Southern Rent Assessment Panel **File Ref No.** CHI/15UD/MNR/2006/0008

Rent Assessment Committee: Reasons for decision.

Housing Act 1988

Address of Premises

Kygereth,
St.Martin,
Helston
TR12 6BT

The Committee members were

R Batho MA BSc LLB FRICS (Chair)
A J Lumby BSc FRICS
Miss C Rai

1. Background

On 30th January 2006 the tenant of the above property referred to the Committee a notice of increase of rent served by the landlord under section 13 of the Housing Act 1988. The landlord's notice, which proposed a rent of £600 per month with effect from 8th March 2006 is dated 10th January 2006.

The tenancy is a periodic tenancy which commenced on 9th December 1994. The current rent is £500 per month. No services are provided by the landlord for the tenant.

2. Inspection

The property, which is located in the hamlet of St Martin near Helston, is semi-detached and comprises an entrance porch, living room, inner hall with utility room and toilet off, and kitchen on the ground floor, with a first floor landing giving access to three bedrooms and the bathroom/wc. There are gardens to the front, with car parking space and a garage, together with a greenhouse and shed both erected by the tenant.

The Committee inspected the property on 28th March 2006, in the presence of the tenant alone, the tenant having declined to allow the landlords access. During their inspection, the Committee clarified some of the factual statements contained in the tenant's written representations, such as the identification of the additional cupboards in the kitchen, and of the windows which the tenant had replaced, but neither sought nor

heard any oral evidence or other representation from the tenant. The committee found the property to be in good condition.

3. Evidence

The committee received written representations from the landlord and tenant and these were copied to the respective parties.

A hearing was held at the Kerrier Council Offices in Helston on Tuesday 28th March 2006, at which oral representations were made by the landlord. The tenant was not present or represented.

In his written representations, the tenant argued that it would be inappropriate for the landlords to benefit from any increased rent for the property, given that he had both improved and maintained it. He rejected the landlords' claim that there was originally a verbal agreement that the rent be reviewed at twelve monthly intervals, and pointed out that the subsisting rent of £500 per month had been fixed only in January 2005. He also referred to the fact that the Kerrier District Council Rent Officer had valued the property at £484 per calendar month.

In his written statement, Mr Smith said that the garden had been extremely overgrown at the commencement of the tenancy and that he had remodelled it at a cost which he said amounted *to* £1,500. He had replaced, or simply installed a garden gate: [the landlords' photograph shows no gate, and their evidence was that the original rent was agreed without there being a gate, but it is accepted that the tenant provided a gate, and that that gate originally provided at a cost of £150 was now being replaced at a likely cost of £600.] He had rebuilt a garden wall and erected both a shed and a greenhouse at a further cost of just over £2,000. In addition, he had replaced carpets and curtains, with the cost of carpets coming to over £3,300 during the eleven year period of the tenancy. He had replaced broken kitchen units, the oven and the hob at a cost of £1,900.

When the night storage heaters failed he had had a full oil fired central heating system installed at a cost of £5,500, although he had received a grant (the amount of which he

did not disclose) towards this cost. The garage door had been replaced and the rear windows have also been replaced, because they were rotten: these last two items had cost £1,135.

The tenant also claimed that the landlords' persistent failure to deal with repairs or to maintain the property in a proper manner amounted to a breach of their obligations under section 11 of the Landlord and Tenant Act 1985, as amended. There was a further suggestion that the alleged failure to maintain might also involve a breach of section 1 (3) of the Protection from Eviction Act 1977.

In their evidence, given both by written representation and orally at the hearing, the landlords explained that when they purchased Kygereth in 1989 it had been subject to a Closing Order: Mr Pearce was a builder and they had purchased the property with the intention of renovating it. They had obtained planning consent to build an extension and had coupled the construction of that extension with complete renovation of the property to include a new roof, rewiring, re-plumbing and other associated works. The tenants had moved into the property shortly after these works were completed, in December 1994, and then in 2003 the landlord had replaced all of the windows on the front elevation.

They had done some other more minor works and these, taken together, clearly showed their readiness to deal with repairs that were needed. The matters that the tenant referred to, such as remodelling the garden, replacing the windows, the repair to the garage door and the installation of the central heating system had all been done without any notification to the landlord and without seeking consent. There had been an approach with regard to the central heating system, but they had considered the electric off peak heating installed at the time of renovation to be perfectly adequate, and whilst they would have been willing to carry out any necessary repairs they saw no need for the wholesale replacement subsequently undertaken.

The landlords produced a photograph showing the property as it had been when the renovation was completed in 1994: they argued that it was a good property in a good location, and the evidence that they presented by way of advertisements taken from local papers (part of the documentation submitted before the hearing, and so copied to

the tenant) indicated that comparable properties were currently being offered for letting at rents in the range £600 to £700 per calendar month. On reflection, therefore, they considered that the rent of £600 per month which they had proposed was low.

4. The law

In accordance with the terms of section 14 Housing Act 1988, the Committee proceeded to determine the rent at which it considered that the subject property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy.

In so doing the Committee, as required by section 14(1), ignored the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of that Act. The Committee also noted the provisions of section 13 of the Act, which allow for annual rent increases.

In coming to its decision the Committee had regard to the evidence supplied by the parties and the members' own general knowledge of market rent levels in the area of West Cornwall. The Committee took specific note of the figure of £484 per month referred to by the tenant as being the District Council's assessment, but concluded that this would have been a figure used in the assessment of Housing Benefit rather than a true assessment of market rent, and so was not one which they could rely upon. The Committee concluded that an appropriate market rent for the property would be in the range £675 to £700 per month.

5. The decision

The Committee noted the parties' disagreement over such oral provision as might have been made for rent increases but, in the light of section 13 of the Housing Act 1988 was satisfied that the landlords were entitled to seek an increase no less than twelve months after the last one took effect and, provided that proper notices are served, were satisfied that the landlord was entitled to seek increases on an annual basis generally.

Having seen the condition of the property, and having heard landlords' evidence as to their willingness to deal with matters of repair of which they were properly notified, the Committee concluded that there was no evidence before them which could be seen as supporting the claim that section 11 of the Landlord and Tenant Act 1985 had not been complied with.

Similarly, no evidence was put before the Committee of interference with the tenant's use of or comfort in the dwelling, and as no services were provided there could be no case of their being persistently withdrawn or withheld: accordingly the Committee concluded that the allegations of breaches of the Protection from Eviction Act were unfounded.

With regard to the works done by the tenant, the Committee accepted that the tenant had incurred considerable expenditure, but concluded that this had been undertaken entirely voluntarily. The Committee accepted the landlords' evidence that they would have carried out repairs had they been asked to do so, and indeed there was evidence that they had done so in the past. The tenant offered no evidence which could be taken as suggesting that requests that repair work be done had been refused or ignored.

The photographic evidence indicated that the garden had originally been in good condition, and the Committee therefore concluded that the works carried out by the tenant were for his and his family's own convenience, rather than matters of necessity. The tenant's evidence was that he had replaced carpets and curtains, and those which the Committee saw were in good condition, but there was nothing to support his contention that this work had to be done, or that the oven or hob which had been new when he took the property had been beyond repair.

Similarly, the fact that the landlord had replaced the windows on the front elevation of the property in 2003, and had then concluded that those to the rear elevation were in satisfactory condition at that time, led to the conclusion that their replacement in 2005 was unlikely to have been necessary. The installation of a full central heating system in place of off peak heaters which would have been capable of repair may have been more attractive to some occupiers, but had to be distinguished from a situation where there had been no heating at all and the tenant had provided it.

The Committee therefore concluded that the difference in rental value between the property as it currently exists and as it would have been had the landlord been allowed to carry out repairs for which he was responsible was small, and that the rent at which the property might reasonably be expected to let on the open market in the condition as it was provided by the landlord would be £650 per calendar month, rather than the maximum £700 per month referred to above.

The Committee therefore concluded that the rent at which the property might reasonably be expected to be let on the open market would be £650 per calendar month.

This rent will take effect from 8th March 2006 being the date specified by the landlord in the notice of increase.

R Batho MA BSc LLB FRICS
Chairman

Dated 4th April 2006