisdiction to hear the substantive case. Section 12(1) of the Act specifies that the Act applies to any tenancy of a house let for human habitation. There are some minor exceptions to this rule. None of these exceptions appeared, at first glance, to apply to the matter at hand. Sub-section (b), however, specifies that a tenancy of a house on a croft is not covered by the Act. The Committee noted that there were other crofts around the Property and determined that it would be appropriate to consider whether this exception might apply. The Committee was aware that the Crofting Reform (Scotland) Act 2010 allowed for voluntary registration of

crofts. If this had occurred there would be a note of this on the Landlord's Land Certificate. The Committee noted that there was no such note and also that there appeared to be no fields attaching to the Property. The Tenant was not aware of the Property being a croft. In the absence of any evidence to the contrary the Committee was satisfied that it was appropriate for it to proceed on the basis that the Property was not a croft and that the Act therefore applied.

The Landlord's main argument appeared to be that as the Tenant had not paid rent recently she was in illegal occupation and there was, therefore, no tenancy and the Act could not apply. Whilst the Committee accepted that the Tenant may not have been paying rent to the Landlord recently, this was not relevant from the Committee's perspective. It was clear that the Landlord had allowed the Tenant to occupy the Property. The Tenant produced an email at the Hearing from the Landlord to the Tenant dated 22 December 2009 and timed at 17:20 which confirmed receipt by the Landlord of both a deposit of £450 and a first month's rental of £450. The Tenant also confirmed that she had been provided with a tenancy agreement by the Landlord which she had signed and returned to him. Non-payment of rent, whilst it may be a breach of a lease, does not render a lease invalid. A landlord would have remedies that would allow them to bring a lease to an end where a tenant was not paying rent. The Landlord, in this particular case, had not availed themselves of any available remedies.

The Committee considered whether they had jurisdiction. The Committee determined that it was clear that a tenancy agreement had been entered into by the Landlord and Tenant. There was nothing to suggest that the Act did not apply and, as far as the Committee was concerned, it was very clear that the Act applied to this situation and that the Committee had the appropriate jurisdiction. Accordingly the Committee determined that they would proceed to hear arguments on the substantive merits of the case.

Preliminary Matter 2 – Ownership of the Property

11. The Committee noted that the General Manager had written to the Panel Office on 19 April 2013 to advise that ownership of the Property vested in Greateak Limited. The Committee noted that they had been provided with a copy of the Landlord's Land Certificate as at 15 April 2013. This showed that, as far as the Registers of Scotland were concerned, that ownership was still vest in the Landlords. It may be possible that there was some beneficial ownership arrangement between the Landlord and Greateak but this was not immediately apparent to the Committee.

The Committee also noted that from a search the Committee carried out at Companies House, that the Landlord appeared to have been dissolved as a company in 2009. Given ownership of the Property had not been transferred from the Landlord to any other party prior to dissolution then, and notwithstanding any beneficial ownership arrangement that may have previously existed, this would mean that ownership of the Property would have fallen to the QLTR. It may, therefore, be the case that neither the Landlord nor Greateak have any right to the Property without first seeking to petition the relevant court and seeking reinstatement of the Landlord to the Register of Companies. Failing any action by any other party then it appeared to the Committee that the Property now belonged to QLTR.

The Committee considered how to proceed. Given that the case had already proceeded to an inspection and hearing and, as noted below, there were repairs issues to be resolved the Committee determined that they should proceed and serve a Repairing Standard Enforcement Order ("RSEO") against the Property. The Committee further determined that all three potential owners (the Landlord, Greateak and QLTR) should be notified of the decision of the Committee and that it was for these three parties to resolve between them how to proceed.

Summary of the substantive issues

12. The issues to be determined are:-

- (1) Whether the boiler was safe and otherwise met the repairing standard.
- (2) Whether an new radiator required to be installed in the kitchen, as one was originally present when the Tenant moved in.
- (3) Whether the vents relating to the boiler in the kitchen were adequate.
- (4) Whether there was an appropriate smoke detection system installed in the Property, compliant with the repairing standard.
- (5) Whether the electrical system within the Property met the repairing standard.
- (6) Whether the rear door of the Property was properly wind and watertight and otherwise met the repairing standard.
- (7) Whether the moss on the roof was sufficient to mean that it was a breach of the repairing standard.
- (8) Whether the guttering at the Property was in proper working order and otherwise met the repairing standard.
- (9) Whether the access track passing along the front of the Property was safe and otherwise met the repairing standard.
- (10) Whether the blistered plasterwork on the stairs was a breach of the repairing standard.

Findings of fact

13. The Committee found the following facts to be established:-

- The Committee could not determine from the inspection whether the boiler was in proper working order and met the repairing standard and accordingly a clear gas safety certificate would be required.
- That a replacement radiator was required in the kitchen.
- That further works of repair/redecoration/replacement would be required to the vents, subject to meeting any requirements of the gas safety certificate.
- There was no compliant smoke detection system within the Property.
- It was not apparent whether the electrical system was safe within the Property and accordingly an electrical installation condition report would be required.
- There was a significant draught coming through the rear door/frame and works would be required to attend to this.
- The moss on the roof, whilst would benefit from being cleared in the general course of maintenance, was not a breach of the repairing standard.
- It appeared that the guttering did not meet the repairing standard and further works would be required to make these good.
- The access road was not safe and required to be levelled and a protective barrier erected.
- The blistered plasterwork on the stair fell outwith the jurisdiction of the Committee, it not having been highlighted in the original application.

Reasons for the decision

14. The Committee based its decision primarily on the evidence obtained during the course of the inspection.

The Committee first inspected the boiler at the Property. It was noted that this was dated, although this did not, of itself, mean that it would not comply. However the Committee, and contrary to the view submitted by the Landlord, was satisfied that current legislation did require a clear gas safety certificate to be issued. The Landlord would require to attend to this. The Committee also noted that a radiator had previously been present in the kitchen and had run off from the boiler. This, given it was present at the start of the tenancy, would require to be replaced and a proper working radiator put in place. The Committee also noted that a new vent had been put in near the floor level beside the door. This appeared to be satisfactory. However an old vent had been removed above the door and had simply been left as a hole. Subject to any requirements of the gas safety engineer to allow them to issue a clear certificate, this area should either be covered and redecorated or, if this vent was still required, a new vent cover placed over this hole as it was otherwise unsatisfactory.

The Committee noted that when the Tenant moved in there were no smoke alarms within the Property. The Tenant had added the smoke alarms however these were battery powered only. The Committee were satisfied that the requirements of the current legislation required that the Property have hardwired interlinked smoke alarms. This was a clear breach of the repairing standard and the Landlord would require to attend to this.

The Committee noted that the lights underneath the upper kitchen units did not work. There were also issues regarding the exterior lights. The Committee was not satisfied that the electrical system within the Property could be said to be safe at the present time. Accordingly a clear electrical installation condition report from a suitably qualified electrician would require to be produced. It would require to cover the electrical system throughout the Property including the kitchen lights, smoke detection system, exterior lights and the immersion heater. The Landlord would require to carry out any works necessary to allow the certificate to be produced and provide evidence of any works carried out by way of paid invoices.

The Committee inspected the rear door at the Property. Although this was a modern door and had been installed recently, there was still a draught coming in at the side of the door or at the frame. This draught could be felt on what was a relatively calm day in summer. Accordingly the Committee were satisfied that in more inclement winter conditions this would be a breach of the repairing standard and accordingly the Landlord would require to make adjustments to the door/frame to ensure that it was properly wind and watertight and otherwise met the repairing standard.

The Committee inspected the roof both from ground level and from a first floor window. There was beginning to be a significant accumulation of moss on the roof. However this did not appear, at this stage, to the Committee to be causing any damage to the Property. Whilst it would benefit from being removed it was not a breach of the repairing standard.

The Committee inspected the guttering at the Property. At the time of inspection it was dry and accordingly it was not readily apparent whether the guttering was in proper working order. The Tenant submitted that the guttering above the edge of the sun room leaked and dripped down any time it was raining. Throughout the course of the inspection and the hearing the Committee found the Tenant to give reliable and credible evidence. The Committee had no basis on which to doubt the Tenant's assertion. Accordingly the Committee would require the Landlord to carry out such works of repair or replacement as were necessary to the guttering in this area to ensure it was in proper working order.

The Committee inspected the access track that ran along the front of the Property and gave access to the rear door and the shed area. It was clear that the left-hand side of the

track, as one was driving towards the rear of the Property, had either compacted or subsided and resulted in the track being "tilted". There was also a significant drop off on that left-hand side down a steep slope which was strewn with very large boulders. The access track was narrow and the Committee was concerned that this was a significant safety hazard. The Landlord had indicated that the Tenant should simply not drive round to the rear of the Property. However, the Committee was satisfied that it was appropriate for the Tenant to have access both by vehicle and by foot. A large shed was located at the rear of the Property as was the rear door. It was clear that access had been taken by vehicles over this area for some considerable period of time and there was no reason why the Tenant should not be entitled to continue to do so. Whilst the Tenant, due to concerns as to her safety, had limited the amount of times she drove over this track she did still require access to the rear door when moving heavier items. It was also not particularly safe for pedestrian access at times of the day or year when visibility and ground conditions may not be at their best. The Committee was satisfied that the track would require to be levelled and a suitable fence protective barrier erected to help prevent a vehicle or person from falling down the slope.

Lastly the Committee considered the blistered plasterwork on the stair. The Committee considered that this would benefit from being repaired. However the Committee noted that this had not been complained of in the original application to the Panel. Accordingly this fell outwith the jurisdiction of the Committee.

Lastly, the Committee considered how long the Landlord should be given to carry out the various works. The Committee did accept that there were a limited number of tradesmen on the island and that it may take slightly longer than normal for works to be carried out. In the circumstances the Committee was of the view that a period of 4 months should be sufficient for the works to be carried out.

Decision

15. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
16. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(2).
17. The decision of the Committee was unanimous.

Right of Appeal

18. 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

19. 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 E Miller Date 5/7/13
Chairperson