



NOTICE TO LOCAL AUTHORITY
ISSUED BY
THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 26(2) OF THE HOUSING (SCOTLAND) ACT 2006

prhp Ref: PRHP/DD8/67/11

Re: Property at 1 West Mains of Kincaldrum, Forfar, DD8 1TT ("the Property")

The Parties:-

JOHN STEPHEN SPENCE residing at West Mains of Kincaldrum Farm, Forfar, DD8 1TT ("the Landlord")

PETER McLAREN residing at 1 West Mains of Kincaldrum, Forfar, DD8 1TT ("the Tenant")

Notice is hereby given to Angus Council, being the local authority in which the Property is situated, that there has been a failure by the Landlord to comply with a Repairing Standard Enforcement Order in relation to the Property in terms of Section 26(1) of the Housing (Scotland) Act 2006. The Statement of Decision of the Private Rented Housing Committee under Section 26(1) of the said Act is attached hereto and referred to for its terms.

A Rent Relief Order has been made under Section 27 of the said Act and will take effect 28 days after the last date on which the Rent Relief Order can be appealed under Section 64 of the said Act.

If an appeal against the decision of the Private Rented Housing Committee is made, then the effect of the decision and the Rent Relief Order is suspended until the appeal is abandoned or finally determined. In the event that the decision is confirmed, then the Rent Relief Order and the decision will be effective 28 days from the date on which the appeal is abandoned or so determined. If an appeal is received then the Private Rented Housing Panel will notify you of this and the eventual outcome of the appeal.

The date of service upon the parties of the decision under Section 26 of the Act is hereby certified to be

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, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on Friday 13 January 2012 before this witness:-

Lindsay Johnston _____ witness

E K Miller _____ Chairman

Lindsay Johnston
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



Statement of decision of the Private Rented Housing Committee under Sections 26 and 28 of the Housing (Scotland) Act 2006

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Re: Property at 1 West Mains of Kincaldrum, Forfar, DD8 1TT ("the Property")

The Parties:-

PETER McLAREN residing at 1 West Mains of Kincaldrum, Forfar, DD8 1TT ("the Tenant")

JOHN STEPHEN SPENCE residing at West Mains of Kincaldrum Farm, Forfar, DD8 1TT ("the Landlord")

Background

1. On 8th June 2011 The Private Rented Housing Committee ("the Committee") issued a determination which decided that the Landlord had failed to comply with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the Act"). On the same date the Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property. The RSEO made by the Committee required the Landlord to:
 - (a) carry out such works of repair or replacement to the windows at the Property as are necessary to render them properly wind and watertight and capable of being open and shut properly.
 - (b) carry out such works of repair or replacement as are required to render the front and rear door at the Property properly wind and watertight.
 - (c) install a hardwired smoke detection system to comply with the appropriate regulations.
 - (d) carry out such works as are necessary to ensure the free flow of sewage and drainage water within the drainage system without overflow in to the garden of the Property.
2. The Committee had ordered in the RSEO that the works specified were to be carried out and completed within 2 months from the date of service of the RSEO.
3. On Wednesday 21st September 2011, Mr D Godfrey, the Surveyor Member of the original Committee, carried out a re-inspection of the Property. The Tenant was not present having subsequently vacated from the Property since the original Hearing. The Landlord was present on the Surveyor Member's arrival to give access to the Property but he did not remain for the inspection.
4. It was readily apparent to the Surveyor Member that no works at all had been carried out since the original inspection and the issuing of the RSEO. All items listed in the original RSEO remained unattended to.
5. Subsequent to the re-inspection a copy of the Surveyor's Report was provided to the Landlord and he was invited to make comments. The Landlord had indicated to the Committee prior to the re-inspection that the work would not be carried out by the time of

the re-inspection. No response was received from the Landlord subsequent to the re-inspection.

6. The Committee then considered what steps to take. In terms of Section 26(1) of the Act it was for the Committee to decide whether a landlord has complied with an RSEO made by the Committee. In terms of sub-section (2) where the Committee decides that a landlord has failed to comply with the RSEO, the Committee must (a) serve notice of the failure on the local authority and (b) decide whether to make a Rent Relief Order.

The Committee, after discussion, accepted that it was clear, given that no works had been undertaken at all, that the Landlord had failed to comply with the RSEO. Accordingly the Committee were obliged to serve notice of the failure on the local authority and resolved to do so.

The Committee then decided whether or not to make a Rent Relief Order. The Committee noted that the Tenant had vacated and the Property was empty. Accordingly the previous tenancy had, in effect, ceased to exist. Accordingly there was little point in serving a Rent Relief Order on the Property given there was no rent to restrict. The Committee also noted that in terms of Section 28(5) of the Act, the Landlord would commit an offence if he were to re-let the Property during a period in which an RSEO was still in effect. The Committee would wish to highlight to the Landlord that it was an offence for him to re-let. The existing RSEO acted as a full restriction on him letting and on that basis the Committee were also of the view that a Rent Relief Order would be of no benefit at the present stage.

The Committee also considered the terms of Section 28(1) of the Act 2006. Sub-section (1) specified that a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. There had been no indication from the Landlord as to why he had failed to carry out any steps to comply with the RSEO. In the circumstances the Committee were of the view that Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

Determination

7. The Committee determined that in terms of the Act the Landlord had failed to comply with the RSEO. The Committee determined to serve a Notice of Failure to comply with the RSEO on the relevant local authority within which the Property was situated. The Committee declined to serve a Rent Relief Order on the Property at this stage. The Committee agreed to report the matter to the Police for consideration for prosecution under Section 28(1) of the Act.
8. The decision of the Committee was unanimous.

Right of Appeal

9. **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

10. 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 **E K Miller** Date..... 13/1/2012
Chairperson