



Statement of decision of the Private Rented Housing Committee under Section 25 (1) of the Housing (Scotland) Act 2006

prhp Ref: PRHP/IV2/5/09

Re : Property at Blackhills Farmhouse, Moyness Road, Auldearn, IV12 5JZ ("the Property")

The Parties:-

MR ALAN HARFIELD residing at Blackhills Farmhouse, Moyness Road, Auldearn, IV12 5JZ ("the Tenant")

THE TRUSTEES for the CAWDOR MAINTENANCE TRUST c/o Messrs Bowlts, Chartered Surveyors, Barnhill, Pluscarden, by Elgin, IV30 8TZ (represented by their agent Alistair Davidson Esq of the said Messrs Bowlts Chartered Surveyors ("the Landlords"))

Decision

The Private Rented Housing Committee, having made such enquiries as is fit for the purposes of determining whether the Landlords have complied with the Repairing Standard Enforcement Order (hereinafter referred to as "RSEO") in relation to the property concerned, and taking account of the representations made by the parties, determine that the Landlords should be given a further extension of six weeks from the date of this decision to the period allowed for completion of the required work in terms of Section 25(1) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act").

Background

1. Reference was made to the original Determination of the Committee dated 6 April 2009 ("the Determination") and the subsequent variation of the Determination dated 15 September 2009 ("the Variation"). The Determination had decided that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act and an RSEO had been made by the Committee which required the Landlords to carry out the works as specified therein. The said works were to be carried out within 3 months of the date of the RSEO.
2. After the timescale within the RSEO had elapsed a reinspection of the Property had taken place on 18 August 2009 with two Members of the original Committee present, Mr Colin Hepburn (Surveyor Member) and Mrs Linda Robertson (Housing Member).
3. The original RSEO required the Landlords to:-
 - (a) replace the rear door and make good any damage caused to the surrounding frame and floor caused by previous water penetration.
 - (b) to repair or replace the front door and to ensure that it was wind and watertight.
 - (c) repair or replace all windows within the Property to ensure that they were wind and watertight.

4. During the course of the re-inspection of 18 August 2009, the following items had been highlighted as still requiring attention. These were:-
 - (a) areas of cement fillet around the door frame being loose and or had not been replaced where it had been removed. There were also a couple of small holes in the cement work around the door.
 - (b) Whilst the rear door doorpost and frame had been replaced the staining which was evident to the floor at the time of the original inspection was still present.
 - (c) Whilst various repairs had been carried out to all the windows, in the ground floor toilet window, there was still evidence of daylight penetration around the frame and in relation to the upstairs northmost front bedroom window clear daylight was showing between the opening part of the window and the frame.
5. Following the reinspection of 18 August 2009, the Committee considered how matters would best be taken forward. Given the perceived minor nature of the works that were outstanding, the Committee took the view, after the views of the parties had first been sought, that rather than have a reconvened Hearing, that the Landlords' agents should be given an extension of 6 weeks to complete the necessary outstanding works. Subsequent to this decision, the Variation reflecting this was issued on 15 September 2009.
6. Subsequent to the reinspection and the issue of the Variation by the Committee it came to light that the reinspection on 18 August 2009 had started prior to the designated time and that not all the relevant parties had been present throughout the whole of the reinspection. The Landlords agent had not been present during the reinspection and the Tenants agent had been present for part only of the reinspection. Accordingly a further reinspection of the Property together with a reconvened Hearing was set for 30 November 2009 before the full Committee (comprising Mr E K Miller, Legal Member; and the said Mr Hepburn and Mrs Robertson; along with the Clerk to the Committee, Mr Robert Shea).
7. The Property was duly reinspected by the said Committee on 30 November 2009 and the Committee inspected not only the three outstanding items that had been highlighted in the Variation but also a number of other windows within the Property which were brought to their attention by the Tenant.
8. Following the inspection of the property the Private Rented Housing Committee held a Hearing at Nairn Community Centre, Nairn and heard from both the Tenant and the Landlords. The Landlords were represented by their surveyor, Mr Alistair Davidson of Bowlts, Chartered Surveyors. The Tenant represented himself.
9. The Tenant submitted as follows:-

The Tenant accepted that the works that had been carried out to both the front and rear doors had been carried out to a good standard and were satisfactory. This also applied to the flooring in the rear hallway area. The areas of poor cement fillet had also been repaired The Committee agreed with this and accordingly these issues were no longer considered to be "live".

The Tenant, however, was still unhappy in relation to the windows which he felt were not properly wind and watertight. The Tenant felt that he had been prejudiced by the reinspection. This had started ahead of the time designated and his agent had not been able to be present during the course of the whole of the inspection and to make comments on the various windows. The Tenant felt that the windows were still not properly wind and watertight and during the inspection had played a video to both the Committee and the Landlords Agent taken at the Property on a windy day. The video

showed cotton strips that had been pinned on to the inside of the windows moving due to alleged draughts within the Property caused by gaps around the window frames. The Tenant was of the view that the uprights of the windows were warped and this would cause gaps to still be there no matter how much the windows were adjusted.

The Tenant made reference to a letter that had been provided to them by the Landlords' agents some time ago regarding works to, inter alia the windows that were supposed to be carried out to the Property.

The Tenant acknowledged that whilst some works had been carried out to the windows and improvements made there were still issues. Some of the gaps, he alleged, had tried to be filled in by the Landlords' painter building up layers of paint to fill in the gaps. This had not been successful and in some places was now causing the windows to stick.

The Tenant highlighted that in his view there were gaps around a number of the windows up to 2 millimetres wide. When you multiplied the width of these gaps up around the dimensions of the window this effectively meant there were large "holes" in the windows where wind could enter. The Tenant took the view that the main repairs that the Landlords had carried out to the Property were repairs to the window ledges. Whilst the Tenant accepted that this was necessary in the longer term it did not particularly reduce the draughts coming in around the windows themselves. The Landlords had made some adjustments to the catches in the Property but in the Tenant's view this was primarily an adjustment and not a repair.

In the downstairs bathroom window, narrow strips of wood had been placed along the edges of the opening window where this should press against the window frame. The Tenant pointed out that the wood was not malleable and therefore this would not create a proper seal nor a lasting repair. At least one of the wooden strips was already falling off.

The Tenant also highlighted that in places on the upper floor windows rubber insulation strips had been placed along the frame and a further layer had then been stuck on top where the gaps were deeper than the depth of a single rubber seal. The tenant did not take the view that this would be a sufficient or lasting repair.

The Tenant also complained about the amount of condensation on the windows of the property and stated his view that they were generally of a poor finish. He made reference to a survey he had had prepared by Allied Surveyors in 2008 which indicated that the windows were deteriorating.

10. The Landlords submitted as follows:-

The Landlords submitted that there would always be some condensation within the windows at the property and that the fact that there was condensation did not, of itself, mean that the windows were not wind and watertight. The Property had always had single glazed windows and the Property was located in the north of Scotland in an exposed rural location. It was inevitable that there would be some condensation within the Property on the windows.

The Landlords' agent was of the view that the letter previously issued by the Landlords to the Tenant many years ago was irrelevant for the purposes of this Hearing.

The Landlords' agent accepted that the wooden strip on the downstairs toilet window was not adequate and accepted that a rubber seal would be more appropriate. In his defence the Landlords' agents advised that his understanding had been that the Tenant had said to the Landlords' tradesmen that they did not wish them to use the rubber seal as it would not last long enough. In the upstairs bedroom window rubber

seals had been installed and the Landlords' agent was of the view that this was acceptable.

In relation to the video shown by the Tenant, the Landlords' agent was of the view that there would always be an element of movement of air near windows of this type and, whilst the cotton strips were moving, this was within an acceptable range.

11. Summary of the Issues

The issues to be determined by the Committee were whether the windows within the Property were properly wind and watertight and whether repair and/or replacement was required.

12. Findings of Fact

The Committee found the following facts to be established:-

- (a) The repair/replacement of the front and rear doors had been properly carried out and they are now wind and watertight. The flooring within the rear hallway is also acceptable as is the cement fillet around the front door.
- (b) The windows at the Property, whilst improved from the original inspection by the Committee were still, in places, failed to meet the repairing standard.

13. Reasons for the Decision

The Committee felt that there was some disagreement with the Tenant as to how much time in advance of the designated time the reinspection had started. However, the Committee accepted that Mr Hepburn and Mrs Robertson had attended at the Property in advance of the designated time for the inspection. Mr Hepburn had pointed out during the course of the Hearing that the purpose of their visit was for a reinspection and therefore there was a limited amount of input required from the parties as it was not a hearing. Although the Tenant's agent had appeared during the course of the inspection and had had certain items pointed out to her at that point the Committee accepted that, upon reflection, she had had less of an opportunity than she might otherwise have done to comment on matters had the inspection been carried out at the designated time. The Landlords' agent arrived shortly after the designated time and accordingly had had no input into the reinspection. In the circumstances, notwithstanding that the Variation had only specified certain restricted works, the Committee felt the appropriate course of action was to rely upon the full Committee inspection earlier that day. All parties had been present and the Committee wished to ascertain whether the repairing standard was being met or not in relation to the Property under the Determination rather than those restricted items under the Variation.

A number of other issues had arisen during the course of the Hearing. Reference was made again to the letter given to the Tenant by the Landlords' agents some time ago. The Chairman had again emphasised, as had been the case at the first Hearing that this was a contractual matter between the parties and was of no relevance to this Hearing.

During the course of the Hearing, the Tenant had made reference to the right of the Committee to restrict the rent by way of a Rent Relief Order. The Chairman, during the course of the Hearing, indicated that it would be inappropriate for the Committee to issue a Rent Relief Order against the Landlords in the event that it found that certain works were still outstanding. This was due to the fact that in the Variation only certain works had been highlighted to the Landlords as remaining outstanding. If it transpired, following the Committee's decision after this Hearing, that other works were still needed outwith the Variation then it would only be appropriate for the Landlords to be given time to do these before any Rent Relief Order could be considered following a future subsequent inspection.

Looking at the issue of whether the windows did indeed meet the repairing standard or not, the Committee were conscious of their obligation under Section 13(3)(a) to take account of the age, character and prospective life of a property. The Property was single glazed and the windows, whilst they could be made to meet the repairing standard, were dated. There would always be some element of air ingress and condensation in a property of this age and character. That said, the Committee were of the view that whilst the Landlords had carried out significant works and had come close to meeting the repairing standard there were steps that could be taken to further improve the situation. Examples of this were (a) the downstairs bathroom window where an attempt at insulation had been ineffectively carried out with the use of wooden strips and (b) the lefthand side window of the main lounge window where, during the course of the inspection, the Tenant had shown that a higher degree of force than was reasonable in the circumstances was required to open and shut the window. The Committee were of the view that the Landlords should review all the windows within the Property and thereafter take such further steps as were required to ensure that all the windows open and shut smoothly and that in those windows where excessive draughts were still entering the Property that the windows were either further adjusted or replaced or that a sufficient seal between the window and the frame was created. Whilst leaving the matter to the Landlords to decide how best to carry out the works, the Committee were of the view that additional further rubber seals around the edges of the window frames would improve matters. Where the gaps were larger it would be possible for an additional rubber seal to be installed on the opening part of the window as well (rather than placing the two layers of rubber sealant on top of each other). This would provide a better and more effective seal. The Committee considered what period of time the Landlord would require to carry out such further works and took the view that a period of six weeks would be sufficient in the circumstances.

14. The Committee accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act and varied the RSEO to allow the Landlords to carry out such works as are necessary.
15. The decision of the Committee was unanimous.

Right of Appeal

16. **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

17. 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..... 26/1/2010

NOTICE OF A DECISION TO VARY



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/IV2/5/09

Re : Property at Blackhills Farmhouse, Moyness Road, Auldearn, IV12 5JZ ("the Property")

Sasine Description: ALL and WHOLE that plot or area of ground together with the buildings erected thereon known as and forming Blackhills Farmhouse, Moyness Road, Auldearn which subjects hereby described form part and portion of ALL and WHOLE those larger subjects described in Disposition in favour of Hugh John Vaughan Earl of Cawdor and others as Trustees of the Cawdor Maintenance Trust and recorded in the Division of the General Register of Sasines for the County of Nairn on Eighth July Nineteen Hundred and Eighty Six

The Parties:-

MR ALAN HARFIELD residing at Blackhills Farmhouse, Moyness Road, Auldearn, IV12 5JZ ("the Tenants")

THE TRUSTEES for the CAWDOR MAINTENANCE TRUST c/o Messrs Bowlts Chartered Surveyors, Barnhill Pluscarden, by Elgin, IV30 8TZ (represented by their agent Alastair Davidson Esq of the said Messrs Bowlts, Chartered Surveyors ("the Landlords"))

NOTICE TO THE TRUSTEES for the CAWDOR MAINTENANCE TRUST ("the Landlord")

The Private Rented Housing Committee having determined on 26 January 2010 that the Repairing Standard Enforcement Order relative to the property dated 6 April 2009 as subsequently varied on 15 September 2009 should be further varied, the said Repairing Standard Enforcement Order is hereby varied with effect from the date of service of this Notice in the following respects:-

1. That the windows at the Property require further repair works or replacement to render them wind and water tight and in all respects reasonably fit for human habitation and in particular to ensure that they open and close properly and without the use of excessive force in doing so and that the level of air ingress to the Property between the windows and the window frames is reduced where appropriate.
2. The period allowed for the completion of the works required by the Order is extended by six weeks from the date of service of this Notice.
3. Subject 25(3) of the Housing (Scotland) Act 2006 does not apply in this case.

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, Chairperson of the Private Rented Housing Committee at Dundee on 26 January 2010.

before this witness:-

L Johnston

_____ witness

E Miller

_____ Chairman

✓
KINDSAY JOHNSTON name in full

33 YEAMAN SHORE Address

DUNDEE

DD1 4BJ

LEGAL SECRETARY Occupation