



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

prhp Ref: prhp/IV51/81/10

**Re : Property at Meanish Cottage, South Duntulm, Isle of Skye forming part and portion of the lands and estate of Kilmuir in the Island of Skye and County of Inverness all as more particularly described in the Disposition by Jonathan MacDonald with consent of Mrs. Mairead MacDonald in favour of Greatoak Limited dated Twenty second February and recorded in the Division of the General Register of Sasines for the County of Inverness on Sixth March, both months of Nineteen hundred and ninety seven ("the Property")**

### **The Parties:-**

**Mr T McKinlay and Ms P. Tyler, Meanish Cottage, Duntulm, by Portree, Isle of Skye (hereinafter referred to as "the Tenants")**

**Ian MacQueen, The Steadings, Monkstadt Holiday Cottages, Linicro, by Portree, Isle of Skye, the Landlord and uninfert proprietor of the Property (hereinafter referred to as "the Landlord")**

**Greatoak Limited, a company incorporated under the Companies Acts under number 2842790 and having their Registered Office at the Old House, Deans Lade Farm, Claypit Lane, Lichfield, Staffordshire, the infert proprietors of the Property.**

### **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 11 May 2010, the Tenants 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 Tenants stated that the Tenants considered that the Landlord had failed to comply with the duty to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation, that the installations in the house 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, any fixtures, fittings and appliances provided by the Landlord under the Tenancy are in a reasonable state of repair and in proper working order and that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. 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, both the Landlord and the Tenants made written representations.
6. The Private Rented Housing Committee inspected the Property on 26 July 2010. The Tenants and the Landlord and the Landlord's wife were present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Duntulm Castle Hotel, Duntulm, Isle of Skye and heard representations from both the Tenants and the Landlord.
8. The Tenants advised that the towel rail which was not working had been removed by the Landlord and the Landlord had filled in the holes which had been left in the wall as a result of its removal. The Tenants however stated that as there was now no towel rail in the bathroom, it felt damp. It was clarified that there was an electric heater in the bathroom that did work.
9. In connection with the water heater thermostat, the Tenants stated that this had been turned down by the Landlord but the water was still too hot although it was not as hot as it had been. The Landlord indicated that it would be possible to turn the thermostat down further.
10. In connection with the white goods, the Tenants confirmed that the Landlord had replaced the cooker. The Tenants however stated that the washing machine, although it worked, had temperature fluctuations. It was clarified that the freezer and the tumble dryer and fridge were now working. The Landlord handed over certificates showing that all the appliances had been tested and had passed. The Landlord also stated that the white goods were not part of the lease. It was clarified that there was no inventory and that the Landlord's white goods had been in the property when the Tenants took occupation. The Tenants stated that they thought that the white goods were included but the Landlord stated that the Tenants had their own white goods in the garage which are presently being stored and he understood that the Tenants were to replace his white goods with their own.
11. In connection with the windows, the Tenants confirmed that these had now been fixed by the Landlord but the window in the rear wall in the living room still let in water. There was also a problem with the back window in the main bedroom which had fixings missing from it. The Tenants also stated that the remaining windows were still draughty.
12. In connection with the doors, the Tenants confirmed that the front door was now acceptable but water came in underneath the back door whenever it rained. The lock on the back door however had been redone.
13. In connection with the smoke alarms, the Tenants confirmed that these were now working. The Tenants stated that there was a fire blanket and a fire extinguisher in the property but these had last been inspected in 2003. The Landlord stated that these items are not provided by him but were in the property when the Tenants moved in. The Landlord stated that there was no obligation for him to provide these.
14. In connection with the balustrade, the Tenants stated that this was not as sturdy as it should be and this caused a problem as Ms Tyler was unsteady on her feet. The Landlord pointed out that there was a steel bracket on the balustrade.
15. In connection with the stair carpet, the Tenants stated that this was unsafe and that Ms Tyler had fallen on the stairs a couple of times due to the carpet being very worn out on one step in particular. The Landlord stated that he had ordered an aluminium tread but that he thought that this could cause more of a hazard than the state the carpet was in at present.

16. In connection with the water damage to the carpet, the Tenants pointed out that below the living room window and at the back door the carpet had damp stains. The Tenants also stated that the living room floor was uneven and floor boards moved more than they should.
17. The Landlord clarified that he wished to resolve issues and he would prefer it if the Tenants' items which were presently stored in the garage could be brought into the property. He explained that he had had Morrisons in to sort out all the windows and they should not have left the upstairs bedroom window without a fixing on it and that he would have this sorted immediately.
18. In response to a question from the Surveyor member, the Tenants clarified that they have the emersion on all night. It was further clarified that they used to have it on all the time and that the temperature had been more acceptable since the thermostat was adjusted and since they started just having it on overnight.
19. The Tenants stated that part of the problem was that they had difficulty in getting hold of the Landlord when there were issues to be resolved. The Landlord advised that he now had a mobile phone and gave the Tenants the phone number.

### **Decision**

20. The Committee considered each of the matters raised by the Tenants.
21. Towel Rail  
The Committee noted that this had now been removed and the holes in the wall caused by its removal had been filled in. As there is heating in the bathroom by way an electric heater, there is no obligation in terms of the Repairing Standard for the Landlord to provide a heated towel rail and accordingly the Committee found no breach of the Repairing Standard in respect of this.
22. Water Heater Thermostat  
As the thermostat clearly heats the water, the Committee considered that it was working. The Committee further considered that if the emersion was only on for an hour or two, which is the proper way to use immersion heaters, the water would probably not be too hot. The Landlord however suggested that the thermostat could be turned down lower and the Committee considered that this would be a sensible option. The Committee however found no breach of the Repairing Standard in respect of this.
23. White Goods in the Kitchen  
The Committee noted that the cooker had been replaced and considered that there was no evidence that the remaining white goods were not in a reasonable state of repair and in proper working order. In any event there was ambiguity with regard to whether or not these formed part of the furnishings in the property as the lease only refers to the property as being partly furnished and there is no inventory of furnishings.
24. Windows  
The Committee noted that all the windows had been fixed and were now wind and water tight except the back window in the living room and the back window in the main bedroom. The Tenant stated that the remainder of the windows were draughty but they appear to the Committee to be in a reasonable state of repair and to be wind and water tight. The back window in the living room had water on the inside of the seal and the Committee considered that this could cause a problem in heavy rain. The back window in the main bedroom has fixings missing and clearly is not wind and water tight in its present condition. The Committee accordingly found that there was a breach of paragraph 13(1)(a) of the Act and made a Repairing Standard Enforcement Order.

25. Doors

It was clear from the inspection and from the Tenants' submissions that there was no problem with the front door. However, the back door has water on the inside of the seal and there appeared to be a problem with water coming in underneath the door. The Committee accordingly considered that this was a breach of paragraph 13(1)(a) of the Act and made a Repairing Standard Enforcement Order.

26. Flooring, wear and water damage

Although there were two small areas of damp stain, one in the living room and one in the hall, the Committee did not find a breach of paragraph 13(1)(d) of the Act as the Committee considered that the carpets were in a reasonable state of repair.

27. Smoke Alarms and Fire Equipment

The Tenants confirmed that the smoke alarms were now working properly. The Landlord also provided a safety certificate for all the appliances in the property. The fire blanket and fire extinguisher were not on any inventory and the Landlord indicated that he had not provided them, they were just in the property when the Tenants took possession. The Landlord has no obligation to provide a fire blanket and fire extinguisher and there was also no evidence available to indicate that these items were not in proper working order. The Committee accordingly did not find a breach of the Repairing Standard in respect of this.

28. Balustrade

It was clear from inspection that the balustrade was sturdy and the Committee found no breach of the Repairing Standard.

29. Stair Carpet

It was clear from inspection that the carpet was badly worn on one of the stairs of the staircase and the Committee considered that this could be a hazard. The Committee accordingly considered that the stair carpet was not in a reasonable state of repair and found a breach of paragraph 13(1)(d) of the Act.

30. Fireplace

It was clear from inspection that the fireplace has been reattached to the wall. The Committee accordingly found no breach of the Repairing Standard.

31. The Committee found no evidence of a damp problem in the property and no evidence of any problem with the floor boards in the living room.

32. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the said Act and proceeded to make a Repairing Standard Enforcement Order in relation to a number of matters as required by Section 24(2).

33. The decision of the Committee is unanimous.

34. Given the relatively minor nature of the work, the Committee considered it reasonable to allow the Landlord a period of six weeks to complete the work.

### **Right of Appeal**

**35. 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**

36. 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.

**J V Lea**

Signed .....  
Chairperson

..... Date 30 August 2010

## **A Repairing Standard Enforcement Order**

### **Ordered by the Private Rented Housing Committee**

**Re : Property at Meanish Cottage, South Duntulm, Isle of Skye forming part and portion of the lands and estate of Kilmuir in the Island of Skye and County of Inverness all as more particularly described in the Disposition by Jonathan MacDonald with consent of Mrs. Mairead MacDonald in favour of Greatoak Limited dated Twenty second February and recorded in the Division of the General Register of Sasines for the County of Inverness on Sixth March, both months of Nineteen hundred and ninety seven ("the Property")**

#### **The Parties:-**

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#### **NOTICE TO: Ian MacQueen ("the Landlord")**

Whereas in terms of their decision dated 30 August 2010, The Private Rented Housing Committee having 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 comply with a duty to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation, and that any fixtures, fittings and appliances provided by the Landlord under the Tenancy 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 to:

- a. Repair the back window in the living room and back window in the main bedroom to ensure that they are wind and water tight.
- b. Repair the back door to ensure that it is wind and water tight.
- c. Replace the worn carpet on the stairway.

The Private Rented Housing Committee orders that the work be done within six weeks of the date of service of this notice.

**If the Landlord or the Tenant is aggrieved by this decision of the Private Rented Housing Committee they may appeal to the Sheriff by summary application within 21 days of being notified of this decision.**

Where such an appeal is made, the effect of the revocation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the revocation 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 Judith V Lea, solicitor, Unit 3.5 The Granary Business Centre, Coal Road, Cupar, Fife, KY15 5YQ, chairperson of the Private Rented Housing Committee at Cupar on 30 August 2010 before this witness:-

**R Graham**

Witness

**J V Lea**

.... Chairman

Rachel Graham  
31 1/0 Dundonald Street  
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