

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### **VARIATION OF A REPAIRING STANDARD ENFORCEMENT ORDER in terms of SECTION 25(1)(a) OF THE HOUSING (SCOTLAND) ACT 2006**

**Chamber Ref :** FTS/HPC/RT/16/1015

**Parties:** North Lanarkshire Council, Regulatory Services, Public Health and Housing Team, per their employee, Mr. David Strang, 153, Main Street, Coatbridge, ML5 3RS (the "third party applicant" )

Mr. Alan Maxwell residing at 72 Orbiston Drive, Bellshill, ML4 2LX ("the Tenant")

Ms. Nagina Kauser, residing at 7 Pollock Street, Bellshill, ML4 1QD ("the Landlord")  
per her agent, Mr. Nadim Kauser, also residing at 7 Pollock Street, Bellshill, ML4 1QD ("the Landlord's agent")

**Property:** 72 Orbiston Drive, Bellshill, ML4 2LX registered in the Land Register for Scotland under Title Number LAN64474 ("the Property")

#### **Tribunal Members**

Karen Moore (Chairperson)

Debbie Scott (Ordinary Member)

#### **NOTICE TO THE LANDLORD**

Ms Nagina Kauser, residing at 7 Pollock Street, Bellshill, ML4 1QD ("the Landlord")  
per her agent, Mr Nadim Kauser, also residing at 7 Pollock Street, Bellshill, ML4 1QD

Whereas in terms of its decision dated 24 August 2017, the First-tier Tribunal for Scotland determined that the Repairing Standard Enforcement Order dated 13 April 2017 made by it in relation to the Property be varied, the Tribunal hereby varies the Repairing Standard Enforcement Order as follows:-

The time limit for compliance with the Repairing Standard Enforcement Order is extended to 2 October 2017.

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 printed on this and the two preceding pages are subscribed by Karen Moore, Chairperson of the tribunal, at Glasgow on 24 August 2017 before this witness, Norman William Moore, solicitor, Dunnswood House, 10 Dunnswood Road, Cumbernauld.

N Moore

*Witness*

K Moore

# 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) issued under Section 25 of the Housing (Scotland) Act 2006**

**Chamber Ref :** FTS/HPC/RT/16/1015

**Parties:** North Lanarkshire Council, Regulatory Services, Public Health and Housing Team, per their employee, Mr. David Strang, 153, Main Street, Coatbridge, ML5 3RS (the "third party applicant")

Mr. Alan Maxwell residing at 72 Orbiston Drive, Bellshill, ML4 2LX ("the Tenant")

Ms. Nagina Kauser, residing at 7 Pollock Street, Bellshill, ML4 1QD ("the Landlord") per her agent, Mr. Nadim Kauser, also residing at 7 Pollock Street, Bellshill, ML4 1QD ("the Landlord's agent")

**Property:** 72 Orbiston Drive, Bellshill, ML4 2LX registered in the Land Register for Scotland under Title Number LAN64474 ("the Property")

#### **Tribunal Members**

Karen Moore (Chairperson)

Debbie Scott (Ordinary Member)

#### **Decision**

The Tribunal determined to vary the Repairing Standard Enforcement Order made by and dated 13 April 2017 in relation to the Property.

This decision should be read in conjunction with:

Statement of Decision and Repairing Standard Enforcement Order dated 13 April 2017

#### **Factual Background**

1. By application dated 2 December 2016, the third party applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber), and hereinafter referred to as "the Tribunal", for a determination that the Landlord had failed to comply with the duty imposed on her by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in respect that the Property does not meet the Repairing Standard in respect of Section 13(1)(c) and Section 13(1)(g) of the Act.
2. On 13 April 2017, the Tribunal issued a determination that the Landlord had failed to comply with the duty imposed on her by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in respect that the Property does not meet the Repairing Standard in

respect of Section 13(1)(c) and Section 13(1)(g) of the Act and on the same date, issued a Repairing Standard Enforcement Order (RSEO) as follows:-

*"The Landlord must on or before 31 May 2017:-*

- 1. Instruct a gas safe engineer to carry out a full inspection of the gas central heating system and to repair or renew any parts which require to be renewed or repaired to ensure the installation and system is fully functioning and meet current regulatory standards and provide a gas safety certificate to the tribunal;*
- 2. Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any parts which require to be renewed or repaired to ensure the installation and apparatus is fully functioning and meets current regulatory standards and provide a EICR to the tribunal and*
- 3. Provide and install sufficient carbon monoxide detectors to comply with current regulations and*
- 4. Make good any décor damaged as a result of these works."*

#### **Re-Inspection**

3. The Ordinary Member of the Tribunal re-inspected the Property on 19 June 2017 at which re-inspection the Landlord and the Landlord's agent were both present. A copy of the Ordinary Member's Re-inspection Report is attached. At the Re-inspection, the Ordinary Member found that the works required by the RSEO had not been carried out. The Landlord's agent exhibited a gas safety certificate to the Ordinary Member in compliance with Item 1 of the RSEO. The Landlord's agent also exhibited the same EICR which had been provided to the Tribunal at the Hearing on 22 February 2017 and which had not been certified by a SELECT or NICEIC registered electrician. Therefore, no satisfactory EICR has been provided to the Tribunal. The Ordinary Member noted that a carbon monoxide monitor had been installed in the kitchen in compliance with Item 3 of the RSEO. The Landlord's agent further advised the Ordinary Member that the Property was on the market for sale and that there was no intention to re-let the Property. The Ordinary Member noted that the property is being marketed for sale by Home Link.
4. In addition, the Ordinary Member noted that the roof void works recommended by the Tribunal in its Decision of 13 April 2017 had been carried out. The cold water tank lid was in place. The insulation material had been moved to keep the ventilation clear. The area around the window appeared to be dry since the earlier Inspection on 22 February 2017.

#### **Matter for determination by the Tribunal.**

5. Having been satisfied that the works required by the RSEO had not been carried out fully, the matter before the Tribunal was how to proceed further.

#### **Decision of the Tribunal and Reasons for the Decision of the Tribunal**

6. The Tribunal, firstly, had regard to Section 26 (1) of the Act which states that it is for the first-tier tribunal to decide whether a landlord has complied with a repairing standard enforcement order and, secondly, had regard to the terms of Section 26(2) of the Act which states that failure to comply with a repairing standard enforcement order must be notified to the local authority. The Tribunal also had regard to the fact that a failure to comply with a repairing standard enforcement order is a criminal offence. The Tribunal weighed up the consequences for the Landlord of a finding of failure to comply with the facts that the Landlord had carried out some of the works required by the RSEO, that the Landlord's agent had advised the Ordinary Member at the Re-inspection on 19 June 2017 and that the Property appeared not to be subject to a current tenancy and took the view that, at this stage in the process, a finding of failure to comply was not appropriate.

7. The Tribunal then had regard to Section 25 (1) of the Act which states: -

*"(1) The first-tier tribunal which made a repairing standard enforcement order may, at any time (a) vary the order in such manner as they consider reasonable, or (b) where they consider that the work required by the order is no longer necessary, revoke it."*

8. With regard to Section 25(1)(b), the Tribunal gave careful consideration to whether it should revoke the RSEO. The Tribunal took account of the fact that the Property appeared not to be subject to a current tenancy. The Tribunal, from its own professional knowledge, is aware that there are rented properties of a similar type to the Property in the locality in which the Property is situated and so there is a rental market for properties of this type. Accordingly, the Tribunal could not discount the fact the Property might be returned to the rental market. The Tribunal had regard to the fact that the works required by the RSEO are required to ensure the health and safety of occupants of the Property. The Tribunal held the view that, although the Property is not tenanted at present, the likelihood of a future tenancy could not be disregarded and that safeguarding the occupants of the Property is of paramount importance. Accordingly, the Tribunal was not of a mind to revoke the RSEO.

9. With regard to Section 25(1)(a), the Tribunal again gave consideration to the facts of the case as narrated in paragraph 3, and, in particular, gave weight to the fact that some of the works had been carried out, that the Landlord's agent had stated that he intended to instruct a SELECT or NICEIC registered electrician and that the Property appeared not to be subject to a current tenancy. Accordingly, the Tribunal took the view it was appropriate to vary the RSEO to extend further the time allowed for the works required by the RSEO to be carried out. The Tribunal considered that a further 3 months is an appropriate extension of time.

10. The decision of the Tribunal is unanimous.

11. The Tribunal draws the Landlord's attention to Section 28(1) of the Act which states that a landlord who, without reasonable excuse, fails to comply with a repairing standard enforcement order commits an offence and to Section 28(5) of the Act which states that it is an offence for a landlord to enter into a tenancy or occupancy arrangement in relation to a house which is subject to a repairing standard enforcement order.

### **Right of Appeal**

12. 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.
13. 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

Karen Moore, Chairperson

Date 24 August 2017



24 August 2017  
This is the Re-inspection Report referred  
to in the foregoing decision FTS/HPC/RT/  
16/1015 K Moore  
Chairperson.

## Housing and Property Chamber First-tier Tribunal for Scotland



Housing and Property Chamber

First-tier Tribunal for Scotland

Re-inspection

Repairing Standards Enforcement Order

**Parties:** Mr David Strang, an employee of North Lanarkshire Council, Regulatory Services, Public Health and Housing Team, 153, Main Street, Coatbridge, ML5 3RS (The "third party applicant") in respect of a tenancy between Mr Alan Maxwell residing at 72 Orbiston Drive, Bellshill, ML4 2LX ("the tenant") and Ms Nagina Kauser, residing at 7 Pollock Street, Bellshill, ML4 1QD ("the landlord") per her agent, Mr Nadim Kauser, also residing at 7 Pollock Street, Bellshill, ML4 1QD ("the Landlord's agent")

**Property:** 72 Orbiston Drive, Bellshill, ML4 2LX registered in the Land Register for Scotland under Title number LAN64474 ("the Property")

**Chamber reference:** FTS/HPC/RT/16/1015

### Tribunal Members

Karen Moore (Chairperson)

Debbie Scott (Surveyor member)

The RSEO dated 13 April 2017 made the following four order's to be completed on or before 31<sup>st</sup> May 2017.

1. Instruct a gas safe engineer to carry out a full inspection of the gas central heating system and to repair or renew any parts which require to be renewed or repaired to ensure the installation and system is fully functioning and meet current regulatory standards and provide a gas safety certificate to the tribunal;
2. Instruct a SELECT or NICEIC electrician to carry out a full inspection of the electrical installation and apparatus throughout the Property and to repair or renew any parts which require to be renewed or repaired to ensure the installation and apparatus is fully functioning and meets current regulatory standards and provide a EICT to the tribunal
3. Provide and install sufficient carbon monoxide detectors to comply with current regulations and
4. Make good and décor damaged as a result of these works.

The re-inspection took place on the 19<sup>th</sup> June 2017 at 11.00 am at the property.

The weather was sunny.

Ms Nagina Kauser and Mr Nadim Kauser were present at the inspection. At the inspection, digital photographs were taken which are annexed to this report.

At the inspection it was noted that the property is being marketed for disposal by Home Link ( 01698 264 422)

The property was inspected to review the above four RSEO order comments follow the same numbering as above:

1. A gas certificate was provided at the inspection. See photograph 1 below. Requested that the Landlord send a copy of this to the Housing and Property Chamber, First Tier Tribunal for Scotland.
2. The Landlord did not gain an updated electrical certificate. An electrical certificate was presented at the re-inspection which was initially presented at the tribunal meeting. This certificate was discounted by the tribunal as was not SELECT or NICEIC. Photograph attached showing electrical certificate.
3. A Carbon Monoxide monitor was installed in the Kitchen above the door frame. See attached photographs 3.
4. The property has been repainted and redecorated since the tribunal inspection.

#### Recommendations from RSEO:

The roof void was inspected, it was noted that the cold water tank lid was in place. The insulation material had been moved to keep the ventilation clear. The area around the window appeared to be dry since the recommended changes. See photograph 4.



Photograph 1 – Gas Safety Certificate

**Regin LANDLORD/HOME OWNER GAS SAFETY RECORD** Serial No. 450-4229555

This inspection is for gas safety purposes only to comply with the Gas Safety (Installation and Use) Regulations. It does not check electrical safety, and should not be taken as a recommendation of the condition of the property. A detailed report is issued after the test, and the results of the test are recorded on this form.

**REGISTERED BUSINESS DETAILS** Name: **REGIN**  
Address: **25, CHICHESTER ROAD**  
City: **CHICHESTER**  
Postcode: **PO19 1JL**  
Telephone: **01243 797 100**

**LANDLORD/HOME OWNER DETAILS** Name: **MR & MRS J. & K. JONES**  
Address: **10, CHICHESTER ROAD**  
City: **CHICHESTER**  
Postcode: **PO19 1JL**  
Telephone: **01243 797 100**

**APPLIANCE DETAILS**

Appliance	Manufacturer	Type	Serial No.	Gas Safety Test	Flue Test	Inspection Details
1. Gas boiler	Worcester Bosch	Boiler	115 1234	Pass	Pass	1.2 1.3 1.4 1.5 1.6 1.7 1.8 1.9 2.0 2.1 2.2 2.3 2.4 2.5 2.6 2.7 2.8 2.9 3.0 3.1 3.2 3.3 3.4 3.5 3.6 3.7 3.8 3.9 4.0 4.1 4.2 4.3 4.4 4.5 4.6 4.7 4.8 4.9 5.0 5.1 5.2 5.3 5.4 5.5 5.6 5.7 5.8 5.9 6.0 6.1 6.2 6.3 6.4 6.5 6.6 6.7 6.8 6.9 7.0 7.1 7.2 7.3 7.4 7.5 7.6 7.7 7.8 7.9 8.0 8.1 8.2 8.3 8.4 8.5 8.6 8.7 8.8 8.9 9.0 9.1 9.2 9.3 9.4 9.5 9.6 9.7 9.8 9.9 10.0

**FLUE TESTS**

**INSPECTION DETAILS**

**DATE OF NEXT GAS SAFETY CHECK** 12 months

**Signature of Registered Gas Engineer** *[Signature]*

**Signature of Landlord/Home Owner** *[Signature]*

**Next Gas Safety Check must be carried out within 12 months**

Photograph 2 – Electrical certificate from October 2015

Photograph 3 – Carbon Monoxide Monitor – located in Kitchen on adjacent wall to the Gas Central Heating boiler



Photograph 4

