



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 (represented by their agent Ms Sarah Gauld, of Messrs Innes and MacKay, Solicitors, Kintail House, Beechwood Business Park, Inverness, IV2 3BW ("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 Kenneth Bowlts 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 an extension of six weeks 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 Determination of the Committee dated 6 April 2009 which decided that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act and the RSEO made by the Committee which required the Landlords to carry out the works as specified therein. The said works were to be carried out and completed within 3 months from the service of the RSEO.
2. Mr Colin Hepburn (Surveyor Member) and Mrs Linda Robertson (Housing Member) reinspected the Property on 18 August 2009, being a date after which the works under the RSEO ought to have been completed. The Tenants' son was present at the inspection and, shortly before the inspection was completed, the Tenants' agent also arrived. The Landlords' agent arrived at the Property after the inspection had been completed and after Mr Hepburn and Mrs Robertson had left the Property.
3. The RSEO required the Landlords to *inter alia*:
 - 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.

Mr Hepburn and Mrs Robertson noted during the course of their inspection that:-

- (a) The front door had been replaced and was now wind and watertight. Some the cement fillet around the door frame was loose and had not been renewed 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, door posts and frame had been replaced the staining which was evident to the flooring at the time of the original inspection was still present.
 - (c) In relation to the windows, various repairs had been carried out but in the ground floor toilet window there was still clear evidence of daylight penetration around the frame. In relation to the upstairs northmost front bedroom window, clear daylight was showing between the opening part of the window and the frame.
4. During the course of the inspection the Tenants' son and agent did raise another issue which was that a section of the concrete sill to the ground floor dining room window had become detached and broken off completely, whilst a large crack had appeared in the concrete sill to the upper floor hall rear window. Both of these cracks would probably be attributed to rusting of the internal reinforcing rod within the concrete sill component. These were not covered by the original RSEO and accordingly were outwith the Committee's jurisdiction. However, given the circumstances, the Landlords may deem it prudent to address these issues now.
 5. The Committee took account of submissions made by the Tenants, their agents and the Landlords' agents. The Tenants' agent submitted that the Landlords had had ample time to carry out the works and requested a reconvened hearing. The Tenants view was that not all the repairs to the window had been to the repairing standard. The Landlords' agent noted that the works were relatively minor and queried whether they were in fact a breach of the repairing standard. They also requested a longer period to the extension, as they were aware the Tenants were to be on holiday and access could not be arranged. The Committee noted that the Landlords had carried out the bulk of the repairs and work required by it in terms of the RSEO. The remaining works that were required were minor and could be rectified relatively quickly. It did appear that the Landlords had made a reasonable effort to comply with the terms of the RSEO. The Committee were satisfied the remaining works were still required for compliance with the repairing standard and also noted the terms of the RSEO which require the Landlords to make good any damage occasioned to the property by carrying out works required to comply with the RSEO. They were satisfied the works listed in paragraph 3 above were still required and outstanding but that the other works that had been done had met the repairing standard. The Chairman had obtained confirmation from the Tenants' agent that the Tenants were to be on holiday. Taking all of the above into account the Committee were satisfied that in this particular case an extension would be appropriate. Accordingly the Committee decided that the period to carry out the works should be extended by six weeks from the date of service of notice of this Decision to vary the RSEO. The Committee did note that this should be ample time for the Landlord to carry out the works, holidays notwithstanding, and that unless there were exceptional circumstances it would be unlikely that any further extensions would be granted.

6. The decision of the Committee was unanimous.

Right of Appeal

7. 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

8. 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..... 15/9/09

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 (represented by their agent Ms Sarah Gauld, of Messrs Innes and MacKay, Solicitors, Kintail House, Beechwood Business Park, Inverness, IV2 3BW ("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 Kenneth Bowlf 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 15 September 2009 that the Repairing Standard Enforcement Order relative to the property dated 6 April 2009 should be 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. 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.
2. 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/...

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 15 September 2009.

before this witness:-

L Johnston

witness

E Miller

Chairman

KINDSMY JOHNSTON name in full

33 YEAMAN SHORE Address

DUNDEE

DD1 4BT

Legal Secretary Occupation