

# Determination by The Private Rented Housing Committee

## Statement of decision of the Private Rented Housing Committee under Section 24 (1) of the Housing (Scotland) Act 2006

Property at South Mains of Tillymorgan, Culsalmond, Inch being All and Whole Farm and Lands of South Mains of Tillymorgan, being the Lands particularly described in the in Disposition to Francis Middleton recorded in the general Register of Sasines on 20<sup>th</sup> December 1897 in the parish of Culsalmond. ("The Property")

### The Parties:-

Mr F Buchanan, South Mains of Tillymorgan, Culsalmond, Inch ("the Tenant")

Mr Francis Massie and Mr Alexander Massie, trading as Alexander Massie & Sons, 6 Denwell Drive, Inch, Aberdeenshire ("the Landlords")

### Background

1. By application dated 11 June 2009, the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlords had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that he considered that the Landlords had failed to comply with the duty to ensure that the house was wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior of the house (including drains, gutters and external pipes) were in a reasonable state of repair and in proper working order, that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order and that any fixtures, fittings and appliances provided by the Landlords under the tenancy were in a reasonable state of repair and in proper working order and that the house had satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire.
3. The President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the Act to a Private Rented Housing Committee.
4. The Private Rented Housing Committee served Notice of Referral in terms of Schedule 2 paragraph 1 of the Act upon both the Landlords and the Tenant.
5. Following service of the notice of referral, both the Landlords and the Tenant made written representations. A letter was also sent by the Landlords' solicitor.
6. The Private Rented Housing Committee inspected the property on 14 October 2009. The Tenant and the Landlords were present during the inspection. Following the inspection of the property, the Private Rented Housing Committee held a hearing at the Stewart's Hall, Gordon Street, Huntly and heard representations from the Tenant and the Landlords and the solicitor on behalf of the Landlords.
7. The Tenant stated that the required repairs were the fixing of the leaks in the roof and making safe of the telegraph pole which conducted the external electricity wires, having the external drain sorted and having the leak from the hot water tank fixed. The Tenant stated that there was also an erratic supply of water. He explained that if water was being drawn at the cattle shed this would deprive the house of water. He indicated that cattle had not been in the shed recently but that there was also a

problem when the sheds were power washed and this had happened at the end of the summer for a week. The Landlords confirmed that there would be cattle in the shed over the winter. The Tenant stated that he advised the Landlords of the repairs one year ago and pointed out that in March this year an estate agent had surveyed the property on behalf of the Landlords and would have seen the various repairs that were required. The Tenant also pointed out that the Landlords would have been able to see the blocked drain, the problem with the electricity pole and the external problem with the roof from outside the property which they walk past every day. The Tenant also indicated that the Landlords would have been well aware of the problem with the water supply as they had contacted him on occasion with regard to the inadequacy of the supply at the cattle shed when he was doing his washing.

8. Mrs Reid, on behalf of the Landlords, advised that the tenancy began 14 years ago and there was an arrangement at that time that the three Tenants would maintain and repair the property. Mr Buchanan was the only remaining Tenant and had never paid any more than £45 a month in rent. Mrs Reid also stated that the Tenant had never informed the Landlords that internal repairs were required and had blocked entry to the Landlords on at least one occasion. Mrs Reid stated that if the Tenant had not been responsible for repairs he would have asked the Landlords to carry out repairs on previous occasions. The Tenant indicated that there had never been an agreement that he would do the repairs. He stated that he had always paid cash and that the rent was low to keep it below the tax threshold. He also advised that the Landlords had carried out repairs in the past, for example double glazing had been put in the two front rooms just after he moved in and the Landlords had previously repaired the hot water tank and had carried out roof repairs. The Landlords confirmed that they had carried out these repairs in the past but indicated that they told the Tenant to maintain the property and keep the external areas of the property clean and tidy and keep the garden in good condition. The Landlords stated that they did not know about the leaks in the roof until Mr Rhind went in in May / June this year. The Landlords indicated that the Tenant was not supposed to run a motor vehicle repair business from the house. The Tenant stated that he was a sales engineer for lubricants and although he ran his business from the house he did not run a motor vehicle repair business from the house. He indicated that his hobby was bikes but that he repaired them outside. He explained that the stuff which was outside the house had come from the wash house, when its roof had collapsed in 2005. The Landlords pointed out that the Tenant did not keep the garden tidy and it was completely overgrown.
9. Mrs Reid referred the Committee to Section 16 of the Housing (Scotland) Act 2006 and asked if the Committee would be prepared to adjourn the matter to allow the Landlords to go to the Sheriff to see if it was possible to contract out of the Landlord's repairing obligations. In response to a question from the Committee, the Landlords confirmed that when the lease was taken out it was not for any set time, it was until the Landlords might need the property.
10. The Landlords confirmed that the Hydro Board read the meter in the white box attached to the steading building but not in the Tenants house. The Landlords indicated that they did not think that the Hydro Board was responsible for the wiring between the meter on the steading wall and the meter in the Tenant's house. The Landlords confirmed that they obtained the meter reading for the house from the Tenant and used this to divide up the electric bill. Mrs Reid stated that if the Landlords had been aware of the problems with the water supply they would have looked into this. In connection with the drain, the Landlords confirmed that the property was served by a septic tank and soakaway but the septic tank had been cleaned out a couple of years ago.

## Decision

11. The Committee had some concerns with regard to whether the Tenant had properly advised the Landlords of the repairs required prior to taking the matter to the Private Rented Housing Committee. The Tenant however advised that he had told the Landlords verbally and the Landlords accepted that they regularly passed the property and so must have been aware of the external state of the roof, the overflowing drain and the problems with the electric pole, as these were obvious from an outside inspection of the property. It was also clear to the Committee that the Landlords must have been aware of the problems with the intermittent water supply as there was a knock on effect on the farm buildings used by them. It was also clear to the Committee that the Landlords would have been aware of the full extent of the problems in the property as identified by the Tenant when their estate agent went in to the property earlier in the year.
12. The Committee also considered whether the exception in Section 16 of the Act applied. The Landlords position is that the Tenant was required in terms of the tenancy to carry out the repairs. This is to some extent borne out by the fact that the Tenant is paying an extremely low rent. However, the Tenant denies that this is the case and it was clear from the evidence that the Landlords have carried out some repairs during the tenancy. The Committee accordingly could not be satisfied that there was agreement between the Landlords and the Tenant, that the Tenant was responsible for the repairs. In any event the Landlords confirmed that the tenancy was not for any specific period and accordingly the Committee could not be satisfied that the tenancy, when it was entered in to, was not determinable at the option of either party within three years of the start of the tenancy. The Committee accordingly could not find that the exception in Section 16 applied in this case. The Committee also considered the Landlords solicitor's request that the matter be adjourned to allow an application to be made to the Sheriff under Section 18 to contract out of the Landlords repairing obligation. It is clear to the Committee however that the Tenant would not consent to this and this can only be done if both parties consent.
13. The Committee considered each item of repair in return.
  - a) In connection with the hot water tank, it was clear from the inspection that this was leaking. This clearly falls within Section 13(1)(c) of the Act. The Committee considered that as it was leaking it was not in a reasonable state of repair and in proper working order and accordingly resolved to make an Order in respect of this.
  - b) In connection with the leaking roof, it was clear from the inspection that this was causing major problems in the property. There was evidence of significant water ingress, which had led to rot and deterioration of the structural timbers and internal fabric of the building. The Committee considered that this was a clear breach of Section 13(1)(a) of the Act and made an Order in respect of this to include the work required in sorting out the damage which has been caused by the water ingress. However, the Order only relates to the areas of the house which were complained about by the Tenant and to which the Committee was given access to inspect. There were other rooms in the house that the Committee was not invited to inspect.
  - c) In connection with the drain, it was clear from the inspection that sewage was coming out of this. It was not clear to the Committee whether it was just a blocked drain or whether the problem was with the sewage system and the septic tank. This is a breach of Section 13(1)(c) of the Act. The Committee accordingly made an Order requiring the drainage system to be in proper working order.
  - d) In connection with the electricity supply, the Committee presume that as the Hydro Electric Board only read the meter which is on the side wall of the

steading, the rest of the outside cabling going from the meter on the outside of the steading to the meter in the Tenant's property is private and is the Landlords' responsibility. The Committee had grave concerns about the state of the external wiring and the state of the post holding it up This is also a breach of Section 13(1)(c). The Committee accordingly made an Order requiring the Landlords to carry out the necessary repairs. The Committee also had concerns with regard to the internal wiring but this was not a matter which was raised by the Tenant and accordingly could not be considered by the Committee.

- e) In connection with the water supply. It did not appear to be disputed by the Landlords that there were problems with this when the cattle were drinking water in the sheds or when there was pressure washing of the steadings. The water supply is not constant and therefore is not adequate. The Committee accordingly considered that this was a breach of Section 13(1)(c) of the Act and made an Order accordingly.
  - f) The Committee noted that the Tenant had ticked the box in connection with the house having satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire but the Tenant did not raise the issue of smoke alarms in his application or at the hearing. The Committee noted that there was only one smoke alarm in the property and this had been installed by the Tenant. The Committee accordingly recommend that the Landlords consider installing extra smoke detectors to ensure the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire. The Committee did not make an Order in respect of this as it was not a matter that the Tenant had directly complained about.
10. The Committee accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the said Act and proceeded to make a Repairing Standard Enforcement Order in relation to a number of matters as required by Section 24(2).
  11. The decision of the Committee is unanimous.
  12. Given the amount of work which has to be carried out by the Landlords, the Committee considered it reasonable to allow the Landlords a period of four months to do this. However given the potentially dangerous state of the outside electrical wiring, the Committee recommend that this is dealt with as soon as possible.

#### **Right of Appeal**

1. **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**

2. 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

**J Lea**

..... Date...28 October, 2009

## **A Repairing Standard Enforcement Order**

### **Ordered by the Private Rented Housing Committee**

Re : Property at South Mains of Tillymorgan, Culsalmond, Inch being All and Whole Farm and Lands of South Mains of Tillymorgan, being the Lands particularly described in the in Disposition to Francis Middleton recorded in the general Register of Sasines on 20<sup>th</sup> December 1897 in the parish of Culsalmond. ("The Property")

The Parties: Mr F Buchanan, South Mains of Tillymorgan, Culsalmond, Inch ("the Tenant")

Mr Francis Massie and Mr Alexander Massie, trading as Alexander Massie & Sons, 6 Denwell Drive, Inch, Aberdeenshire ("the Landlords")

NOTICE TO: Mr Francis Massie and Mr Alexander Massie of Alexander Massie & Sons ("the Landlords")

Whereas in terms of their decision dated 28<sup>th</sup> October 2009, The Private Rented Housing Committee having determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlords have failed to comply with a duty to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation, that 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, and that 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 Private Rented Housing Committee now requires the Landlords 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 of the work in terms of this Order is made good.

In particular, the Private Rented Housing Committee requires the Landlords to:-

1. Repair leaks to the hot water system as necessary.
2. Repair / renew and reinstate the roof coverings, pointer work and flashings as necessary to ensure that the roof is watertight.
3. Make good internal damage caused by water ingress, to include any structural timbers and plaster finishings as necessary.
4. Unblock and clear the external drainage system to ensure that it is in proper working order.
5. Repair / renew the external private electric supply cabling to ensure that it is in a reasonable state of repair and in proper working order.
6. Undertake such works as necessary to ensure consistent uninterrupted and adequate water supply in terms of quality and quantity.

The Private Rented Housing Committee orders that the work be done within 4 months of the date of service of this notice

**A landlord or a tenant aggrieved by this 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 variation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the variation 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 Judith V Lea, solicitor, Unit 3.5 The Granary Business Centre, Coal Road, Cupar, Fife, KY15 5YQ, chairperson of the Private Rented Housing Committee at Cupar on 28 October 2009 before this witness:-

**R Graham**

..... Witness

**J Lea**

..... Chairman

Rachel Graham  
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