

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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### **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)**

**NOTICE TO: Mr William Brownhill and Mrs Andrea Brownhill (the landlords)**

Whereas in terms of its decision dated 26 July 2017, the tribunal determined that the landlords had failed to comply with the duty imposed on them by Section 14 (1) (b) of the Act, and in particular that the landlords have failed to ensure that the house meets the repairing standard in that: 1) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order and 2) the fixtures, fittings and appliances provided by the landlords under the tenancy are not in a reasonable state of repair and in proper working order

The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

The tribunal now requires the landlords to carry out such work as is necessary for the purpose of ensuring that the property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this order is made good before the date specified in this order.

In particular, the tribunal requires 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 orders that the works specified in this order must be carried out and completed within the period of **3 months** from the date of service of this notice.

### **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.

**Please note that in terms of section 28(1) of the Housing (Scotland) Act 2006, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title)**

also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

IN WITNESS WHEREOF these presents typewritten on this and the two preceding pages are signed by Sarah Frances O'Neill, solicitor, Chairing member of the First-tier Tribunal (Housing and Property Chamber), at Glasgow on the twenty-sixth day of July, Two Thousand and Seventeen before this witness –

B Quinn

witness

S O'Neill

Chairing member

Brian Quinn name in full

1 Atlantic Quay, Robertson St address

Glasgow G2 8JB

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

(Hereinafter referred to as "the tribunal")

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

**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 Ms Andrea Brownhill, 12A Baywillow Court, Cambuslang, Glasgow G72 7AD ("the landlords")**

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

#### **Decision**

The tribunal, having made such enquiries as it saw fit for the purposes of determining whether the landlords have complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, and taking account of all the available evidence, determines that the landlords have failed to comply with the duty imposed on them by Section 14 (1) (b) of the Act. The tribunal therefore issues a Repairing Standard Enforcement Order. The tribunal's decision is unanimous.

#### **Background**

1. By application received on 27 February 2017, the tenant applied to the tribunal for a determination that the landlords had failed to comply with their duties under Section 14(1) of the Act.

2. In his application, which was completed and signed on his behalf by his representative, Ms Fiona Brown of Shelter Scotland, the tenant stated that he believed the landlords had failed to comply with their duty to ensure that the property met the repairing standard as set out in section 13(1) (a) (c) and (d) of the Act. His application stated that the landlords had failed to ensure that:

- the house is wind and watertight and in all other respects reasonable fit for human habitation
- 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
- any fixtures, fittings and appliances provided by the landlords under the tenancy are in a reasonable state of repair and in proper working order.

3. The tenant included the following complaints in his application form:

1. Dampness in bathroom, living room and bedroom.
2. No skirting in bathroom.
3. Bath tap doesn't work.
4. Bathroom sink loose from wall.
5. Draught coming through wall/ceiling in bathroom.
6. Draught from bedroom window.
7. Radiators off walls – do not work.

4. The tenant stated in his application that the following work required to be carried out at the house:

1. Dampness investigated and required work carried out.
2. Carry out required work in bathroom.
3. New radiators/heating system as required.
4. Fix bedroom window.

5. On 25 April 2017, a Convener of the panel, with delegated powers under Section 96 of the Housing (Scotland) Act 2014, issued a minute of decision stating that she considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the tenant, comprising documents received between 27 February 2017 and 30 March 2017; and intimating her decision to refer the application to a tribunal for determination.

6. The President of the panel wrote to the parties on 9 May 2017, notifying them under and in terms of the Act of her decision to refer the application under Section 22(1) of the Act to a tribunal, and that an inspection and a hearing would

take place on 14 June 2017. Written representations were requested by 30 May 2017.

7. On 14 May 2017, the tribunal issued a direction to the landlords, requiring them to provide to the tribunal by 7 June 2017 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, had been checked and were working safely. No response to the direction was received by the stated deadline. It later became clear at the inspection and hearing, however, that there were currently no gas installations in the house, and that the reference to a lack of radiators on the walls was in fact a reference to electric storage heaters which had previously been there.
8. On 30 May 2017, written representations were received from the tenant's representative, Ms Fiona Brown, stating that the tenant had advised that the landlords were now taking steps to carry out the required repairs, and requesting a postponement of the inspection and hearing which had been fixed for 7 June to allow time for the repairs to be completed. On the same date, written representations were received from Mr William Brownhill, one of the landlords.
9. In the circumstances, the tribunal agreed to postpone the inspection and hearing, and a new inspection and hearing date was fixed for 13 July 2017. No further representations were received from either party prior to that date.

### **The inspection**

10. The tribunal inspected the house on the morning of 13 July 2017. The weather conditions at the time of the tribunal's inspection were warm and sunny. The tenant was present at the house during the inspection. Mr William Brownhill, one of the landlords, was also present during the inspection. Photographs were taken during the inspection, and these are attached as a schedule to this decision.

### **The house**

11. The house is a ground floor flat within a two-storey block comprising six flats in total. It is in the region of 50 years old, and comprises: a hallway, living room, two bedrooms, kitchen and bathroom.

### **The hearing**

12. Following the inspection, the tribunal held a hearing at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL. Mr William Brownhill, one of the joint

landlords, was present and gave evidence on his own behalf. The tenant was not present and was not represented. The tribunal was satisfied that the tenant and his representative were aware of the hearing. The tenant's representative had called the tribunal office prior to the hearing to say that she would not be attending the hearing. The tribunal therefore proceeded with the hearing.

### **The evidence**

13. The evidence before the tribunal consisted of:

- The application form completed by the tenant's representative.
- Registers Direct copy of Land Register title REN117117, which confirmed that the house is owned Mrs Andrea Brownhill.
- Tenancy agreement between William Brownhill and the tenant in respect of the house dated 14 May 2012.
- Copy notification letters dated 12 October 2016 and 30 March 2017 from Fiona Brown, the tenant's representative, to the landlords, setting out the repairs alleged to be required, together with certificate of posting in respect of both letters and proof of delivery in respect of the letter dated 30 March 2017.
- The written representations submitted by the tenant's representative on 30 May 2017.
- The written representations received from the landlords on 30 May 2017.
- The tribunal's inspection of the property.
- The oral representations of the landlord at the hearing.

### **Summary of the issues**

14. The issue to be determined was whether the house meets the repairing standard as set out in Section 13 of the Act, and whether the landlords had complied with the duty imposed on them by section 14 (1) (b).

### **Findings of fact**

15. The tribunal made the following findings in fact:

- The house is owned by Mrs Andrea Brownhill.
- Mr William Brownhill is the registered landlord for the house. Mrs Andrea Brownhill is registered as a joint owner of the house on the Scottish Landlord Register.
- The tenant entered into a tenancy agreement with Mr Brownhill on 14 May 2012 to rent the house for six months from that date. The tenant was still resident at the house as at the date of the tribunal's inspection.

- The tenant had in fact been living in the house for some years, and was resident there at the time Mrs Brownhill bought the property in 2009.
- The tribunal in its inspection carefully checked the items which were the subject of the complaint. The tribunal observed the following:
  - i. The bathroom ceiling had recently been faced with plastic coated sheeting.
  - ii. There was no evidence of draughts coming through the bathroom wall or ceiling.
  - iii. Damp readings were taken in the bathroom, and no signs of dampness were found.
  - iv. The skirtings in the bathroom had been replaced.
  - v. The bath tap had been repaired/replaced, and when tested, was found to be operating correctly.
  - vi. The bathroom sink was loose from the wall, and there was some movement when pressure was put on it.
  - vii. Damp readings were taken in the rear bedroom, and no signs of dampness were found. There were, however, signs of mould on the ceiling.
  - viii. Damp readings were taken in the living room, but no dampness was found.
  - ix. There was evidence of a hole which had been sealed on the living room wall to the right of the window.
  - x. While there was some evidence of damage to the UPVC window frame in the front bedroom, no evidence was found of any draughts coming through the bottom right hand corner, which the tenant told the tribunal was the subject of his complaint.
  - xi. There were no storage heaters on the walls, but there were clear marks on the walls in some rooms where the heaters had been.
  - xii. There were no gas appliances in the house; the water is heated by an electrical immersion heater.
  - xiii. There were two smoke alarms in the hallway, one of which was hard wired, which was tested and found to be working, and the other battery operated. There were no other smoke alarms in the house.
  - xiv. There was no heat alarm in the kitchen.

## **Reasons for decision**

16. The complaints before the tribunal as set out in the tenant's application, and the tribunal's determinations in relation to each of these, are set out below.

### **1. *Dampness in bathroom, living room and bedroom***



17. At its inspection, the tribunal took damp readings in the bathroom, living room and right hand bedroom. No evidence of dampness was found in any of these rooms.
18. The bathroom ceiling had recently been faced with plastic coated sheeting. Mr Brownhill told the tribunal that there had been a leak coming through from the flat above, which had come through to the bathroom and had spread to the bedroom next door. He understood that the owner upstairs had now had the leak repaired, and he had instructed a joiner to replace the bathroom ceiling, which had been coming away, around 3 weeks previously. He therefore believed that the dampness problem had been resolved.
19. The tribunal observed some signs of mould on the rear bedroom ceiling, which the tenant told the tribunal he had cleaned off. No indication of dampness was found in that room.
20. With regard to the living room, the tenant told the tribunal at the inspection that there had been some dampness in the corner of the room. He believed that this was due to a hole left in the wall following the removal of a television cable. At its inspection, the tribunal saw evidence of a hole which had been sealed on the living room wall to the right of the window. Both the tenant and Mr Brownhill told the tribunal that the issue had now been resolved, and the tribunal found no evidence of dampness in the living room.
21. The tribunal therefore determines that the bathroom, living room and rear bedroom are wind and watertight and in all other respects fit for human habitation.

## **2. *No skirting in bathroom***

22. The tribunal observed at its inspection that the skirtings in the bathroom had been replaced. Mr Brownhill told the tribunal at the hearing that these had been replaced at the same time as the bathroom ceiling.
23. The tribunal therefore determines that the bathroom skirtings are in a reasonable state of repair and in proper working order.

## **3. *Bath tap doesn't work***

24. The tribunal observed at its inspection that the bath tap had been repaired or replaced, and when tested, was found to be operating correctly.
25. The tribunal therefore determines that the bath tap is in a reasonable state of repair and in proper working order.

#### **4. Bathroom sink loose from wall**

26. The tribunal observed at its inspection that the bathroom sink was loose from the wall, and that there was some movement when pressure was put on it. Mr Brownhill acknowledged that the sink required to be fixed. He said that the tenant had agreed to get it fixed himself, but had not done so.
27. The tribunal therefore determined that the bathroom sink is not in a reasonable state of repair and in proper working order.

#### **5. Draught coming through wall/ceiling in bathroom**

28. At its inspection, the tribunal observed no evidence of draughts coming through the bathroom wall or ceiling. Mr Brownhill told the tribunal at the hearing that the draughts had been due to a gap caused by the ceiling coming away as a result of the leak upstairs, which had now been fixed. He said that the issues had been addressed by the installation of the new bathroom ceiling, and the tenant indicated at the inspection that he agreed this was the case.
29. The tribunal therefore determines that the bathroom wall and ceiling are wind and watertight and in all other respects fit for human habitation.

#### **6. Draught from bedroom window**

30. At its inspection, the tribunal observed that while there was some evidence of damage to the UPVC window frame in the front bedroom, no evidence was found of any draughts coming through the bottom right hand corner, which the tenant indicated was the subject of his complaint. The tenant said that there was a whistling sound from that part of the window. Mr Brownhill told the tribunal at the hearing that he believed there was an issue with the window frame and seal on the top left of the window, but this had not been checked by the tribunal as that was not the complaint indicated by the tenant. The tribunal checked the windows from both inside and outside, and found that the window was well sealed on both sides.
31. The tribunal therefore determines that the bedroom window is in a reasonable state of repair and in proper working order.

#### **7. Radiators off walls – do not work**

32. The tribunal observed at its inspection that there were no storage heaters on the walls, but there were clear marks on the walls in some rooms where the heaters had been. The landlords had provided electric and oil heaters in their

place. Mr Brownhill told the tribunal that the storage heaters had been in place at the time Mrs Brownhill had bought the house. After Shelter first contacted the landlords in October 2016, they had arranged for an electrician to check the electric heating. The electrician had told them that the heaters were beyond repair, and the landlords had provided the tenant with both electric and paraffin heaters as a temporary measure.

33. The tenant had applied under the Warmer Homes Scotland scheme to have a new heating system installed. The paperwork for this scheme dated 1 March 2017 submitted by Mr Brownhill with his written representations showed that a survey had been carried out by Warmworks Scotland, which administers the scheme. This indicated that the tenant was being offered a number of energy efficiency measures, subject to a technical survey, including a gas boiler, a gas connection and a heating system. Mr Brownhill told the tribunal that he had signed an agreement to pay any cost due to him for this work.
34. Mr Brownhill told the tribunal that a gas connection had now been put into the house, but no gas meter had yet been installed. This required to be done before the boiler and heating could be installed. He said that the tenant had agreed to arrange for the meter to be installed, but that he had not yet done this. This was the reason why the heating system had not yet been installed.
35. The tribunal notes that there was central heating in place at the time the tenant's current tenancy agreement with the landlords began. These were therefore installations provided by the landlord as part of the tenancy. The tribunal determines that the installations in the house for the supply of space heating are not in a reasonable state of repair and in proper working order.

### **Observations by the tribunal**

36. The tribunal has some sympathy with the landlords, given the difficulties Mr Brownhill described in gaining access to the house and in contacting the tenant. The tribunal found Mr Brownhill to be a credible and reliable witness. The tribunal office also had difficulty in contacting the tenant, and it appeared from the case file that his representative had also had similar difficulties. The tribunal observes that, if the landlords continue to have difficulty in exercising their right of entry to the house to carry out works, it is open to them to apply to the tribunal for assistance in gaining access to the house. Further information about applying to the tribunal to gain entry to the house can be found on the tribunal's website at:  
<https://www.housingandpropertychamber.scot/right-entry>.
37. The tribunal also observes that it is the responsibility of the landlords to ensure that the house meets the repairing standard. Mr Brownhill told the tribunal that

he had an informal agreement with the tenant that, in return for a reduced rent, he would carry out certain repairs within the property, which he had failed to do. The tribunal chairperson explained to Mr Brownhill that this repairs were the responsibility of the landlords, and he appeared to accept this. While there are some circumstances in which it may be the tenant's responsibility to carry out works, in terms of section 16 of the Act, these did not apply in this instance. The tenancy agreement made no reference to any responsibility by the tenant for carrying out repairs, and had a duration of less than three years.

38. While the tenant did not make a complaint about this matter in his application, the tribunal also wishes to make an observation about the provision within the property for detecting fires and giving warning of fire or suspected fire. The tribunal noted at its inspection that there were two smoke alarms in the hallway, one of which was hard wired, which was tested and found to be working, and the other battery operated. There were no other smoke alarms in the house, and there was no heat alarm in the kitchen. The tribunal notes that this provision does not comply with the current statutory guidance for private rented properties.
39. In determining whether a house meets the repairing standard regarding satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, section 13 (5) of the Act states that regard is to be had to any building regulations and any guidance issued by the Scottish Ministers. The current Scottish Government statutory guidance<sup>1</sup> states that there should be at least:
- one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes
  - one functioning smoke alarm in every circulation space, such as hallways and landings.
  - one heat alarm in every kitchen
  - and all alarms should be interlinked.
40. Finally, the tribunal notes that, while there is no need for a carbon monoxide (CO) alarm in the house at present, as there are no gas appliances, this will change when the new gas boiler and central heating are installed. The tribunal notes that the correspondence from Warmworks Scotland indicates that a CO monitor will be installed at the same time as the boiler and the heating. The tribunal reminds the landlords that, once the boiler and central heating are installed, they will be required to ensure that there is satisfactory provision in

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<https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20GUIDANCE%20ON%20SATISFACTORY%20PROVISION%20FOR%20DETECTING%20AND%20WARNING%20OF%20FIRES%20-%20REVISED%20NOV%202016.pdf>

the house for giving warning if carbon monoxide is present in a concentration that is hazardous to health. giving warning in the event of fire or suspected fire. The current guidance from Scottish Ministers <sup>2</sup> provides that private landlords must ensure that a detection system is installed in all dwellings they rent to tenants where there is:

- a fixed combustion appliance (excluding an appliance used solely for cooking) in the dwelling or
- a fixed combustion appliance in an inter-connected space, for example, an integral garage
- a combustion appliance necessarily located in a bathroom.

Further information on this is contained in the guidance referred to above.

### **Summary of decision**

41. The tribunal determines that the landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlords have failed to ensure that the house meets the repairing standard in that 1) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order and 2) any fixtures, fittings and appliances provided by the landlords under the tenancy are in a reasonable state of repair and in proper working order.
42. The tribunal therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act. While William Brownhill is the registered landlord for the property, and is the landlord identified in the tenancy agreement, Mrs Andrea Brownhill is the registered owner of the property. The RSEO is therefore issued in the names of both Mr and Mrs Brownhill.

### **Rights of Appeal**

43. 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.

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<https://www.housingandpropertychamber.scot/sites/default/files/hpc/SCOTTISH%20GOVERNMENT%20STANDARD%20TUTORIAL%20GUIDANCE%20FOR%20THE%20PROVISION%20OF%20CARBON%20MONOXIDE%20ALARMS%20IN%20PRIVATE%20RENTED%20HOUSING.pdf>

44. 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.

Signed..... S O'Neill  
Sarah O'Neill, Chairperson

.....Date..... 26/7/17

# Housing and Property Chamber

## First-tier Tribunal for Scotland



### Schedule of Photographs of 20A Cowal Drive, Linwood PA3 3JW

The following photographs were taken during inspection on 13 July 2017:



**Photograph 1:** Front elevation: subject is ground floor flat



**Photograph 2:** Bathroom; skirting

This is the schedule of photographs referred to in  
the Foregoy decision dated 26/7/17

S O'Neill



**Photograph 3:** Bathroom ceiling



**Photograph 4:** Bathroom: Bath taps





**Photograph 5:** Bathroom: sink



**Photograph 6:** Rear bedroom: ceiling



**Photograph 7:** Front bedroom: window - interior



**Photograph 8:** Front bedroom: window - exterior



**Photograph 9:** Living room: walls – hole filled - interior



**Photograph 10:** Living room: wall - damp meter reading – interior



**Photograph 11:** Living room – wall - external



**Photograph 12:** Hallway – smoke detector



**Photograph 13:** Back bedroom - Hot water cylinder tank



**Photograph 14:** Kitchen - Heating/hot water control



**Photograph 15:** Hallway – wall where heater removed



**Photograph 16:** Living room – wall under window where heater removed