

# Housing and Property Chamber First-tier Tribunal for Scotland



## **Notice of a Decision to Vary a Repairing Standard Enforcement Order**

**Ordered by the First-tier Tribunal for Scotland (Housing and Property Chamber)**

(Hereinafter referred to as "the tribunal")

Case Reference Number: FTS/HPC/RP/17/0070

**Re: 20A Cowal Drive, Linwood, Paisley PA3 3JW ("the house")**

**Land Register Title No: REN117117**

### **The Parties:-**

**Mr Gary Hamlyn, residing at the house ("the tenant")**

**Mr William Brownhill and Mrs Andrea Brownhill, 12A Baywillow Court, Cambuslang, Glasgow G72 7AD ("the landlords")**

**Tribunal Members – Sarah O'Neill (Chairperson); Sara Hesp (Ordinary Member)**

### **Repairing Standard Enforcement Order Against:**

**Mr William Brownhill and Mrs Andrea Brownhill ("the landlords")**

The tribunal, having determined on 28 February 2018 that the Repairing Standard Enforcement Order relative to the house dated 26 July 2017 should be varied, the committee hereby varies the Repairing Standard Enforcement Order to the effect that the period allowed for the completion of the works required by the Repairing Standard Enforcement Order is extended until 13 April 2018.

### **Rights of Appeal**

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is

suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any 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 Sarah Frances O'Neill, Chairperson of the First-tier Tribunal (Housing and Property Chamber), at Glasgow on the twenty-eighth day of February Two Thousand and Eighteen before this witness:

S O'Neill

\_\_\_\_\_ witness \_\_\_\_\_

\_\_\_\_\_ chairperson

ERIC JOHNSON name in full

50 LAUDERDALE Address

GARDENS

GLASGOW G12 9QT

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### **Determination of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

(Hereinafter referred to as “the tribunal”)

### **Statement of decision of the Tribunal under Section 25 of the Housing (Scotland) Act 2006**

Case Reference Number: FTS/HPC/RP/17/0070

**Re: 20A Cowal Drive, Linwood, Paisley PA3 3JW (“the house”)**

**Land Register Title No: REN117117**

#### **The Parties:-**

**Mr Gary Hamlyn, residing at the house (“the tenant”)**

**Mr William Brownhill and Mrs Andrea Brownhill, 12A Baywillow Court, Cambuslang, Glasgow G72 7AD (“the landlords”)**

**Tribunal Members – Sarah O’Neill (Chairperson); Sara Hesp (Ordinary Member)**

#### **Repairing Standard Enforcement Order Against:**

**Mr William Brownhill and Mrs Andrea Brownhill (“the landlords”)**

#### **Background**

1. The tribunal issued a decision on 26 July 2017 requiring the landlords to comply with the Repairing Standard Enforcement Order (RSEO) relative to the property issued by the tribunal on 26 July 2017. The RSEO required the landlords to:
  1. Secure the bathroom sink to the wall so that it is in a reasonable state of repair and in proper working order.
  2. Either a) install a gas central heating system throughout the house or b) reinstate the electrical panel heaters throughout the house, so that the installations in the house for space heating and heating water are in a reasonable state of repair and in proper working order.

3. After either a) a gas boiler and central heating system have been installed or b) the electrical panel heaters have been reinstated, provide an up to date Electrical Installation Condition Report (EICR) in respect of the house by a suitably qualified and registered SELECT or NICEIC contractor, or a member of NAPIT, showing that all electrical installations and fixtures and fittings have been checked and are working safely, following the changes made to the heating system.
4. If a gas boiler and central heating system is installed, provide an up to date gas safety certificate in respect of the house by a Gas Safe registered engineer, showing that all installations and appliances have been checked and are working safely.

The tribunal ordered that the works specified in the RSEO must be carried out and completed within the period of **3 months** from the date of service of the RSEO.

2. The ordinary (surveyor) member of the tribunal carried out a re-inspection of the house on 13 November 2017. She found that item 1 of the RSEO had been completed. She found that the other items remained outstanding. With regard to item 2 of the RSEO, she found that work was underway to install a gas central heating system: a gas boiler had been installed in the cupboard in the bedroom, and radiators had been installed in the hallway and the living room. The system still required to be inspected by Ideal and the Scottish Government in order to be signed off. These visits were scheduled for 15 November 2017.
3. Regarding items 3 and 4 of the RSEO, she noted in her re-inspection report that no Electrical Installation Condition Report (EICR) or gas safety certificate had been lodged with the tribunal.
4. An email was received from Mrs Brownhill on 13 November 2017, attaching a copy of what she stated to be the gas safety certificate. The certificate provided was, however, a Building Regulations Compliance Certificate relating to the boiler installation, not a gas safety certificate. The tribunal caseworker wrote to the landlords on behalf of the tribunal on 22 November 2017, explaining this, and advising that the RSEO required the landlords to provide both an up to date gas safety certificate and an up to date EICR in respect of the house.
5. A further email was received from Mrs Brownhill on 30 November 2017, attaching what she stated to be an electrical certificate. The certificate was, however, a Minor Electrical Installation Works Certificate dated 29 November

2017, relating to the boiler installation, rather than an EICR in respect of the house as required by the RSEO.

6. The tribunal issued a direction to the landlords on 24 January 2018, explaining why they had not complied with items 3 and 4 of the RSEO, and requiring them to provide to the tribunal by 14 February 2018 the following documents:
  - 1) an up to date Electrical Installation Condition Report (EICR) in respect of the house by a suitably qualified and registered SELECT or NICEIC contractor, or a member of NAPIT, showing that all electrical installations and fixtures and fittings have been checked and are working safely, following the changes made to the heating system.
  - 2) an up to date gas safety certificate in respect of the house by a Gas Safe registered engineer, showing that all gas installations and appliances, including all radiators within the house, have been checked and are working safely.
  - 3) a copy of any final inspection certificate or other paperwork received from Warmworks Scotland in respect of the house, confirming that the installation of the central heating system has been completed.
7. On 12 February 2018, three separate emails were received from Mrs Brownhill. Attached to the first email were:
  - a) a copy of a gas safety certificate in respect of the house by a Gas Safe registered engineer, Jamie McBride, Glasgow, dated 8 February 2018.
  - b) a copy of an EICR in respect of the house by Stephen Leonard, Sparktech, Paisley also dated 8 February 2018.
8. A second email was received from Mrs Brownhill on the same date, attaching an email from Warmworks Scotland, together with an installer's certificate in respect of the house dated 20 October 2017 and a further copy of the Minor Electrical Installation Works Certificate dated 29 November 2017, submitted in her previous email in respect of the boiler installation by an approved NICEIC contractor.
9. With her third email, Mrs Brownhill enclosed a copy letter from Warmer Homes Scotland addressed to Mr Brownhill dated 12 February 2018, confirming that it had installed a new gas boiler and central heating system at the house, and that the work passed a final inspection by a Warmworks inspector on 7 December 2017. The tribunal is therefore satisfied that item 2 of the RSEO has been completed.

10. The tribunal observes that in the gas safety certificate dated 8 February 2018, the gas engineer notes that there is “no bonding at gas meter”, and that warning advice has been issued about this. He states that the bonding needs to be updated. The tribunal also notes that the Minor Electrical Installation Works Certificate dated 29 November 2017 comments on the gas bonding, describing it as ‘at the point of entry.’ The warning issued by the gas engineer also indicates that the gas installation was not working safely as at the date of his inspection.
11. The Minor Electrical Installation Works Certificate also states that the “D/B” needs upgrading, and the tribunal takes this to mean that the distribution board requires modernisation. It appears to identify this as a C2 issue, which is potentially dangerous, and requires urgent remedial action. This suggests that the electrical installation at that date was not working safely and did not meet the repairing standard.
12. The tribunal also notes that the electrical contractor who provided the EICR dated 8 February 2018 does not appear to be a registered SELECT or NICEIC electrical contractor, or a member of NAPIT, as set out in the RSEO. The Minor Works Installation Certificate, however, does appear to have been provided by an approved contractor, as does the gas safety certificate which is signed by an approved Gas Safe engineer.
13. Section 13 (4A) of the Housing (Scotland) Act 2006 Act states that in determining whether a house meets the standard of repair set out in sections 13 (1) (c) and (d) of the 2006 Act in relation to installations for the supply of electricity and electrical fixtures, fittings and appliances, regard is to be had to guidance issued by Scottish Ministers on electrical safety standards. The current guidance, which can be found on the Housing and Property Chamber website,<sup>1</sup> states (at paragraph 10) that an EICR must be completed by a ‘suitably competent person’. It also states that this will usually mean a contractor who is registered with NICEIC, SELECT or a member of NAPIT.
14. The tribunal notes that the landlords have not therefore fully complied with the RSEO. Regarding item 3, the EICR provided by the landlords does not appear to have been produced by a contractor who is registered with NICEIC, SELECT or a member of NAPIT. The tribunal still therefore requires to see either:

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[https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY%20-%20REVISED%20NOV%202016\\_0.pdf](https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20ELECTRICAL%20INSTALLATIONS%20AND%20APPLIANCES%20IN%20PRIVATE%20RENTED%20PROPERTY%20-%20REVISED%20NOV%202016_0.pdf)

- evidence that the contractor who carried out the EICR is in fact a member of one of the organisations mentioned above, together with evidence that a new distribution board has been installed since the Minor Electrical Installation Works Certificate dated 29 November 2017 was produced.
- a further up to date Electrical Installation Condition Report (EICR) in respect of the house by another, suitably qualified and registered SELECT or NICEIC contractor, or a member of NAPIT, showing that all electrical installations (including the distribution board) and fixtures and fittings have been checked and are working safely, following the changes made to the heating system.

15. Regarding item 4 of the RSEO, the tribunal also requires to see written confirmation from the gas engineer that the issue identified with the equipotential bonding raised in his gas safety certificate has been addressed, and is now satisfactory.

16. The tribunal considers that the landlords have made substantial efforts to comply with the requirements of the RSEO. The tribunal therefore considers that in all the circumstances it would be reasonable to vary the RSEO to allow the landlords further time to comply with the RSEO, by providing the information required at paragraphs 6 and 7 above. The tribunal accordingly varies the RSEO to extend the period for the completion of the works until **13 April 2018**.

### **Rights of Appeal**

17. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

18. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

**S O'Neill**

Signed.....

.....Date..... 28/2/18

Sarah O'Neill, Chairperson