

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**Notice of a Decision to Vary a Repairing Standard Enforcement Order: Housing (Scotland) Act 2006 section 25**

**Chamber Reference FTS/HPC/RT/18/0382**

**Title number: Subjects registered in the Land Register of Scotland under title number LAN139572**

**House address: 44 Bartonhall Road, Waterloo, Wishaw, ML2 8EP ('the House')**

## **The Parties**

North Lanarkshire Council, Regulatory Services & Waste Solutions, Municipal Buildings, Kildonan Street, Coatbridge, ML5 3LF ('the Third Party Applicant')

Ms Christine James, 8 Rosshall Place, Renfrew, PA4 0BA, represented by Mr John Sparks ('the Landlord')

Ms Amanda Forrest residing at 44 Bartonhall Road, Waterloo, Wishaw, ML2 8EP ('the Tenant')

The Tribunal having determined on 2<sup>nd</sup> April 2019 that the Repairing Standard Enforcement Order ('RSEO') relative to the House and dated 6<sup>th</sup> July 2018, which RSEO was further varied on 6<sup>th</sup> August 2018, should be varied, hereby varies the RSEO to extend the period allowed for the completion of the works required by the RSEO to 1<sup>st</sup> July 2019.

Subsection 25(3) of the Housing (Scotland) Act 2006 does not apply in this case.

## **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 Act, 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 preceding page are executed by Helen Forbes, solicitor, chairperson of the Tribunal at Inverness on 19<sup>th</sup> April Two Thousand and Nineteen before this witness:-

H Forbes

M Forbes

\_\_\_\_\_ chairperson

\_\_\_\_\_ witness

Margaret Forbes  
67B Glenurquhart Road  
Inverness  
IV3 5PB

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**STATEMENT OF DECISION: Housing (Scotland) Act 2006 section 25)**

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**Ms Christine James, 8 Rosshall Place, Renfrew, PA4 0BA, represented by Mr John Sparks ('the Landlord')**

**Ms Amanda Forrest residing at 44 Bartonhall Road, Waterloo, Wishaw, ML2 8EP ('the Tenant')**

## **Tribunal Members**

**Ms Helen Forbes (Legal Member)**

**Mr Robert Buchan (Ordinary Member)**

## **Background**

1. The Tribunal issued a decision on 16<sup>th</sup> May 2018 requiring the Landlord to comply with the Repairing Standard Enforcement Order (RSEO) relative to the property and dated 24<sup>th</sup> April 2018. The RSEO required the Landlord to:
  1. Repair or replace the roof to ensure that it is wind and watertight, thus rendering the interior of the House reasonably fit for human habitation;
  2. Replace any affected insulation, and any defective plasterboard in the ceilings and any other area affected by mould or dampness, to alleviate condensation and dampness affecting the interior of the House, thus rendering the House reasonably fit for human habitation;
  3. Reposition the carbon monoxide detector so that it meets the requirements of the Act;

4. Attend to the electrical item highlighted as "C3" in the Electrical Installation Condition Report (EICR) and to provide a satisfactory electrical certificate confirming that the smoke and heat detectors are correctly installed to meet the requirements of the Act;

5. Make good any damage caused by carrying out any work for the purposes of complying with the duty imposed by Section 14(1)(b) of the Act, in particular any re-plastering and redecoration of affected areas.

The Committee ordered that the works specified in the RSEO must be carried out and completed within a period of 12 weeks from the date of service of the RSEO, which was 16<sup>th</sup> May 2018.

2. By email dated 31<sup>st</sup> July 2018, the Landlord's representative informed the Tribunal that work to the roof was likely to be completed by 27<sup>th</sup> August 2018.
3. The Tribunal considered that, in all the circumstances of the case, it would be reasonable to vary the RSEO to allow a further period for the completion of the works to the roof. The Tribunal accordingly varied the RSEO on 6<sup>th</sup> August 2018 to extend the period for the completion of the works by four weeks.
4. By email dated 13<sup>th</sup> September 2018, the Landlord's representative informed the Tribunal that all the works to the House had been carried out.
5. A re-inspection was carried out by the Ordinary Member on 28<sup>th</sup> September 2018. The re-inspection report is annexed hereto. The Ordinary Member found that items 3 and 4 of the RSEO had not been complied with.
6. By email dated 23<sup>rd</sup> November 2018, the Landlord's representative provided a satisfactory EICR to the Tribunal and confirmed that both items 3 and 4 had been complied with.
7. By email dated 29<sup>th</sup> November 2018, the Tenant stated the following:

*'I am satisfied with all the repairs that has been to the property but I'm still not happy with the condensation problem I'm having on all the windows in the house this is still causing bad asthma attacks to my son and the wall Under the living room window is getting worse showing signs of a hole forming there. The new roof has been very affective with the dampness in the house but it hasn't alleviated the condensation. Mr sparks has told me they are getting double glazing but I still don't have a date for this yet.'*

The email was circulated by the Tribunal to the Landlord for comment on 6<sup>th</sup> December 2018 requesting a response by 12<sup>th</sup> December 2018. No response was received.

## **Inspection**

8. The Tribunal attended at the House on 2<sup>nd</sup> April 2019. The weather was bright, calm and dry. The Tenant was present. The Landlord was not present. The Landlord's representative, Mr John Sparks, was present. The Tribunal inspected the House and found as follows:-
  - 9.1 Living room – there was staining below the window on the right-hand side and on the vertical blinds. The damp meter did not show any dampness in this area.
  - 9.2 Back bedroom – there was staining under the window. The damp meter did not show any dampness in this area.
  - 9.3 Front bedroom 1 – there was staining under the window. The damp meter did not show any dampness in this area.
  - 9.4 Front bedroom 2 – there was staining on the ceiling. The damp meter did not show any dampness in this area.
  - 9.5 Loft – it was evident that the loft area was drying out following the installation of a new roof but there was still some residual dampness registered.
9. The Tenant told the Tribunal that she was unable to attend the subsequent hearing to take place at the Glasgow Tribunal Centre as she had no child care provision. The Landlord's representative said he would be able to attend the hearing if necessary. The Tribunal adjourned to discuss matters and decided it would be in the interests of justice to have a discussion at the House, given that the Tenant was unable to attend the hearing.
10. The Tenant said that her son's asthma was still affected by the damp conditions in the House. The living room blinds were less than a year old, yet they were significantly stained with condensation. She had been told that new windows were to be installed but this had not yet happened. A new bathroom had been recently installed, following a leak from below the bath, which had leaked into the kitchen ceiling.
11. The Landlord's representative said he had a contractor that was going to install the windows, but he was no longer able to do the work. He was now awaiting a quote from another contractor, and would appreciate a further period to allow the windows to be fitted.

## **Hearing**

12. A hearing took place at the Glasgow Tribunal Centre at 11.30am. Neither party was present.

## Discussion

13. The Tribunal discussed matters and agreed that the House continued to be affected by condensation, and that item 2 of the RSEO had not yet been complied with. Although no damp meter readings registered dampness at the time of inspection, it could be seen from the various stains and from puddles of water on some of the windows that condensation continues to be an issue. The inspection took place following a long dry and mild spell of weather. February 2019 had been one of the warmest Februarys on record. The tenant's claim that the windows have to be opened every morning to alleviate the condensation was accepted and, although the roof is drying out, it can be expected that the moisture from this process is affecting the interior and will continue to do so until it has fully dried out. The additional dampness from the problem in the bathroom will have exacerbated the condensation. The Tribunal noted that the Landlord intends to replace the current single-glazed windows with new double-glazed windows. The Landlord and Tenant think that this would resolve the condensation and dampness affecting the interior of the House.

## Decision

14. The Tribunal decided to vary the RSEO and allow a further period for compliance to 1<sup>st</sup> July 2019. The decision was unanimous.

## Right of Appeal

**1. 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 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 decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

H Forbes

Signed

Legal Member and Chairperson

Date: 2<sup>nd</sup> April 2019

This is the schedule of photographs referred to in  
the Forensic statement of Decision dated 2nd  
April 2019  
H Forbes

Photographs taken during the inspection of  
44 Bartonhall Road, Waterloo, Wishaw, ML2 8EP on the 2nd April 2019

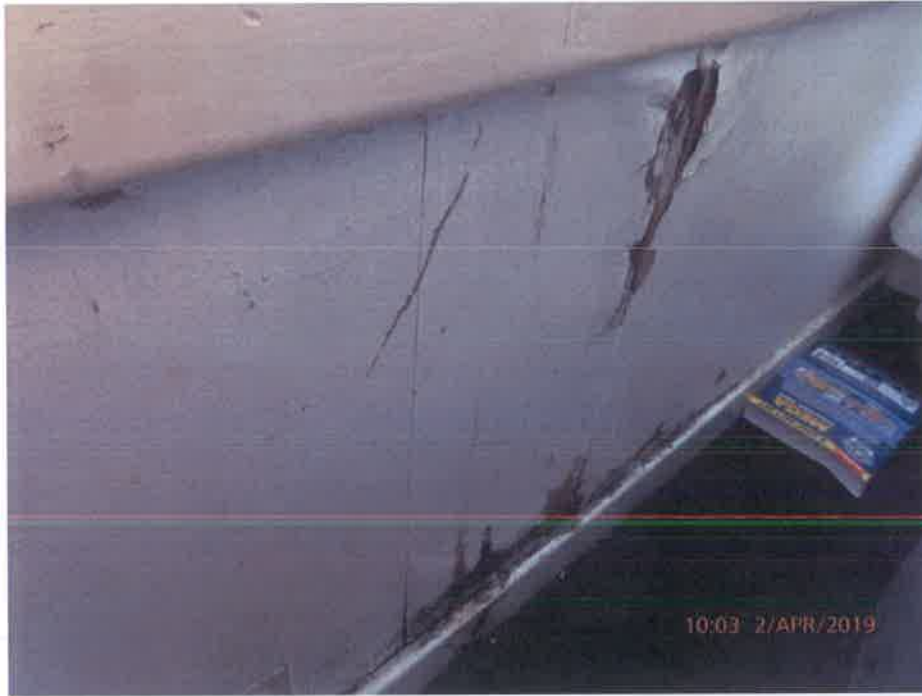


Front



Condensation on the window

Photographs taken during the inspection of  
44 Bartonhall Road, Waterloo, Wishaw, ML2 8EP on the 2nd April 2019



Damaged wall lining below the front lounge window



Damp meter reading below the window



Photographs taken during the inspection of  
44 Bartonhall Road, Waterloo, Wishaw, ML2 8EP on the 2nd April 2019



Meter reading in the roof space

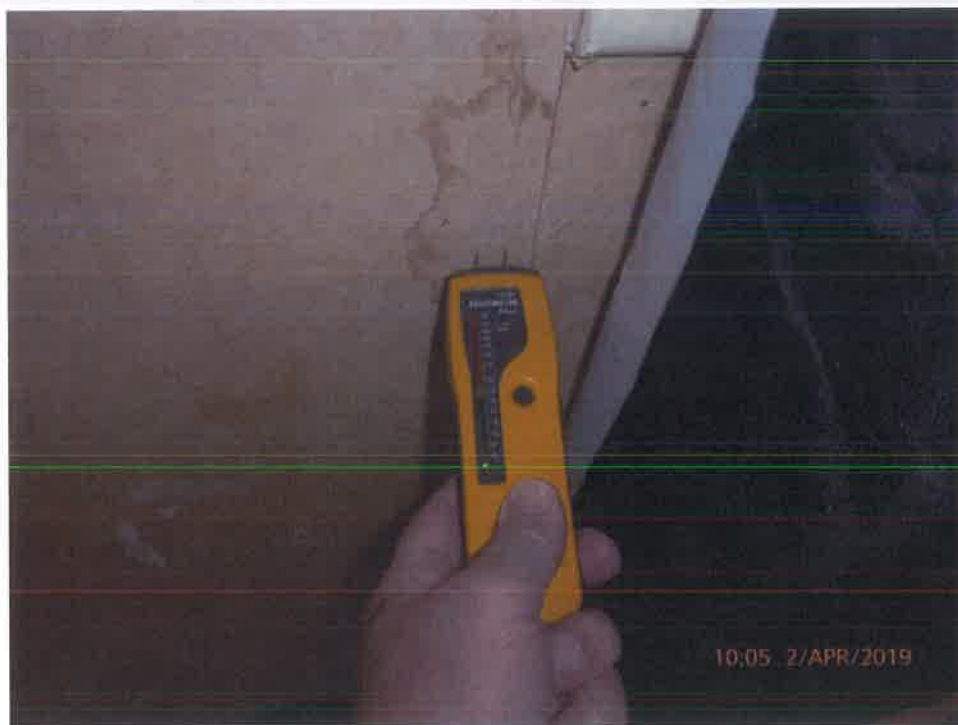


Staining below rear bedroom window

Photographs taken during the inspection of  
44 Bartonhall Road, Waterloo, Wishaw, ML2 8EP on the 2nd April 2019



Stained blinds



Further staining in the front bedroom