Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/IV40/97/10

Re:- Property at Corrary Farm House, Glenelg, By Kyle of Lochalsh, IV40 8JX (**"the property"**)

Land Register Title Number:-

The Parties:-

Mr Douglas Hawthorn and Ms Katherine Macarthur residing at Corrary Farm House, Glenelg, By Kyle of Lochalsh, IV40 8JX ("**the tenants**")

And

William Young of Ritson Young, Chartered Accountants, 28 High Street, Nairn, IV12 4AU as judicial factor on the Estates of the Corrary Partnership, a partnership having its principal place of business at Corrary, Glenelg, By Kyle of Lochalsh, IV40 8JX ("**the landlords**")

The Committee comprised:-

Mr James Bauld	- Chairperson
Mrs Sarah Hesp	- Surveyor member
Mr Andrew McKay	- Housing member

Decision

The Committee unanimously decided that the Landlord had failed to comply with the duties imposed by Section 14 (1) of the Housing (Scotland) Act 2006 ("the 2006 Act"). The Committee accordingly proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24(2) of the 2006 Act

Background:-

1. By application dated 7 July 2010, the tenants applied to the Private Rented Housing Panel ("PRHP") for a determination that the landlord had failed to comply with the duties imposed by Section 14 (1) of the 2006 Act.

2. The application made by the tenants stated that they considered that the landlord had failed to comply with their duty to ensure that the house met the repairing standard and the application specified a list of defects alleged by the tenants.

3. The tenants provided evidence that these defects had previously been notified to landlord at the landlord's address. Notification had been made by the tenants' solicitors, the Commercial Law Practice, Commercial House, 2 Rubislaw Terrace, Aberdeen, AB10 1XE by letter dated 9 June 2010. A copy of the relevant letter was produced by the tenant. The letter also made reference to previous emails sent to the landlord which also contained notification of various defects.

4. By letter dated 21 July 2010 the President of the Private Rented Housing Panel decided to refer the application to the Private Rented Housing Committee. Notice of that referral was sent to the tenants and landlord on 21st July 2010.

5. On 26 July 2010, the Private Rented Housing Panel received a letter dated 23 July 2010 from the landlord. In that letter, the landlord requested further time to prepare representations. The President of the Panel acceded to that request.

6. On 1 September 2010, the Private Rented Housing Panel received a further letter from the landlord dated 31 August 2010. In that letter the landlord set out a variety of matters and made various written representations. He requested that the action be sisted for a period of 3 months and raised a number of preliminary jurisdictional points. On 13 September 2010, a letter was sent to the landlord from the PRHP asking for further information. No reply was received to that letter. On 8 October 2010 a further letter was sent to the landlord indicating that information had been sought from the Crofters Commission regarding one of the preliminary points raised by the landlord. The letter of 8 October allowed the tenants further time to respond. A copy of that letter was also sent to the tenants. A letter in response to that letter was received from the tenants' agents on 22 October, said letter being dated 21 October. No response was received from the landlord to the letter of 8 October within the time limit of 14 days set by the President of the Panel.

7. On 28 October 2010, the landlord and tenants were notified via email from the PRHP office that the Panel President had decided not to grant any sist and that a date would be set for a hearing. Parties were asked to give a note of dates when they were available for the hearing.

8. Subsequent to that email, the landlord wrote to the PRHP again by letter dated 8 November 2010. A reply to that letter was sent on 12 November 2010. The landlord then wrote again to the PRHP on 17 November 2010 querying the jurisdiction of the PRHP. By letter dated 26 November 2010, the President of the Panel wrote to the landlord indicating that the President's decision was that the application had been referred to a Private Rented Housing committee and that an inspection and hearing would be fixed in accordance with the Act. The President indicated that if the landlord considered the matter was not competent or that there was an issue of jurisdiction then those matters could be raised at the hearing before the Committee.

9. On 21 December 2010, the Committee wrote to the landlord and the tenants indicating that an inspection and hearing would take place on 21 January 2011.

10. The Committee attended at the property on the morning of 21 January 2011 and the inspection took place. The tenants were present during the inspection. The landlord was also present during the inspection. Subsequent to the inspection a hearing took place within the Kintail Lodge Hotel, Gelnshiel, on the afternoon of 21 January 2011. The parties were again in attendance at that hearing.

Summary of Issues

11. The issues complained of in the application before the Committee can be summarised as follows:-

(1) Unreliable and potentially unsafe water supply with blocked pipes.

(2) Safety issue with Raeburn stove with smoke appearing from flue through the wall.

(3) Defective chimney linings.

(4) Burst water pipe and flooded wash house.

(5) Emergency electrical repair work required to fuse box.

(6) Damage to front door and front porch.

(7) Defective windows.

(8) Repairs required to bathroom.

(9) Repairs required to heating system.

During the course of the inspection the Committee viewed the property and noted the general standard of repair of the property. The Committee also asked the tenants and the landlord for comments at various points during the inspection.

The Hearing

12. The hearing took place in Kintail Lodge Hotel on the afternoon of 21 January 2011. The tenants were both in attendance. The landlord was in attendance. Mr Neil Hammond, one of the former partners of the Corrary Partnership was also in attendance to provide assistance and information to Mr Young.

13. At the commencement of the hearing, both parties indicated that they agreed that the copy of the direction under the Crofters (Scotland) Act 1993 dated 6 June 1996 which related to an application by Corrary Partnership for a direction that the site of the dwellinghouse and garden ground extending to 0.08 hectares and shown on a plan attached to the direction accurately represented the area which contained the solum of the dwellinghouse and garden ground surrounding it. It was agreed by the parties that this particular area was decrofted. A copy of that plan will be attached to this judgment.

14. The landlord, while accepting that this particular area had been decrofted, did not agree that this particular tenancy fell under the jurisdiction of the Committee and fell within the type of tenancy covered by the Housing (Scotland) Act 2006. The landlord submitted that the particular house and the garden area were contained within the wider confines of the Corrary Croft and accordingly the tenancy which Mr Hawthorn and Ms McArthur had was "a tenancy of a house on a croft" and was thus excluded from being covered by the repairing standard in terms of Section 12(1)(d) of the 2006 Act. On being questioned by the Committee members, the landlord indicated that he had no idea of the full extent of the tenancy granted to the tenants when the tenancy commenced. It seemed to be agreed that the tenancy commenced in or around May 1998. It seemed to be agreed that there was never a written tenancy agreement and the landlord agreed that he was not party to any agreement or any discussions which took place at the time of the creation of the tenancy. The landlord's position was that the tenants occupied a site which is part of a croft and partly de-crofted and that they occupied this entire area under a single tenancy. He produced a copy of a letter sent from the tenants' agents to the landlord dated 30 July 2010. The landlord indicated that there was a plan attached to that letter which the tenants' agents' claimed showed the full extent of the area occupied by the tenants. The landlord claimed that this meant the entire area could be construed as a single tenancy and that since the total area being occupied by the tenants included land that was still part of a croft, then the tenancy was "a tenancy of a house on a croft" and

was thus excluded from the repairing standard. The landlord was asked whether he agreed whether it was possible for there to be two separate tenancies, one of the house and garden on the de-crofted land and one of the additional area of land. He indicated that he had no idea of the extent of the tenancy and that he did not in any event necessarily agree with the assertion by the tenants' solicitor that the area on the plan attached to the letter of 30th July constituted their tenancy. The landlord was then asked whether it was a reasonable inference that the judgment issued from Portree Sheriff Court on 19 June 2001 by Sheriff Noel McPartlin created a reasonable inference that there was a tenancy of the de-crofted area and that the tenancy of that area was an assured tenancy. The landlord did not accept that as a reasonable inference. The landlord was asked whether he had taken legal advice on these matters and indicated that he had. He was further asked whether he had taken any legal action to recover the tenancy but indicated that he had not yet done so. He indicated that he had been advised by his solicitor that he could not simply remove the tenant and that he could not go to court. He concluded by saying that it was his belief the tenancy was a tenancy of a house on a croft and was thus excluded from the repairing standard.

15. The tenants were then asked whether they agreed with the landlord's submission that the house was excluded from the provisions of the Housing (Scotland) Act 2006 by being "a tenancy of a house on a croft". Mr Hawthorn indicated that he would normally have his lawyer deal with matters like this but his position was that he held an assured tenancy of the farm house as described. He indicated that the other land round about the farm house was occupied by him and used by him in connection with the tenancy. He indicated this had never been disputed by anyone and that he believed his tenancy of the farm house was an assured tenancy as set out in the judgment from Portree Sheriff Court. He and Ms McArthur were then questioned regarding the creation of the tenancy. They indicated that they moved in on or around May1998 and were given the tenancy of the Corrary farm house including the office. They accepted that the office, when the tenancy initially started, continued to be used by Neil Hammond both as a farm office but also to run a business of Mr Hammond's. They received a payment in respect of electricity from Mr Hammond. That position seemed to be accepted by Mr Hammond himself at the hearing. Mr Hammond eventually removed and the tenants then had the full use of all the rooms within the farmhouse. Accordingly the tenants' position was that they held an assured tenancy of the farm house and that the tenancy fell squarely within the provisions of the Housing (Scotland) Act 2006 and that repairing standard applied to the tenancy.

16. Having heard parties on the question of whether the tenancy of the farm house was excluded from the extent of the repairing standard, the Committee indicated that it would require to discuss the submissions made by the landlord before coming to a decision. Accordingly the Committee indicated to the parties that they would proceed to hear the parties with regard to further matters under reservation of the potential decision that the matter was outwith the jurisdiction of the repairing standard and the Committee. Parties agreed that they would then deal with the question of whether the property met the repairing standard and were invited to further address the Committee.

17. Mr Young immediately indicated that in his view the property did not meet the repairing standard and that it never would. He indicated in his view it would be cheaper to knock the building down and start again. He asked the Committee to take into account a provision in Section 13 (3) (a) of the 2006 Act that in determining whether a house met the repairing standard regard must be had to the "age, character and prospective life of the house". In his view, the farm house was at the end of its prospective life and it required extensive accumulated renovation. He produced and made reference to a survey report from Allied Surveyors which had been obtained by the tenants. He indicated this report pre-dated the application by the tenants to the Panel. The Committee asked what evidence of costings Mr Young had to indicate that it would be cheaper to demolish the building rather than repair it, but he produced no evidence to support these contentions.

18. The Committee then decided to look at each of the issues previously noted.

19. The first issue was the question of the water supply to the property. It was agreed between the parties that the water to the property was supplied by a spring which feeds

into a tank which then provides the water supply. It was submitted by the tenant that there were occasional blockages to the supply and that because of the size of the water tank which supplied his property, the supply would run out before other properties in the area. There were also problems occasionally with the pipes leading to the tank being broken because they lay above ground and occasionally were stood on by grazing cows. The tenant seemed to agree that if he had a bigger tank that may assist in resolving the supply problems. The tenant also pointed out that at times the water pressure dropped and that when the water supply ran dry he would have a sludge coming through his taps. The tenant produced a video showing that.

20. The next issue was the "Raeburn" stove. The landlord had an initial query with regard to the ownership of the stove. It seemed to be accepted by parties that the stove had been bought and paid for by the Corrary Partnership and was accordingly a landlord's fixture. It also seemed to be accepted that there were defects with the chimney to the stove and in general the stove required some refurbishment.

21. The next issue to be considered was the question of the defective chimney lining. This was linked to the question relating to the Raeburn stove. The tenant indicated that the chimney lining in the kitchen was no longer effective. There was a suggestion from the tenant that the lining of the chimney in the sitting room (downstairs front bedroom?) was creating some fumes and that the fireplace in the same room had also been blocked off.

22. The next issue in question was in relation to burst pipes. The tenant accepted there had been no burst pipes in over a year but that there had been occasional problems with pipes becoming frozen particularly in the wash house. The wash house was an unheated building attached to the main farm house although access was from the farm house internally and also from an external door. The tenant was happy to accept that he could take steps to insulate the pipes in the washhouse to alleviate freezing.

23. The tenant indicated that he had instructed repairs to the fuse box and had instructed an electrician to replace certain elements. Accordingly this was no longer a matter for determination by the Committee.

24. The next issue to be considered by the Committee was the damage to the front door and front porch. The landlord indicated his view that if you leant against the porch it would fall down and that it was not repairable. The porch appeared to be in a state of dilapidation. The landlord's position was the porch was not an essential part of the house.

25. The next issue to be considered were the windows to the property. The tenant's position was that new windows had been put into certain parts of the house when a heating system had been installed but that the new windows for the upstairs rooms had never been installed. The tenant took the view that new windows could be installed and it would be a quick and easy job to do.

26. The next issue to be considered was the heating system in the property. The tenant simply wanted the system to be maintained so that it functioned properly and the tenant's position was that repairs to this could be done. The heating system was linked to the Raeburn stove which acted as the boiler for the system and supplied hot water to the radiators.

27. The next issue to be considered were the repairs required to the bathroom. There was a substantial crack on the toilet bowl. The tenant indicated that nothing had been done to this in 12 years and it required to be repaired or replaced.

28. The next issue to be considered were repairs to the roof to the property. The tenant had shown during the inspection an area in one of the bedrooms where there had been a leak in the roof which had caused water ingress which had affected the roof timbers and the internal decorative finishes to the room. The tenant indicated that roof repairs could be carried out to ensure the roof was wind and water right.

29. Having dealt with the various individual items, the landlord indicated that in his view it would cost more to maintain this property than he was receiving in rent. He was receiving

£200 per month in rent. He took the view the building had been erected in the 1880s and could not possibly be maintained. He took the view that the property had reached the end of its prospective life and that this should be taken into account by the Committee in determining whether or not the repairing standard should be enforced.

30. In response to that comment, the tenants indicated that they had paid rent for the last 10 years totalling £24,000 and that over that period the landlord had not spent a single penny in maintenance on the property. The tenants agreed, and this was confirmed by Neil Hammond, that £15,000 had been spent initially when the tenancy had commenced to carry out various improvements to the property. The tenants indicated their rent had always been paid on time and that when the judicial factor had been appointed they had transferred the payments direct to him.

31. The landlord then made reference to an earlier letter which he had produced which contained an extensive list of defects found within this property. He indicated to the Committee that he wished these matters to be taken into account.

32. The landlord then indicated that he believed the legislation was a breach of Article 1, Protocol 1 of the European Convention on Human Rights. He indicated his position that the partnership was a person in terms of the European Convention and that they had a right to peaceful enjoyment of their possessions in terms of the relevant Article of the relevant Protocol. He submitted to the Committee that the application by the tenants was driven to seek to obtain a financial advantage in that it would force the partnership to do repair works which were not commercially viable. He took the view that the application was driven by the tenants as an attempt to force the partnership and the judicial factor to sell the property to the tenants. He believed that if a Repairing Standard Enforcement Order was made that he would not be able to carry out the repairs and would thus be liable to prosecution. His only way of escaping prosecution would be to sell the property to the tenants at a discount on the market value. He submitted to the Committee that an appropriate balance required to be struck between the rights of an individual person and the state and that the legislation relating to the repairing standard and rent controls was a breach of human rights. He made reference to a case called Hutten Czapska v Poland. He indicated this could be found at reference 2007 45 EITRK 4. The landlord did not have a copy of that case nor did he make any specific reference to any aspect of the case. He indicated the case set a precedent that certain forms of rent control were onerous and were not compliant with the European Convention. He took the view that if an order being made under the Scottish legislation was too onerous on the landlord it would not comply with the European Convention on Human Rights. He simply referred to the European Convention and was not able to explain any particular aspect of the relevant law or how it impacted on the Scottish legislation. He then submitted that tenants who could afford to do so should take on the duty of carrying out the repairs themselves or should remove from a property rather than proceeding with an application to the Private Rented Housing Panel. He took the view that the application was economically driven. He indicated that in his view the tenants were independently wealthy persons. The landlord was asked whether he was aware that all legislation of the Scottish Parliament requires to be certified as being compliant with the Human Rights Act 1998 which is the legislation which introduced the European Convention on Human Rights into United Kingdom law. He indicated that he was not aware of that. He could provide no evidence that any of this legislation had previously been challenged as being non compliant with Human Rights law.

33. In response to these comments, Mr Hawthorn indicated that in their view they had an assured tenancy. He indicated that the tenants would be happy to try to purchase the house if it were to be sold but in the event that the house was not being sold then the landlord was obliged to do what the law required in connection with the tenancy.

34. Mr Young then made further comments with regard to the hearing and his attendance. He indicated that the partnership had obtained a building warrant to carry out substantial renovations to this property but had not proceeded with it. He indicated his view that the tenancy which existed should have been a short assured tenancy but was not because the partnership had failed to serve certain documents. Accordingly he indicated that he was not able to deal with the tenancy. He asserted that assured tenancies were part of the affordable housing regime and that the issue of a Repairing Standard Enforcement

Order would be a wholly disproportionate burden upon the landlord in this particular case. He asserted that the 2006 legislation was skewed against the landlord. On being asked if he would comply with a Repairing Standard Enforcement Order if one was made by the Committee he indicated that he would have to comply with the law as he was an officer of the court having been appointed as judicial factor to the Corrary Partnership by the Court of Session. He indicated that his attendance at the property during the inspection was the first time he had actually viewed the property internally.

35. At that stage the hearing was concluded and parties were advised by the Committee that the Committee would now consider the various submissions which had been made and would proceed to make a decision which would be issued to the parties.

Decision

36. After the inspection and hearing, the Committee carefully considered the evidence which had been obtained at both the inspection and the hearing and also the evidence contained in the various papers submitted both prior to the hearing and at the hearing. The Committee determined that they should issue a decision dealing firstly with the preliminary points raised by the landlord and then dealing with any subsequent matters which may arise after such decision.

Landlord Preliminary Points

Is the property a "tenancy of a house on a croft"?

37. The first preliminary point raised by the landlord was that the present property was not covered by the repairing standard as it fell within one of the exceptions set out within Section 12 of the 2006 Act. In particular the landlord claimed that this particular house consisted of "a tenancy of a house on a croft within the meaning of the Crofters (Scotland) Act 1993". If the Committee determined that the house was such a tenancy then it is clear from the terms of the 2006 Act that the repairing standard would not apply to it and that the application made by the tenant would require to be dismissed. The committee carefully considered the submissions made by the landlord on this matter. However the Committee noted that the landlord produced no evidence regarding the extent of the tenancy and had no knowledge of the discussions which led to the tenancy being created at its commencement. In particular the Committee noted the terms of the judgment from Sheriff McPartlin at Portree Sheriff Court dated 19 June 2001. That case had been raised by Corrary Partnership against the present tenants seeking recovery of possession of Corrary farm house. The action had been based on an averment by the Corrary Partnership that the tenancy which had been granted to the tenants and applicants was a short assured tenancy. In his judgment, Sheriff McPartlin states that the tenancy between the parties "complies with the conditions for an assured tenancy set out in Section 12 of the Housing (Scotland) Act 1988." He rejects the claim by the Corrary Partnership that the tenancy was a short assured tenancy as they had not served the appropriate statutory notice prior to the creation of the tenancy. Accordingly there is clear evidence, supported by a sheriff court judgment, that the tenancy of Corrary farm house is an assured tenancy under the Housing (Scotland) Act 1988. It was also agreed between the parties that the land on which the farm house is situated and some of the surrounding garden ground is clearly land which has been "de-crofted" in terms of the Crofters (Scotland) Act 1993. Accordingly the Committee determined that the tenancy of the farm house was an assured tenancy and was not a tenancy of a house on a croft. Accordingly the Committee rejected the landlord's preliminary suggestion that the house fell outwith the scope of the tenancies which are covered by the repairing standard and the Committee determined that the repairing standard was applicable to the particular property which was the subject of the application.

"Has this Property reached the end of its prospective life?"

38. The landlord in his submissions to the Committee suggested that if the Committee determined that the property was covered by repairing standard that in determining

whether or not it met the standard the Committee required to have regard to the "age, character and prospective life of the house" as set out in Section 13(3) of the 2006 Act. In particular the landlord suggested that the house was at the end of its prospective life and that accordingly no repairing Standard Enforcement Order should be made. The landlord led no evidence to demonstrate or support the view that this property was at the end of its prospective life. The only evidence which he submitted to the Committee to support that statement was the extent of repairs which appeared to be required. The landlord submitted to the Committee a copy of a report from Allied Surveyors which was dated 13 October 2009. This report indicated that the property at that stage required comprehensive repairs and upgrading works but still produced a market value for the property of £95,000 in its then present condition. The Committee were not persuaded that the property was at the end of its prospective life or indeed anywhere near it. The Committee took the view that if the necessary repairs to the property were carried out it had a substantial potential life span. The property was not in any danger of imminent collapse. It was currently inhabited by a family and the Committee took the view that if repairs were required to the property they could be effected.

The Human Rights Argument

39. During the course of the hearing, the landlord made various submissions to the Committee regarding the impact of the European Convention on Human Rights. He claimed that the granting of an RSEO would be a disproportionate burden on the landlord and would breach the landlord's human rights in terms of Article 1 of Protocol 1 to the European Convention on Human Rights. The landlord made no reference to the Human Rights Act 1998 which is the legislation which incorporated parts of the European Convention into United Kingdom law. The Committee accepted that Article 1 of Protocol 1 of the Convention are matters which are incorporated into United Kingdom law by the 1998 Act. The landlord however provided no detailed legal argument on the correlation of the Human Rights legislation with the Housing (Scotland) Act 2006. He referred the Committee to the case of Hutten Czapska v Poland. He did not produce a copy of that case at the hearing. Subsequent to the hearing, the Chairperson of the Committee obtained a copy of that judgment from the online resources available at the website of the European Court of European Rights. The particular case arose in terms of the Polish legal system and its laws on tenancies. The petitioner in the case was a French national of Polish origin who had been born in 1931 and who owned a house and a plot of land in a particular town in Poland. At the conclusion of the Second World War, the Polish government imposed various state controls on rental levels both in the public sector and in the privately owned sector. By 1989, towards the end of the communist regime in Poland, the state controlled rent which applied to both publicly and privately owned buildings, covered just 30% of the actual costs of maintenance of the buildings. From 1990 until about 2004, the Polish government made various attempts to change this system but without much success. The petitioner in the Human Rights case complained that the situation created in Poland by the implementation of the various laws which imposed certain tenancy agreements upon her and set inadequate levels of rent amounted to a violation of her right to the peaceful enjoyment of her possessions and was thus contrary to Article 1 of Protocol 1 of the European Convention.

40. Article 1 of Protocol 1 reads as follows:-

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provision shall not, however, in any way impair the right of the state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

41. In its judgment, the Grand Chamber of the European Court of Human Rights indicated that this Article comprises three distinct rules. The first rule is of a general nature and

sets out the principle of peaceful enjoyment of property. The second rule covers deprivation of possessions and subjects it to certain conditions. The third rule recognises that governments are entitled to control the use of property in accordance with the general interest.

42. In the case, the applicant argued that the restrictions imposed in Poland gone beyond what could be considered mere "control of the use of property". She argued that they had resulted in essential elements of her right of property being practically extinguished. She was not able to decide who would live in her house or for how long. The terms of the lease of her flats had been imposed on her by administrative decisions. She could not terminate the lease agreements nor regain possession of her house because of these conditions. She stressed that she had no influence whatsoever on the amount of rent paid by her tenant and indeed the level of rents were fixed without any reasonable relationship to the costs of maintaining her property in good condition.

43. In its judgment, the Grand Chamber decided to consider the case in light of the three rules set out above. The Grand Chamber concluded that although she had been subject to a number of legal restrictions she had never lost her right to sell her property. They also concluded that the relevant rules had not resulted in any transfer of her ownership. Accordingly the Grand Chamber decided that they could only consider the case in terms of the second paragraph of Article 1 of Protocol 1, namely that any interference with the rights of a person to enjoy peaceful enjoyment of their possessions can only be controlled by laws. The Chamber also considered whether that interference was in pursuit of a legitimate aim in the general interest and thirdly considered whether or not the government had reflected the notion of a fair balance that must be struck between the demands of the general interests of the community and the requirements for the protection of the individual's rights. In its determination, the Grand Chamber determined that the interference did respect the principle of lawfulness and accepted that in the relevant social and economic circumstances of the case, the Polish legislation had a legitimate aim in the general interest as required by Article 1 of Protocol 1. However, in determining whether the Polish legislation had struck the requisite fair balance between the general interests of the community and the protection of the individual's rights, the Grand Chamber determined that the Polish government had failed to strike that balance. In determining that the Polish government had failed to provide this fair balance, the court noted that the Polish laws prevented the applicant from entering into any freely negotiated lease agreement with tenants. It also noted that the State had temporarily suspended evictions from private rented flats. Finally it also noted that in terms of the relevant legislation, landlords were restricted in the level of rents they could charge and these rents were set below the costs of maintenance of the property and could not be increased to cover necessary maintenance costs.

44. In the application before the Committee, the landlord argued that this Human Rights case had a similar application in Scotland. Having considered the matters carefully, the Committee took the view that the relevant legislation in Scotland was compliant with the European Convention on Human Rights. Landlords in Scotland are free to negotiate lease agreements with their tenants. There are substantial rules available which allow landlords to recover possession of property. There are legal methods available to landlords to set rents. In the assured tenancy regime, which the present tenancy falls within, the rent levels are intended to be set at the market level of rent. If landlords and tenants cannot agree rent levels, there are specific legal procedures in place which allow landlords to seek to obtain rental increases. In the present case, the landlord of Corrary farmhouse seems to have taken no steps to do so. The Committee are satisfied that the legislation contained in the Housing (Scotland) Act 2006 is fully compliant with the Human Rights Act 1998 and with the relevant provisions of the European Convention on Human Rights. Accordingly the Committee reject the landlord's position that the legislation is not fully compliant and that the issuing of any order under the legislation would be an unduly onerous or disproportionate burden.

45. Further, in connection with that submission, the landlord made submissions to the Committee that the tenants' application to the PRHP was economically driven and was an attempt to force the landlord to sell the property to the tenants. The Committee expressed no view on that point. It is an irrelevant consideration. The Committee are required to consider whether the house is subject to the relevant laws on the repairing

standard and if so whether the repairing standard has been breached. The landlord's suggestion that the tenants should pay for repairs is also one which finds no support anywhere in law and is rejected by the Committee. The landlord's position that he cannot afford to carry out any repairs is again an irrelevant consideration for the Committee. The landlord's position that rents have not been increased in this tenancy fail to reflect the law which is available and the procedures which are available to the landlord to seek to change rents and it is clear that the landlord had taken no steps to do that despite such possibilities being open to him.

"Does the property meet the Repairing Standard?"

46. Having considered the preliminary points raised by the landlord and having rejected them, the Committee then required to consider whether the condition of the property met the standards set out in the Repairing Standard under the Housing (Scotland) Act 2006. It was conceded by the landlord that the property did not meet the repairing standard

47. The Committee determined the following facts.

(a) The property is a detached farm house building situated in a rural setting approximately 3 miles from Glenelg Village. The walls are of masonry construction and have been rendered externally. The roof structure is pitched timber trusses with timber sarking boards and slates. The property is one and a half storeys in height. Internally the accommodation consists of a porch on the ground floor leading to a kitchen/dining room. From the kitchen/dining room there are two further rooms both currently used as bedrooms. From the bedroom at the rear, there is access to an external wash house which also has a separate external access. The external wash house is of timber construction with a pent corrugated iron roof. Upstairs there is a landing together with three further rooms two of which are currently used as bedrooms, one is a sitting room. There is also a bathroom on the upper floor.

(b) Generally the property is in a state of disrepair.

(c) The porch is dilapidated. The porch does not appear to be wind and water tight.

(d) Within the kitchen, the chimney to the solid fuel "Raeburn" stove requires repairs.

(e) The windows on the upper floor are all wooden framed, sash and casement and single glazed. Some windows require work to make them wind and water tight. Several have cracked or broken panes of glass. Several have missing or broken sash cords and some window furniture does not function properly.

(f) Within the rear bedroom upstairs, there is evidence of the external roof leaking which has caused some wet rot and internal damage to the property.

(g) Within the bathroom upstairs, the toilet bowl is cracked and the cistern does not function correctly.

(h) It was accepted by the landlord that the property did not meet the repairing standard and that substantial renovations and repair works were required. The landlord accepted that these repair works were probably in excess of the works which were reported in terms of the application to the Panel.

48. The Committee took the view that the property was not wind and water tight, was not in all respects reasonably fit for human habitation, that the installations and appliances within the property were not in a proper state of repair and the fittings for the supply of water and sanitation were not in a reasonable state of repair and were not in proper working order. Accordingly the Committee took the view that the property fell short of the requirements set out under the repairing standard.

Reasons for Decision

49. The Committee carefully considered all the evidence presented to them consisting of all the papers submitted before the hearing, the evidence obtained during the inspection and the evidence led at the hearing.

50. The Committee took the view that this property did not meet the repairing standard as set out in Section 13(1)(a) of the 2006 Act. The Committee accordingly determined that a Repairing Standard Enforcement Order should be made to remedy the defects within the property.

51. The decision of the Committee was unanimous.

Rights of Appeal

52. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

53. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP of the Committee which made the decision.

Effects of Section 63

54. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.

55. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed ..... J Bauld Date ..8 February 2011

James Bauld, Chairperson

Signature of Witness.... G Williams Date .....8/2/11.....

Name: Gillian Williams

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Senior Court Administrator

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case Reference Number: PRHP/IV40/97/10

Re:- Property at Corrary Farm House, Glenelg, By Kyle of Lochalsh, IV40 8JX ("**the property**")

The Parties:-

Mr Douglas Hawthorn and Ms Katherine Macarthur residing at Corrary Farm House, Glenelg, By Kyle of Lochalsh, IV40 8JX ("**the tenant**")

And

William Young of Ritson Young, Chartered Accountants, 28 High Street, Nairn, IV12 4AU as judicial factor on the Estates of the Corrary Partnership, a partnership having its principal place of business at Corrary, Glenelg, By Kyle of Lochalsh, IV40 8JX ("**the landlord**")

Notice to William Young of Ritson Young, Chartered Accountants, 28 High Street, Nairn, IV12 4AU as judicial factor on the Estates of the Corrary Partnership, a partnership having its principal place of business at Corrary, Glenelg, By Kyle of Lochalsh, IV40 8JX ("the landlords")

Whereas in terms of the decision dated **8 February 2011** the Private Rented Housing Committee have determined that landlords have failed to comply with the duty imposed by Section 14 (1) of the Housing (Scotland) Act 2006 and in particular the landlords have failed to ensure that:-

(a) the house is wind and water tight 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,

(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,

(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,

The Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard and that any damage cause by the carrying out of the works in terms of this Order is made good.

In particular the Private Rented Housing Committee requires the landlords to carry out the following works

a) To carry out repairs to the roof to make it wind and water tight.

b) To carry out repairs to the porch to make it wind and water tight.

c) To effect repairs to the chimneys within the property to ensure that no smoke escapes from the chimneys into the property and that the chimneys are properly lined.

d) To remove and replace the toilet bowl and cistern.

e) To effect all necessary repairs to the windows to make them wind and water tight.

The Private Rented Housing Committee orders that the works specified in this Order must be carried out and completed within the period of 12 weeks from the date of service of the Notice.

A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified if that decision. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the PRHP or the Committee which made the 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. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed J Bauld ..... Date 8 February 2011

James Bauld, Chairperson

Signature of Witness... G Williams Date 8/2/11

Name: Gillian Williams

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Senior Court Administrator