

Determination by Private Rented Housing Committee

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

Re : Corsehead Farm, Glenluce, Newton Stewart, DG8 OJF ("the Property")

TITLE NUMBER: WGN 4312

The Parties:-

Robert William Gascoyne and Mrs Janet Gascoyne, residing at Corsehead Farm, Glenluce, Newton Stewart, DG8 OJF ("Tenants")

John J M McIntosh, residing at Genoch Mains, Dunragit, Stranraer ("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 property, and taking account of the evidence led by both the Landlord and the Tenants, in writing and at the hearing, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 14 March 2008 the Tenants applied to the Private Rented Housing Panel for a determination of whether the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenants states that the Tenants consider that the Landlord has failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord has failed to ensure that:-
 - (a) the house is wind and watertight and in all other respects reasonably fit for human habitation. (Section 13 (1) (a) of the Act)
 - (b) 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 (Section 13 (1) (b) of the Act).
 - (c) 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. (Section 13 (1) (c) of the Act).
 - (d) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order (Section 13 (1) (d) of the Act)
3. By letter dated 25 June 2008 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 by letter dated 25 June 2008.
5. The Tenants lodged with their written application a number of letters all as narrated in the Tenant's solicitors letter dated 17 March 2008 addressed to the Private Rented Housing Panel. In addition the Tenant lodged a report from Messrs J & E Shepherd, Chartered Surveyors, 18 Castle

Street, Dumfries dated 19 October 2007. In addition the Tenants lodged a report prepared by Messrs Richardson & Starling (Northern) Limited dated 4 June 2008.

6. By letter dated 27 June 2008 the Landlord's solicitor lodged written representations on behalf of the Landlord.
7. The Private Rented Housing Committee inspected the property on the morning of 28 August 2008. Both the Landlord, his representative and the Tenants were present during the inspection.
8. Following the inspection of the property the Private Rented Housing Committee held a hearing at Newton Stewart. Both the Landlord and the Tenant were present at the hearing. The Landlord was represented by Mr Walker, solicitor and the Tenants were represented by Ms Fox, solicitor.
9. At the start of the hearing the Landlord submitted further written documentation for consideration by the tribunal. Said correspondence consisted of:-
 - (a) letter dated 19 June 2008 addressed to Luce Bay Plant Hire from Garroch & Gourlay Preservation;
 - (b) letter dated 19 June 2008 addressed to Luce Bay Plant Hire from George McShane, Painter and Decorator
 - (c) a letter from the Landlord's solicitors to Dumfries & Galloway Council dated 20 June 2008;
 - (d) letter dated June 21 2008 addressed to Luce Bay Plant Hire from Galloway Electrical Services;
 - (e) letter dated 23 June 2008 addressed to Luce Bay Plant Hire from David Train (Plumbing and Heating Engineer);
 - (f) letter dated 23 June addressed to Luce Bay from Southwest Roofing Services Limited;
 - (g) letter dated 23 June 2008 addressed to Luce Bay Plant Hire from Garroch and Gourlay Preservations;
 - (h) letter dated 24 June 2008 addressed to the Landlord from Luce Bay Plant Hire Limited;
 - (i) a letter addressed to the Landlord's solicitor from Mr Martin Taylor of Dumfries and Galloway Council Environmental Standards Office dated 10 July 1008;
 - (j) a letter to the Landlord from Messrs G M Thomson & Company dated 27 August 2008;
10. The Tenants' solicitor objected to the late production of the documentation narrated in paragraph 9 above. She highlighted that most of the papers had been available to the Landlords for some time and yet had not been produced until the date of the hearing. She submitted that the Tenants would be unfairly prejudiced if the Tribunal allowed these documents to be lodged at the date of hearing. The Landlord's solicitor argued that the papers concerned simply backed up information that would, if necessary, be spoken to by witnesses at the tribunal.
11. The Tenant lodged with the tribunal a further letter from Messrs J & E Shepherd, Chartered Surveyors dated 22 August 2008. The Landlord's solicitor did not object to the submission of this letter, but argued that the Tenant had failed to give due notice of how the Tenant considered the property had failed to meet the repairing standard. The Landlords' solicitor argued that the first report dated 19 October 2007 from Messrs J & E Shepherd was an all encompassing survey report and was not restricted to matters which the committee should consider when determining whether the Landlord had complied with S14(1)(b) of the Act. The Tenant's solicitor highlighted that the application had already been accepted by the Private Rented Housing Panel and had been referred to a Private Rented Housing Committee. The Tenant's solicitor argued that the additional letter dated 22 August 2008 from Messrs Shepherd Surveyors did not highlight anything new to the Landlord but assisted in clarifying issues for determination by the committee.
12. Having heard both parties the committee decided, at the start of the hearing, that:-

- (a) The Tenants were not prejudiced by the late submission by the Landlord of the correspondence referred to in paragraph 9 above. The committee noted that the correspondence concerned consisted mainly of quotations and specifications of proposed work to be carried out to the property. None of the paperwork submitted by the Landlord appeared to contradict the Tenant's contention that the property did not meet the repairing standard;
 - (b) The committee further decided that the Tenant had sufficiently specified how they considered that the property failed to meet the repairing standards. The original survey report by J & E Shepherd along with the clarifying letter of 22 August 2008 were sufficient to allow the committee to apply their own expertise and skill in identifying those issues which were relevant to the determination of whether or not the Landlord had complied with the duty imposed by s14(1)(b) of the Act.
13. The Landlord's solicitor made a further submission at the start of the hearing. The Landlord's solicitor argued that it was accepted that work was required to the property but that such work could not be carried out at a reasonable cost and that the house was beyond economic repair. The Landlord's representative conceded, however, that there was no statutory exception to the Landlord's repairing duty which relieved the Landlord of that duty where any necessary work can not be carried out at a reasonable cost or where the property concerned was beyond economic repair. In the circumstances the committee rejected this submission of the Landlord.
14. In general the Committee noted that the Landlord did not dispute that work was required to the property. The extent of the work required was however disputed. The Landlord did not accept that the necessity of certain works necessarily meant that the property did not meet the repairing standard.
15. The committee thereafter heard evidence from Mr Gascoyne (one of the joint Tenants), Mr James Jardine (Quantity Surveyor and estimator) and the Landlord.
16. The committee found the following facts to be established.
- (a) The Tenants took entry to the property in August 1998. At that time the owner of the time was a Mr Stewart. Mr Stewart agreed that the Tenants could live in the property for their lifetime.
 - (b) It was agreed between the Tenant and Mr Stewart that the Tenant would carry out certain capital works to the property to bring the property to a habitable standard. It was agreed between these parties that the works would be completed by the Tenant shortly after they took entry to the property.
 - (d) A low rent of £40 per week was agreed between the Tenants and Mr Stewart to reflect the capital which the tenants intended to spend on the property to bring it to a habitable standard.
 - (e) On taking entry to the property the Tenant carried out certain capital works which included:-
 - (i) part cost of replacing a double glazed window unit
 - (ii) Modernising the downstairs bathroom;
 - (iii) converting an upstairs box room into a shower room/toilet;
 - (iv) upgrading the central heating system;
 - (v) general redecoration.
 - (vi) removal of fireplace in bedroom 2 (downstairs)
- The Tenants carried these works out at an approximate cost of £18,000.
- (f) At the time the Tenants took entry to the property they highlighted to Mr Stewart that there was a smell of damp in the property. Mr Stewart explained to the Tenants that the property was damp because there had not been anybody living in the property for considerable time.
 - (g) Liability for future repairing obligations of the property was not discussed by Mr Stewart and the Tenants.

- (h) The Tenants did not agree to accept any liability for the continuing repair of the property beyond the initial capital works which were required to bring the property to a habitable standard.
- (i) There is damp penetration at the chimney heads which is causing dampness in the two bedrooms upstairs in the property. Repairs are required to the chimneys to prevent continuing damp penetration.
- (j) Both the pitched and flat roof covering at the property requires an overhaul and possible renewal. Rain water leaks from the roof into the kitchen and through the skylight in the upstairs bathroom. Repairs are required to the pitched and flat roofing of the property to prevent future water penetration. The kitchen ceiling is damp and is sagging, indicating possible or potential structural failure. The ceiling finish is possibly asbestos sheeting.
- (k) The rain water goods including the gutter and down pipes take the rain water only to ground level alongside the building. This was how the property was originally constructed.
- (l) The backdoor is rotting at the bottom of the door and door frame.
- (m) The Skylight in the upstairs shower room and the kitchen window allow water ingress to the property.
- (n) The window in bedroom 2 (downstairs) has a rotten cill.
- (o) There is rot to the main flooring in the main hallway at ground level.
- (p) There is rot to the upper bedroom flooring and to the flooring in the upper shower room.
- (q) The backs of the kitchen units have become rotten as a result of dampness.
- (r) There is dampness to the flooring in the main hallway and to the upper bedroom flooring. There is dampness and rot to the hall skirting boards, of the walls in the bedrooms. There is dampness in the kitchen walls. There is dampness in the sitting room walls. There is dampness in the bathroom skirting boards.
- (s) Extensive repairs are required to the property to prevent the property from suffering from future rot and damp.
- (t) The Tenant has intimated the requirements for repairs to the Landlord.
- (u) It is unlikely that the necessary works to eradicate dampness within the property can be carried out while the Tenants remain in situ due to probable chemical treatment for rot eradication.

Reasons for the decision

17. The issue to be determined by the Rented Housing Committee is whether or not the Property meets the repairing standard in terms of Section 13 (1) (a), 13 (1) (b), 13 (1) (c) and 13(1)b of the Act as at the date of the hearing. The committee considered the submissions of the parties, their observations at the inspection and the documents submitted. They were satisfied that the Tenant had intimated the required works to the Landlord as required by the Act. The committee noted that the Landlord accepted that repair work was required to the property, and the Landlord had taken steps to obtain quotations and advice on the cost and extent of the necessary work in this respect.
18. It was clear from the evidence of all parties that extensive works are required to the property to ensure it meets the repairing standard. The property suffers from extensive dampness. This was referred to in the reports by J & E Shepherd Surveyors, the report from Richardson & Sterling and was accepted by the Landlord's witness Mr James Jardine. Mr Jardine was a most credible witness and highlighted that he had been involved in obtaining various quotations for work which

the Landlord had submitted to the committee. Mr Jardine was of the view that works required to eradicate dampness at the property would involve the use of certain chemicals and that in his professional opinion it would not be possible to carry out these works while the Tenant remained in the property. He further highlighted that the extent of the roof work required at the property would probably require the Tenant to move out of the property as a precautionary measure on health and safety grounds.

19. The committee did not accept that the electrical systems within the property were not in a reasonable state of repair or in proper working order given the age of the property. Whilst the committee noted the aged condition of parts of the electrical system and whilst the Tenant's surveyor indicated that he considered that the system was unsatisfactory there was no clear evidence to the committee that the system failed the standard as set out in section 13(1)(c) of the Act. The committee further noted that the tenants accepted that no repairs were required to the hot water and heating systems.
20. In general terms the Landlord accepted that substantial work was required to the property. The critical issue between the parties appeared to be whether or no the tenant required to move out of the property whilst the necessary rectification works were carried out. The Tenant, Mr Gascoyne in his evidence indicated that he was not willing to move out of the property. He indicated that he and his wife were happy to move to the top floor of the property to allow the major work in relation to dampness etc whilst they continued to deliver within the property. Mr Gascoyne identified in his evidence that he and his wife were concerned if they moved out of the property the landlord would not allow them to move back into the property. The question of whether or not the Tenant will move out of the property to allow the necessary works to be carried out is not one which the committee requires to consider when determining whether the property meets the repairing standards.
21. In his submission the landlord's solicitor submitted to the committee that as the Tenants had accepted responsibility to carry out certain capital works to the property on taking entry they were now responsible for the continued maintenance of the property throughout the term of the lease. This contention was not accepted by the committee. There was no evidence to support such a contention before the committee. The committee accepted and preferred the evidence of the Tenant to the effect that they agreed to carry out certain initial works on taking entry to the property and that no agreement had been reached by the Landlord and the Tenant as to the future maintenance of the property.
22. The Landlord's solicitor drew the committee's attention to the terms of Section 16 (4) of the Housing (Scotland) Act 2006. That section states "a Landlord is not to be treated as having failed to comply with the duty imposed by section 14 (1) where the purported failure occurred only because the Landlord lacked necessary rights (of access or otherwise) despite having taking reasonable steps for the purposes of acquiring those rights".

The Landlord's solicitor submitted that as the Tenant would not move out of the property to allow the works to be carried out the Landlord accordingly lacked necessary rights of access and accordingly there was an exception to the Landlord's repairing duty in respect of the subjects in terms of s 16(4) of the Act.

The committee did not accept this contention on behalf of the Landlord.

The tenant took entry to the property in 1998 and paid rent for their occupancy of the property. The Tenancy is an assured tenancy in terms of Section 12 of the Housing (Scotland) Act 1988. Section 26 of the Housing (Scotland) Act 1988 provides that "it shall be an implied term of any assured tenancy, that the Tenant shall afford to the Landlord reasonable access to the house let on the tenancy and all reasonable facilities for executing therein any repairs which the Landlord is entitled to execute".

Further, and in any event, Part 9 of the Housing (Scotland) Act and, in particular, Section 181 (4) provides that a landlord in a tenancy to which the repairing standard applies, or any person authorised by the landlord, is entitled to enter the house concerned for the purpose of—

- (a) viewing its state and condition for the purpose of determining whether the house meets the repairing standard, or
- (b) carrying out any work necessary to comply with the duty in section 14(1)(b) or a repairing standard enforcement order.

Having regard to the above statutory provisions the committee accordingly determined that the Landlord does have right of access to the property for executing any necessary repairs and that there was no exception to the Landlord's repairing duty in the circumstances of this tenancy.

Decision

- 23. The Committee accordingly determined that the Landlords has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 24. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2) of the Act.
- 25. The decision of the Committee was unanimous.

Right of Appeal

- 26. 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

- 27. 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.

A Cowan

Signed ...
Chairperson

..... Date..... *3rd October 2008*

Repairing Standard Enforcement Order

Ordered by The Private Rented Housing Committee

Re : Corsehead Farm, Glenluce, Newton Stewart, DG8 OJF ("the Property")

TITLE NUMBER WGN 4312

The Parties:-

Robert William Gascoyne and Mrs Janet Gascoyne, residing at Corsehead Farm, Glenluce, Newton Stewart, DG8 OJF ("Tenants")

John J M McIntosh, residing at Genoch Mains, Dunragit, Stranraer ("the Landlord")

NOTICE TO JOHN J M MCINTOSH, RESIDING AT GENOCH MAINS, DUNRAGIT, STRANRAER, ("the Landlord")

Whereas in terms of their decision dated 3rd October 2008, 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 house is wind and watertight and in all other respects reasonably fit for human habitation.
- (b) 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 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) Carry out all such work as may be required to the roof of the property so that it is brought to a reasonable state of repair and in proper working order and so that the house is wind and watertight
- (B) Carry out all such works as may be required to treat the penetrating dampness at the chimney heads of the property
- (C) Repair and/or renew the skylight window and kitchen window of the property so that they are wind and water tight.
- (D) Carry out all such works as may be required to treat and eradicate the rising dampness which currently affects the property
- (E) Repair, or where necessary renew, those items of joinery within the property (including floorboards and skirting boards) which have been affected by the dampness in the property

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within six calendar 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.

A Cowan

Chairperson
3 September 2008

A M Hempsey

Witness

(Sign)

ALISON MORAG HEMPSEY (print name)

Address 7 WEST GEORGE ST
GLASGOW