



REPAIRING STANDARD ENFORCEMENT ORDER

BY THE

PRIVATE RENTED HOUSING COMMITTEE

PRHP Ref: PRHP/G63/99/12

PROPERTY

**The Point Cottage, Balmaha, Glasgow G63 0JQ registered in the Land Register for
Scotland title number STG65309 (“the Property”)**

PARTIES

Mr James & Mrs Nancy Farrell, residing at the property. (“the Tenants”)

**Ms Hayley MacFarlane residing at 24 (1/3) Thornwood Avenue, Glasgow G11 7TW
 (“the Landlord”)**

1. **WHEREAS** in terms of their decision dated 2 October 2012 the Private Rented Housing Committee (‘the Committee’) determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (‘the Act’) and in particular the property fails to meet the repairing standard as set out in section 13(1) of the Act.
2. The Committee now requires the Landlord to carry out such work as is required to ensure the property meets the repairing standard and that any damage caused as a consequence of carrying out of any works in terms of this Order is also made good before the expiry of the Completion Date.

THE ORDER

3. In particular, and without prejudice to the foregoing generality, the Committee **HEREBY ORDERS** the Landlord to carry out the following repairs (‘the Works’):-

3.1. To attend to and carry out the repairs as detailed in the list of repairs (so far as not already done) prepared by the Tenants and lodged with the application and as accepted by the Landlord as being necessary works in order to ensure that the property complies with the repairing standard as defined in section 13 of the Act.

4. The Committee **HEREBY FURTHER ORDERS** that the Works specified in this Order must be carried out and completed before the expiry of the **Completion Date** of 20 weeks from the date of service of this Order.

RIGHT OF APPEAL

5. A Landlord or Tenant has the right to appeal this decision to the Sheriff by summary application within 21 days of being notified of that decision.

EFFECT OF APPEAL

6. In terms of section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by confirming the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined **IN WITNESS WHEREOF** these presents consisting of this and the preceding page are subscribed as follows:-

D Preston

.....
Chairman

.....
10.10.12.....

Date of Signing

.....
Gersford.....

Place of Signing

.....
G Wardlaw, **Witness**

.....
Name

Genima Wardlaw

Address

*Europa Building
450 Argyle Street
G2 8LH*



PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE UNDER RULE 26(1)) OF THE PRIVATE RENTED HOUSING PANEL (APPLICATIONS AND DETERMINATIONS)(SCOTLAND) REGULATIONS 2007

In connection with

PROPERTY:

The Point Cottage, Balmaha, Glasgow G63 0JQ ("the Property")

PARTIES

Mr James & Mrs Nancy Farrell, residing at the property. ("the Tenants")

Ms Hayley MacFarlane residing at 24 (1/3) Thornwood Avenue, Glasgow G11
7TW ("the Landlord")

PRHP Reference: PRHP/G63/99/12

Decision

The Committee, having made such enquiries as is 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 representations of the Landlord and the Tenant, determined that the property fails to comply with the repairing standard as defined in by Section 13 of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act").

Background

1. By application dated 16 May 2012 the Tenants applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 they considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-

- The house is wind and watertight and in all other respects reasonably fit for human habitation.
 - The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
 - 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.
 - The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. In particular the Tenants complained that:
 - 3.1. the property is not wind and watertight
 - 3.2. the exterior of the property requires major repairs
 - 3.3. the electrics are unsafe and the heating is not working properly
 - 3.4. the kitchen is in serious disrepair
 - 3.5. there are no smoke / fire detectors in the property.
 4. By Notice of Referral dated 9 July 2012 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 ("the Committee).

The Committee comprised the following members:

Mr. David M Preston, Legal Member
 Ms. Carol Jones, Surveyor Member
 Mrs. Susan Brown, Housing Member

5. The Committee served Notification of Inspection and Hearing dated 7 September 2012 under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants advising that an Inspection and Hearing would take place on 2 October 2012.
6. The Committee inspected the Property on the morning of 2 October 2012. The Tenants were present and the Landlord was neither present nor represented.
7. Following the inspection of the Property the Committee held a hearing at the Winnock Hotel, Drymen. The Hearing had been scheduled to take place at Kilmarnock Millenium Hall, Gartocharn at 11.00 on 2 October 2012. However when the Committee and the Tenants arrived there at 11.10, the Hall was found to be locked and, despite efforts no contact could be made with the keyholder. There was no evidence that the Landlord had been in attendance and no contact had been made with PRHP administration to indicate that was the case. Accordingly the Committee determined to convene the Hearing at the Winnock Hotel. The Committee heard evidence and submissions from the Tenants.
8. At the outset of the Hearing the Chairman outlined the procedure and explained the powers of the Committee in relation to the application. The Committee noted from the correspondence and documents that there was a great deal of emotion behind the situation between the parties but stressed that it had no locus to intervene in any way in relation to such matters and it would confine its considerations to the matters to be determined.
9. The written and documentary evidence comprised:

- Copy notes by Tenants dated 8 March – 5 April 2012
- Copy photographs from the Tenants
- Copy letter from the Tenants to the Landlord dated 5 April 2012
- Copy letter from the Landlord to the Tenants dated 19 March 2012
- Copy undated letter ("To whom it may concern") from the Tenants
- Copy letter dated 30 March 2012 from the Tenants to the Landlord
- Copy letter from the Tenants to the Landlord dated 8 March 2012
- List of repairs that are needed to be carried out - prepared by the Tenants
- Copy letter dated 20 June 2012 with copy bank statements
- Written representations to PRHP by the Landlord dated 23 July 2012 with attached document
- Copy preliminary report (undated) from D.R.Dolby, Dolby & Sons.

Summary of issues

10. The issue to be determined was whether the nature of the work required, as detailed in the list of repairs and accepted by Dolby & Sons as necessary, meant that the property fell below the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1)(b) of the Act. It was noted that the letter from Dolby & Sons produced by the Landlord and referred to by her, confirmed that the list of repairs prepared by the Tenants "...is an accurate assessment of the work required at the property...". Accordingly the Committee determined that, in the absence of any contrary representations, the Landlord accepted that the list provided an accurate assessment of the work required.

Findings in Fact

11. The Committee finds the following facts to be established:-
 - 11.1. Since 1993 or thereby, the Tenants have occupied the property and have paid rent to the Landlord or her father who owned the property until he transferred it to the Landlord on 15 April 2011. There is no written Lease document but the occupation by the Tenants and payment of rent is sufficient to establish an assured lease under the Housing (Scotland) Act 1988. The provisions in Chapter 4 of the Act apply.
 - 11.2. The tenant had notified the Landlord of the required works to the property as required by the Act.
 - 11.3. The property is a detached one and a half storey cottage situated within the curtilage of the Balmaha Boatyard. The surrounding land is assumed to belong to the Boatyard business, or to the Landlord's extended family. The accommodation comprises living room, dining room, kitchen, bathroom, one bedroom and an attic boxroom which was described by the Tenants as a small bedroom. However the room cannot properly be regarded as habitable due to the ceiling height, restricted access and the dimensions. The original part of the house is of stone construction, probably in excess of 200 years old. It has been extended by a block and cement extension with pitched felt covered roof. The external walls are cement rendered and harled. There is a reasonable sized garden to the rear of the property. The house is not a listed building.

11.4. The inspection revealed:

- The house is neither wind and watertight nor in all other respects reasonably fit for human habitation.
- The structure and exterior of the house (including drains, gutters and external pipes) are neither in a reasonable state of repair nor in proper working order.
- Installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are neither in a reasonable state of repair nor in proper working order.
- Fixtures, fittings and appliances provided by the Landlord under the tenancy are neither in a reasonable state of repair nor in proper working order.

12. In relation to the issue of adequate smoke detectors, while the Tenants had included this on the application form, they had not previously intimated this to the Landlord as an issue and accordingly this Committee had no locus to make any determination in that regard. However in line with practice, the Committee did note that there were no smoke detectors in the property and draws the Landlord's attention to the guidance and advice issued by the Scottish Fire and Rescue Service and the Chief Fire Officers Association Scotland.

Reasons for the decision

13. The Committee inspected the property with particular reference to the issues outlined by the Tenants in the list of repairs provided. It noted that the list had been prepared prior to repairs which had evidently been carried out to the roof. It was reported by the Landlord that this had been done in April 2012, which was confirmed by the Tenants. Some slates and the flashings appeared to have been replaced and bituminous felt appeared to have been applied around the base of the chimney stack. There were still a number of slipped and broken slates visible on the roof. No work had apparently been carried out to the felt roof over the kitchen area and the tenants said it had not been re-felted during their occupation of the property. The Tenants acknowledged that many of the problems relating to water ingress through the roof as listed had improved since the work had been carried out, but had not entirely been eliminated.

14. The Committee noted that some of the reported issues which had resulted from the ingress of water prior to the work on the roof remained evident. In particular the staining of internal walls and ceilings from water damage and peeling plaster and wallpaper in the living room and dining room. In addition to the water ingress at the roof and chimney, the house suffered extensively from penetrating and rising damp, which appeared to be contributed to by the excess ground levels around the outside walls. The property also suffers from condensation exacerbated by poor insulation. The windows generally were in poor condition, with some cracked and broken panes in the bedroom and the bathroom. The window frame (as opposed to the 'ledge' as reported in the list) in the bathroom was rotten, as was the exterior timber frame of the bedroom window. The windows appeared to have inadequate ventilation.

15. The Committee considered that the extent of the rising damp may cause the property to fall below the tolerable standard as defined in the Housing (Scotland)

Act 1987 (the "1987 Act") but it is not within the jurisdiction of the Committee to make any determination in that regard. However the Local Authority should consider its position under the 1987 Act in that respect.

16. There were areas of cracked and boss render to the front and east gable of the property and the soffits were in a poor condition requiring attention or replacement.
17. The visible drainage pipe from the kitchen was cracked and some downpipes and guttering were in poor condition.
18. The Tenants reported that some water pipes behind the tiles in the kitchen had burst causing flooding. The Tenants had re-routed the pipes in pvc plumbing material to avoid disrupting the tiling. The electrical sockets in the kitchen were not in a safe condition and the extractor fan did not work. In the toilet, the WC was seen to have come loose from its mounts and the movement in it had resulted in the waste pipe becoming loose and leaking, despite efforts by the Tenants to secure it. The extractor fan in the bathroom did not work properly.
19. It was apparent to the Committee that the electrical system in the property was in a poor condition which had been partly contributed to by the water ingress. The Committee did not inspect the fusebox or main connections but had regard to the sockets in the kitchen and in the attic boxroom.
20. It was also noted that there are cracks to the walls and ceilings in the porch, top landing, main bedroom and entrance to the loft space, a significant slope to the concrete floor in the living room and, of particular concern from a safety point of view, a hole in the main bedroom floor where it appears as if a section has been cut out.
21. The kitchen units were in poor condition and had suffered from water damage probably resulting from the burst pipes. The units could not be said to be in a reasonable state of repair and in proper working order.
22. The Tenants did not make any specific representations regarding the current operation of the heating system, although they did report that the tank and pipes had burst or leaked resulting in water and fuel oil damage in the dining room area.
23. The Committee gave careful consideration to a reasonable timescale within which the work should be completed. It was mindful of the assessment by Dolby & Sons that a minimum of 12 weeks would be required to carry out the work. It was also mindful that the property would probably require to be vacated during the work which would entail the relocation of the Tenants. Accordingly it determined that a period of 20 weeks would be realistic.

Decision

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

Right of Appeal

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

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.

D Preston

.....Chairman

Date 10.10.12 ,