



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

prhp Ref: PRHP/IV44/78/10

Re : Property at Cnoc Farm Cottage, Teangue, Sleat, Isle of Skye, IV44 8RE ("the Property")

The Parties:-

PETER CHAPMAN, residing at Cnoc Farm Cottage, Teangue, Sleat, Isle of Skye, IV44 8RE ("the Tenant")

SIR IAIN ANDREW NOBLE residing at Ardkinglas and Eilean Iarmain Baronet, Fearann Eilean Iarmain, Eilean Iarmain and An t-Eilean Sgitheanach (represented by Mr Christopher Mackenzie, Estate Factor, Eilean Iarmain) ("the Landlord")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had 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 26th April 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 Tenant considered that the Landlord had failed to comply with his duty to ensure that the Property met 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 and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - (c) that 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; and
 - (d) any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
3. By letter dated 22nd July 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 Tenant.
5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than his original application dated 26th April 2010. The Landlord made no written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 27th October 2010. The Committee comprised Mr E K Miller (Chairman and Legal Member) and Mr R Buchan (Surveyor Member). The Tenant and his former partner Ms Donella Beaton were present during the inspection. The Landlord's agent was present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Gaelic College, Sleat, Isle of Skye and heard from both the Tenant's representative and the Landlord's representative. It had been apparent during the inspection that the Tenant was very unwell. Ms Beaton had recently separated from the Tenant and had lived in the Property herself for a great number of years. She had authority to act as the Tenant's representative. The Committee were satisfied that she had sufficient authority and knowledge of the Property to do so properly. The Landlord was represented by Mr Chris Mackenzie the Estate Factor. The Committee were also satisfied that he had the authority and knowledge to represent the Landlord in the matter.
8. The Tenant's representative submitted that the Property was in need of repair. The primary issue was the lack of adequate heating and the house not being properly wind and watertight. The Tenant's health position now made this more of an issue than it had been in the past. There was a Rayburn in the kitchen which had not worked for some time. This had provided hot water and generally provided heat to the house. There was a large hole in the side of it and it was clear that it was not working properly. The windows were the other primary concern. Some had rotten frames, some were jammed shut and others were difficult to close when opened. Some could not be locked and many were ill-fitting. Overall the Tenant's representative was of the view that the Landlord had spent minimal sums on the Property over the last 10 years and it was now in need of refurbishment. Work had been carried out to the roof in the past and this had addressed some leaks and damp but was not sufficient to bring the Property up to standard. The Tenant's representative accepted that some of the items listed in their letter of complaint to the Landlord of 1st March 2010 were perhaps not breaches of the repairing standard (such as the lack of a coal storage area) but these had been highlighted to the Landlord due to the change in the Tenant's health. One area of dispute was in relation to the lights in the upper hallway where the Tenant's representative felt that, notwithstanding that they had worked on the day of the inspection, they still worked intermittently and could not be said to be in proper working order.
9. The Landlord's agent submitted that it was accepted that some items within the Property did not meet the repairing standard. There was a lack of funds available to the Estate at the present time and this hindered efforts to improve the Property (the Tenant's representative responded to this by pointing out that over the term of the tenancy to date the Tenant had paid the Landlord in excess of £36,000). The Landlord's agent accepted that the Raeburn in the kitchen did not work. In relation to the windows he accepted that some of these needed repair although others were, in his opinion, typical of a property of this age. He did not accept that there was a lack of adequate heating throughout as there were still a number of storage heaters that did work. In relation to the floorboards upstairs he did accept that one of these was badly broken in the spare bedroom and was a hazard. The Landlord's agent accepted that there were leaks in the gutters. In relation to the bath, the Landlord's agent was of the view that whilst it was stained this had no material impact on the ability of the Tenant to use it. In relation to the driveway, whilst there were a couple of potholes it was capable of being used. It had been raining heavily prior to the inspection and everybody present had managed to drive their cars down and back up it. The Landlord's agent accepted that there was no coal storage area but pointed out that there never had been. In relation to the kitchen units, whilst he accepted

that they were dated he did not view them as unusable. In relation to the carpets the Tenant had removed the one from the sitting room and was to be replacing this with his own carpet. In relation to the other carpets, whilst they were dated they did not breach the repairing standard. In relation to the front door lock at the Property it was accepted that this was not working properly but otherwise the Landlord's Agent's view was that the doors were acceptable and met the repairing standard. It was accepted that there was a leak at the sink. In relation to the standard of decoration throughout, the Landlord's agent was of the view that whilst it was dated it did not breach the repairing standard. There was no written lease that could be located to give guidance on who was responsible for decoration of the interior but it was open to the Tenant to decorate if he so wished. Although the wiring was dated in the Property the Landlord's electrician had carried out a check and was satisfied that the system was safe and in proper working order.

Findings of fact

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

- The Rayburn in the kitchen was not working and was clearly in breach of the repairing standard.
- Generally most of the windows did not meet the repairing standard. One example was the upper part of the downstairs bathroom window frame which was held in by duct tape.
- With the repair or replacement of the Rayburn there would be adequate heating throughout the Property.
- The broken floorboard in the second bedroom upstairs was a clear breach of the repairing standard and this needed to be repaired/replaced.
- It was clear that the rainwater disposal system was dated and leaking. It had been raining just prior to the Committee's inspection and there were numerous leaks apparent in the gutters and downpipes.
- The bath met the repairing standard.
- Whilst the driveway was wet and had some potholes it did not represent a breach of the repairing standard. However, at the time of inspection, the access to the back door of the Property was so slippery as to be treacherous and, in the view of the committee, was a breach of the repairing standard.
- The lack of a coal storage area was not a breach of the repairing standard.
- The kitchen units, whilst dated, generally met the repairing standard.
- In relation to the carpets there was no breach of the repairing standard.
- The front door lock did not meet the repairing standard and it needed to be repaired/replaced but otherwise the doors met the repairing standard.
- The kitchen sink was leaking and this was a breach of the repairing standard.
- The decoration throughout the Property did meet the repairing standard with the exception of two metal edging strips which had come loose and were a safety hazard.
- The electrical installation appeared to the Committee, on the day of inspection, to meet the repairing standard.

Reasons for the decision

11. The Committee reached its decision based primarily on the evidence obtained by the Committee at the inspection on 27 October 2010. It was immediately apparent from an inspection of the Rayburn that it was in very poor order. There was a large hole in the left hand side of it and it clearly required repair or replacement.

In relation to the windows, it was readily apparent that these were very dated and in poor condition throughout. There were a number of heavily rotted sills, jammed windows, etc. In the downstairs toilet the upper frame of the window was held in by tape and the Chairman of the Committee was able to remove it easily. The window in the Tenant's bedroom had been open at the time of the inspection and the Landlord's agent required to use a great deal of force to get it shut. The Committee were of the view that generally the windows needed to be repaired or replaced. If they were being repaired then all the rotten areas needed to be replaced, the jammed windows needed to be released, left free to open and close smoothly and to be lockable with the snib and generally the windows required to be made wind and watertight and redecorated.

The Committee considered that once the Rayburn was in working order then combined with the open fire at the other end of the Property and the storage radiators within the Property that this would be sufficient heating to meet the repairing standard.

In relation to the upstairs floorboard in the bedroom this was clearly broken and a hazard. This was a clear breach of the repairing standard.

It was apparent to the Committee from an inspection of the gutters and downpipes that these were not in a reasonable state of repair and not in proper working order. There were a number of leaks from the gutters and downpipes, the walls were heavily stained and it was clear they required repair or replacement.

In relation to the bath, whilst it was stained and somewhat unattractive, it was, nonetheless, perfectly serviceable and did meet the repairing standard.

In relation to the driveway, whilst this was fairly unattractive it was passable and even in difficult conditions such as on the day of the inspection, the Committee were satisfied that this met the repairing standard.

In relation to the area of ground leading from the driveway down to the rear door of the Property this was very slippery and treacherous. The Committee were satisfied that the level of care that would be required to be exercised in accessing the driveway from the rear door was beyond what could reasonably be expected and accordingly was a breach of the repairing standard.

The Committee did not perceive that there was an issue in relation to the lack of a coal storage area. Whilst this was now an issue for the Tenant due to his change in health, there had never been a coal storage area provided by the Landlord and therefore there could be no breach of the repairing standard. There was no requirement in the repairing standard for such a facility to be provided.

In relation to the kitchen units the Committee were of the view that whilst these were old and dated they were serviceable, subject to the comments below regarding the units surrounding the kitchen sink. Otherwise they did not feel that they breached the repairing standard.

In relation to the complaint regarding carpets in the Property, the Committee noted that the Tenant was to be replacing the sitting room carpet. In relation to the other carpets within the Property, whilst they were dated they were still serviceable and met the repairing standard.

In relation to the exterior doors, whilst they were dated, generally they did meet the repairing standard. The exception to this was the front door lock which was not working properly and required to be repaired or replaced.

It was apparent from an inspection of the kitchen sink that this was leaking both at the tap itself and from the drain below. This would require to be repaired or replaced. Damage had been done to the unit directly beneath this and this would require to be repaired or replaced as appropriate.

The Committee considered the standard of decoration throughout and whilst it was dated it did meet the repairing standard with the exception of the two metal edging strips which had come loose and were sticking out and were a clear safety hazard.

The Committee did note during the inspection that smoke alarms were not working and would require to be replaced with a hardwired interlinked system compliant with the current regulations. This had not been complained of by the Tenant and therefore would not form part of the Committee's decision. The Committee did however highlight to the Landlord that this was a clear breach of the repairing standard and the Tenant would be entitled to raise a separate application in relation to this. It would therefore make sense for the Landlord to deal with this at this stage. Given that an electrician would require to be involved in installing the replacement smoke alarms, it would also be sensible for the Landlord to check the wiring in relation to the upstairs light again to ensure that there was no continuing issue as raised by the Tenant. On the day of the inspection itself the lights had been working and therefore the Committee were not in a position to make an order in that regard.

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..... 29/11/2010



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/IV44/78/10

Re : Property at Cnoc Farm Cottage, Teangue, Sleat, Isle of Skye, IV44 8RE ("the Property")

Sasine Description: ALL and WHOLE the subjects known as and forming Cnoc Farm Cottage, Teangue, Sleat, Isle of Skye, IV44 8RE forming part and portion of the Estate of Eilean Iarmain being the subjects more particularly described in Disposition in favour of Sir Iain Andrew Noble recorded in the General Register of Sasines for the County of Inverness on 31st July 1974

The Parties:-

SIR IAIN ANDREW NOBLE residing at Ardkinglas and Eilean Iarmain, Baronet, Fearann Eilean Iarmain, Eilean Iarmain and An t-Eilean Sgitheanach (represented by Mr Christopher Mackenzie, Estate Factor, Eilean Iarmain) ("the Landlord")

PETER CHAPMAN, residing at Cnoc Farm Cottage, Teangue Sleat, Isle of Skye, IV44 8RE ("the Tenant")

NOTICE TO SIR IAIN ANDREW NOBLE ("the Landlord")

Whereas in terms of their decision dated 22 November 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:-

- (a) the Property is 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;
- (c) that 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; and
- (d) any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.

the Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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 repair or replace as appropriate the Rayburn in the kitchen within the Property and to ensure that it is connected properly back into the hot water system and to ensure it is in proper working order
- (b) To repair or replace the windows and skylights within the Property and ensure that they are properly wind and watertight and capable of being open, shut and lockable with the snib in a normal fashion. Following repair or replacement of the windows, redecoration of the paintwork must also be carried out.
- (c) To repair or replace the broken floorboard in the upstairs spare bedroom.

- (d) To repair or replace the rainwater disposal system at the Property to ensure that it is in proper working order and free of leaks.
- (e) To carry out such works as are necessary to fix the leaks coming from the tap and drain at the kitchen sink and to make good any damage occasioned by the said leaks to the kitchen unit surrounding.
- (f) To repair or replace the front door lock.
- (g) To repair or replace the two metal edging strips that are currently loose within the Property and carry out any redecoration works required as a result.
- (h) To attend to the general drainage or carry out such other works as are necessary to the ground surrounding the Property to ensure safe access to and egress from the rear door to the driveway

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 12 weeks 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 24th November 2010 before this witness:-

L Johnston

witness

E Miller

Chairman

Lindsay Johnston
Legal Secretary
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ