

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**

In connection with

**Property at S.V.G.C.A. Cottage, Culzean Castle and Country Park, Maybole,
Ayrshire KA19 8JX
(hereinafter referred to as "the house")**

**Mr. Krishman Moodley, S.V.G.C.A. Cottage, Culzean Castle and Country Park,
Maybole, Ayrshire KA19 8JX (represented by Mr. John Mulholland, Ayr
Housing Aid Centre) ("the Tenant")**

**The Scottish Veterans' Garden City Association (Inc.), having their registered
office at New Haig House, Logie Green Road, Edinburgh EH7 4HQ (represented
by Mr. John Norrie of Messrs. Gillespie Macandrew LLP, Edinburgh) ("the
Landlord")**

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 evidence led by both the Landlord and the Tenant at the hearing and their written representations, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act")

Background

1. By application dated 2 June 2008 and received on 3 June 2008 the Tenant applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act.

2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure compliance with Section 13(1)(a),(b),(c),(d),and (f) of the Act which states 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; and the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire". The Tenant's complaint of disrepair within the application related broadly to

repairs being needed to the damp proof system; drains, gutters and external pipes which required maintenance; inadequate ventilation for the bathroom and kitchen; the heating system is not in proper working order and the costs of running the heating system are unreasonably high; the fixtures and fittings in the kitchen and bathroom are not in reasonable working order; the electrical fitting in the kitchen is not in proper working order; a mains smoke alarm is required; repairs are required to the roof and the roof shingles need replaced; new flooring throughout is required due to damage caused by dampness; two windows to the rear of the house do not open; the front and back doors of the house do not prevent the ingress of rainwater, and all the internal doors require adjustment. The Tenant submitted to the PRHP a copy letter sent by him to the Landlord on 6 May 2008 notifying him of the required repairs and Landlord's reply dated 7 May 2008, the tenancy agreement dated 11 and 14 May 2007, and the Landlord's Repairs and Information Handbook.

3. By letter dated 21 October 2008 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mrs. Aileen Devanny, Legal Member
Mr. George Campbell, Surveyor Member
Mrs. Susan Brown, Housing Panel Member

4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord and the Tenant. Following service of the Notice of Referral the Tenant made no further written representations to the Committee but indicated that he wished to attend a hearing before the Committee. The Landlord did not submit further written representations.

5. On 14 November 2008 the Committee on their own initiative made the following Direction to the parties in terms of Regulation 14 of the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007:-

"Each party is required to lodge with the Private Rented Housing Panel, 3rd Floor, 140 West Campbell Street, Glasgow G2 4TZ ("PRHP") all written evidence which that party wishes the Committee to consider at the hearing fixed for 3 December 2008 and that party is thereafter required to serve a copy of the written evidence lodged on the other party. The written evidence must be lodged or served as directed no later than 1 December 2008. Such evidence should include any reports or other documents, evidence of notification of repairs or other correspondence which the party wishes to refer to. The Committee will not consider any written evidence which is not served or lodged in accordance with the Direction unless satisfied that there are good reasons to do so".

In response to the Direction, both parties lodged written evidence with the PRHP.

6. The Private Rented Housing Committee inspected the house on the morning of 3 December 2008. The Tenant and his wife, Mrs. Rhonda Moodley, and their agent Mr. John Mulholland were present as was Mr. Stephen Kennedy, Chief Executive of the

Scottish Veterans' Garden City Association, Mr. William Shaw, the Landlord's local agent, and Mr. John Norrie, Solicitor for the Landlord.

7. Following the said inspection the Private Rented Housing Committee held a hearing at Maybole Community Education Centre, Maybole. The Committee considered the written evidence submitted and heard evidence from the Tenant and representations from the Tenant's agent and representations from the Landlord's agent and representatives of the Landlord. There was an opportunity for questions to be put to each party at the hearing both from Committee members and from the other party. Once the Tenant and the Landlord had given their evidence and representations were made on the application, the Committee adjourned to consider the evidence and representations, and to make their determination.

Submissions at the Hearing

8. It was pointed out by the Committee Chairperson at the start of the hearing that the Committee was there to determine whether the house met the repairing standard in terms of the Act. A number of issues were raised in the documentation submitted by the parties which appeared irrelevant to the issue of the repairing standard for the property and the Committee would ignore these extraneous issues unless representations were made as to their relevancy.

Mr. Norrie for the Landlord indicated that in assessing whether the repairing standard was met consideration had to be given to the age, character, prospective life and location of the house in terms of section 13(3). He stated that the dampness in the house was not significant and met the repairing standard given the test in Section 13 (3). He argued that in any event Section 16(4) applied as the Landlord lacked the necessary rights to carry out any repairs to put in place a Damp Proof Course as this would involve substantial repairs and due to the chemicals used in this process, the Tenant would have to leave the property during the works and had refused to do so. In the absence of the Tenant vacating the house while the works were ongoing, it was impossible for the Landlord to carry out the works and the Landlord should not be treated as having failed to comply with the repairing standard in section 13 of the Act. The Tenant indicated that he had refused to move from the house because no guarantee was given that he could return after the works were completed and that he was willing to move out of the house on a temporary basis while the works were ongoing. He also indicated that the alternative accommodation offered by the Landlord was a considerable distance from the house at Culzean. The Landlord's agent indicated that his client had not sought to enforce the rights available to him in terms of Section 18(4) of the Act and had not taken action under Section 18 and Schedule 5 of the Housing (Scotland) Act 1988 to recover possession of the house. He argued that the requirement to raise an action to obtain access or recover possession to carry out the works went beyond reasonable steps which the Landlord should be expected to take to acquire rights to comply with the Act. He further argued that the cost of the works was prohibitive given the charitable status of his clients and the extensive costs involved of eradicating the damp in the house. The Tenant's representative indicated that the cost of the works was irrelevant and that the Tenant was willing to leave the house on being given a guarantee that he could return on completion of the works. Having considered the terms of Section 13(3) and Section 16(4) of the Act, the Committee agreed that the cost of the works were irrelevant to the determination as to whether the repairing standard in terms of Section 13 is met.

The issue in relation to section 16(4) was whether the Landlord had taken all reasonable steps to acquire the right to vacant possession to allow the works to proceed. By failing to raise the necessary proceedings under the Housing (Scotland) Act 1988, the Committee felt that the Landlord had not taken all reasonable steps to acquire the necessary rights to obtain vacant possession of the house, and went on to consider whether the repairing standard had been met for the house.

The parties agreed in the course of the hearing that it was not disputed that the Tenant held an assured tenancy under the Housing (Scotland) Act 1988 which commenced on 1 June 2007 and which continued on a month to month basis by tacit relocation. It was agreed that the 2006 Act and the provisions of the repairing standard applied to the house and the relevant notification of repairs issues had been served properly on the Landlord.

The parties agreed the following:-

- a) The house suffers from rising damp and an element of penetrating damp. It was not accepted by the Landlord that the presence of damp breached the repairing standard.
- b) It was accepted by the Tenant that the gutters, drains, and external pipes were in a reasonable state of repair. Although the Tenant stated that their working order was compromised by the gathering of dead leaves and the gutters and down pipes needed cleaned to remove this debris. The Landlord undertook to carry out this item of work.
- c) The roof does not currently breach the repairing standard and the Tenant indicated that he was no longer seeking an order in respect of this repair.
- d) A battery operated smoke alarm has recently been installed and the Tenant was no longer seeking an order in respect of this repair. It was observed by the Committee that the battery operated alarm did not comply with Section 13(1) (f) of the Act as it did not comply with guidance issued by Scottish Ministers on the provision for detecting fires, which is a requirement of Section 13(5) of the Act. The guidance indicates that smoke alarms installed after 3 September 2007 onwards must be mains powered and includes replacement alarms. The Landlord undertook to install an alarm which complies with the guidance.
- e) The Landlord agreed that the LED in the cooker control unit was not working properly and the light next to the cooker hob is not fully functional. It was agreed between the parties that apart from these two items the electrical system was in a reasonable state of repair and in working order. The Landlord undertook to attend to the two outstanding repairs which may involve the repair or removal of the light next to the cooker and the Landlord further undertook to obtain a PIR certificate to confirm that the electrical work complies with the required standards.
- f) The Landlord agreed that the window in the utility room was nailed shut and the window to the rear of the kitchen was fixed and was not capable of opening. The Landlord agreed to arrange that the utility room window be repaired so that it could open.
- g) The Landlord agreed that minor repairs were required to the back and front doors but submitted that the doors did not fall short of the repairing standard.

h) The Tenant confirmed that he was complaining about the structure of the floor and the defective waterproof membrane rather than any floor coverings on top of the floor structure. His request for a new floor covering related only to his request for a repair to the floor structure itself.

During the inspection the Tenant had complained that the kitchen tap was faulty and the step between the front vestibule and the hall was crumbling. These were not repairs specifically mentioned in the application and they had not been specifically notified to the Landlord. Although, it was felt by the Committee that it would be unfair to make a finding in respect of these matters due to the absence of prior notification, the Landlord, without admission that these repairs failed to meet the repairing standard, stated that he would investigate these matters and arrange their repair. The Tenant also complained of the lack of insulation in the property.

The Tenant referred to the remaining repairs detailed in the application. He submitted that the house suffered from substantial dampness; the back and front doors were not wind and watertight; the kitchen fittings were warped due to rising damp and some cupboards smelt of dampness; the heating system was not in proper working order as the bathroom radiator did not heat properly and it was an inefficient and costly system to run; the internal doors did not remain shut and the catches and handles needed adjustment; there was inadequate ventilation in the kitchen and bathroom; and the toilet in the bathroom could not be moved to allow a floor covering to be fitted as the toilet fitting was cemented in situ.

The Landlord's position was that he had instructed works to rid the house of damp before the Tenant took entry. However, these works including the installation of a waterproof floor membrane had proved unsuccessful. However, the Landlord did not accept the remaining works detailed in the application were required to meet the repairing standard and submitted that he had fulfilled his obligations.

Summary of the issues

9. The issue to be determined is whether the house meets 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).

Findings in Fact

10. The Committee made the following findings in fact:-

10.1. On 1 June 1997 the Tenant entered into a lease with the Landlord for the rent of property at SVGCA cottage, Culzean Castle and Country Park, Maybole. This is an assured lease in terms of the Housing (Scotland) Act 1988. The lease continues on a month to month basis by tacit relocation. The provisions outlined in Chapter 4 of the Act apply.

10.2. The Tenant notified the Landlord of the required works to the house.

10.3. The house is a semi-detached cottage built around 1950 in a rural location with sea views to the front of the property comprising lounge, kitchen, scullery, 2

bedrooms, and bathroom. The house is not a listed building.

The weather at the time of inspection was cold, and dry with little wind.

The inspection revealed :- the roof was in a reasonable state of repair given its age and location; the presence of leaves in the gutters; the back and front doors require minor repairs to make them wind and watertight with the replacement of a small section of rotten timber at the bottom of the front door; the utility window is fixed in place by nails and cannot be opened; one kitchen window is capable of opening but another small window is not designed to open; extensive dampness is present in the house with the wall to the front and the party wall between the house and the next door property particularly affected; there are signs of rising damp; and the internal doors required adjustments to the catches to ensure they do not spring open and the door handles are loose. The heating system was working at the time of inspection with all the radiators hot apart from the bathroom radiator which had minimal heat output. There were no controls to regulate the temperature of this radiator suggesting that it was not in proper working order. There was no evidence of condensation in the kitchen at the time of inspection although the Tenant complained that this was a problem when cooking. There was evidence of condensation staining in the bathroom ceiling. The Tenant complained that the condensation in the kitchen caused the electrical light fitting next to the cooker to trip the circuit breaker but no evidence was seen of this at the time of inspection possibly as the cooker was not in operation. The LED in the cooker control unit was not functioning correctly and the light next to the cooker hob was not fully functional. There are two smoke alarms in the house, a battery operated alarm and a mains powered system which is in need of repair. The kitchen and bathroom fittings are adequate given the age of the house although a pungent smell was evident from one of the kitchen base units which is likely to be caused by dampness. There was evidence of a membrane on the floors throughout the house with the exception of the bathroom floor where the covering is asbestos sheeting. The Tenant explained that his wife had removed the membrane in the bathroom as water spillage had made the membrane smell.

Reasons for the Decision

11. In considering the repairing standard issue the Committee carried out an internal and external inspection of the house and in particular closely examined the specific defects highlighted by the Tenant in the application and detailed in the correspondence to the Landlord. In addition the Committee carefully considered the written documentation and oral evidence submitted. The Committee considered the representations of the parties in relation to the repairing standard.

Visual inspection of the house as well as protimeter readings confirm the presence of dampness which was borne out by the reports submitted in the Landlord's productions. The Committee is satisfied that the repairing standard in Section 13(1) (a) and (b) of the Act has not been met and repairs are required to eradicate the damp in the house including the floor finishes. Section 13(1) states the repairing standard is met if "(a) the house is wind and water tight and in all other respects reasonably fit for human habitation, and (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 house is situated near to trees and the Committee observed the presence of leaves lying in the gutters. The Committee considers that to comply with Section 13(1) (b) of the Act the gutters require to be cleaned to ensure that they are in proper working order.

The Committee observed the presence of staining on the bathroom ceiling and the absence of open vents in the house. It is likely that the house suffers from condensation due to a lack of ventilation within the house. The condensation problem could be remedied in the future by the airing of the house by the Tenant and would involve the opening of the windows within the bathroom and the kitchen. The Committee using its expert knowledge did not consider that there had been a failure to comply with the repairing standard laid down in Section 13(1)(a) and (b) since the problem could be remedied without a repair.

The heating system was in operation at the time of inspection and the Committee are satisfied that apart from the bathroom radiator which is not heating properly, the system is in a reasonable state of repair. The bathroom radiator requires repair to comply with the repairing standard laid down in Section 13(1)(c) which requires "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". The Tenant complained that the system was costly to operate and seemed to suggest that this raised the presumption that the system was not in working order. However, the Committee did not consider that the amount of the Tenant's electricity account for the house was at such a high level that any inference to this effect could be drawn. The Committee did not consider the operational cost of the heating system relevant in the context of a determination as to whether the system complies with the repairing standard since there was no evidence, apart from a faulty radiator, that the heating system was not working properly.

The Committee considered that the kitchen and bathroom fixtures and fittings are in a reasonable state of repair and in proper working order as required by Section 13(1) (d) which states "any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order".

A repair is needed to the kitchen light next to the cooker hob and the LED in the cooker control unit to comply with Section 13(1) (c) and the Landlord undertook to carry out this repair. Apart from this repair, the parties agreed that the electrical system was in reasonable repair and proper working order.

Minor repairs are required to the back and front doors to prevent water ingress to comply with Sections 13(1)(a) and (b) and the Landlord agreed to carry out these repairs.

Case Law indicates that windows form part of the "exterior" of a house. Inspection shows that, with the exception of relatively minor repair to the utility window to ensure that it can open, the windows are generally in a reasonable state of repair. The Committee determined that a repair to the utility window is required before the repairing standard in Section 13(1)(b) of the Act has been met. The Landlord indicated at the hearing that he would carry out this repair.

The internal doors require adjustment to comply with Section 13(1)(d) of the Act and

the Landlord undertook to carry out this repair.

The parties agreed that the roof meets the repairing standard so the Committee did not consider this item. At the inspection the Tenant raised the issue of inadequate insulation. However, the application did not refer to this as a required repair and the Committee considered it inappropriate to make a determination in respect of this matter.

Lastly, the application makes reference to the need for a mains smoke alarm. The parties agreed that there was a battery operated smoke alarm in position. However, for the reasons already outlined, this does not comply with guidance issued by Scottish Ministers on provision for detecting fires which the Committee must have regard to in terms of Section 13(5) of the Act. The Committee decided that the existing alarm does not comply with the repairing standard in Section 13(1)(f) which requires "the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire".

Decision

12. The Committee, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.

13. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2).

14. The decision of the Committee was unanimous.

Right of Appeal

15. 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

16. 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 Devanny

Chairperson,
3 December 2008



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re : Property at S.V.G.C.A. Cottage, Culzean Castle and Country Park, Maybole, Ayrshire KA19 8JX, erected on ALL and WHOLE that plot or area of ground extending to eleven poles and seventeen square yards and one quarter part of a square yard or thereby, bounded on the north-west by a pathway from Culzean Home Farm to Culzean Castle and to the south-west by the Hall and four Houses known as New Stables, forming part of Culzean Policy Grounds, part of the Lands and Barony of Culzean, in the Parish of Kirkoswald and County of Ayr, all as more particularly described in the Feu Charter by the National Trust for Scotland for Places of Historic Interest or Natural Beauty in favour of the Scottish Garden City Housing Society Limited dated Twenty ninth January and recorded in the Division of the General Register of Sasines for the County of Ayr on Sixteenth February, both months in the year Nineteen hundred and fifty three; Together with the dwellinghouse and whole other buildings and erections thereon, the heritable fixtures and fittings therein and thereon, free ish and entry therefrom and thereto, and the parts, privileges and pertinents effeiring thereto ("the house")

The Parties

The Scottish Veterans' Garden City Association (Inc.), formerly known as Scottish Garden City Housing Society Limited, having their registered office at New Haig House, Logie Green Road, Edinburgh EH7 4HQ ("the Landlord")

Mr. Krishman Moodley, S.V.G.C.A. Cottage, Culzean Castle and Country Park, Maybole, Ayrshire KA19 8JX ("the Tenant")

NOTICE TO The Scottish Veterans' Garden City Association (Inc.) ("the Landlord")

Whereas in terms of their decision dated 3 December 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 the house meets the repairing standard in that:-

- (1) the house is wind and water tight and in all other respects reasonably fit for human habitation,
- (2) 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;
- (3) the installations in the house for the supply of water, gas and electricity and for the sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;
- (4) any fixtures and fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, and
- (5) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

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:-

- (a) to make the house free from damp including the floor finishes,
- (b) to clean the gutters to ensure that they are in proper working order,
- (c) to carry out such works as are necessary to put the heating system in a reasonable state of repair and proper working order;
- (d) to carry out works to the electrical fittings in the kitchen to put them in a reasonable state of repair and proper working order and to obtain a PIR certificate to confirm that the said electrical works comply with the required standard,
- (e) to carry out repairs to the front and back doors to ensure that they are in a reasonable state of repair, in proper working order and the house is wind and water tight,
- (f) to ensure that the utility window opens and is in proper working order,
- (g) to carry out such repairs as are necessary to the internal doors to ensure that they are in a reasonable state of repair and in proper working order, and
- (h) to carry out such works to the property as are necessary to comply with Section 13(1)(f) of the Housing (Scotland) Act 2006 by the installation of a satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. The provisions of section 13(5) of the said Act must be regarded in relation to the said installation.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 125 days 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.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee, at Motherwell on Fifteenth day of December, Two Thousand and Eight in the presence of the undernoted witness:-

WITNESS.. **A S Devanny**

ALEXANDER SUTHERLAND DEVANNY

SOLICITOR

95 STEWARTON STREET

WISHAW.

A Devanny