

# Housing and Property Chamber

## First-tier Tribunal for Scotland



### Notice of a Decision to Vary

#### A Repairing Standard Enforcement Order

Ordered by the Housing and Property Chamber of the First-tier Tribunal for Scotland

prhp Ref: prhp/rp/16/0173

Re: Property at 16 Bathgate Road, Blackburn, West Lothian EH47 7LW ("the Property/ the house")

Land Certificate Number: WLN5363

#### The Parties:-

Miss Noreen Keenan, 16 Bathgate Road, Blackburn, West Lothian EH47 7LW ("the Tenant")

Braidwood Motor Company Limited, incorporated under the Companies Acts (Company No. 235866) and having its registered office at 16 Drumshoreland Road, Pumpherston, West Lothian EH53 0LN ("the Landlord")

#### NOTICE TO BRAIDWOOD MOTOR COMPANY LIMITED ("the Landlord")

The Private Rented Housing Committee having determined on 2016 that the Repairing Standard Enforcement Order relative to the Property served on 6 September 2016 should be varied, the said Repairing Standard Enforcement Order is hereby varied with effect from the date of service of this Notice in the following respects:-

1. The period allowed for the completion of the work required by the order is extended for a period of 30 days following the date of service of this Notice.

#### Right of Appeal

**A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

Where such an appeal is made, the effect of the variation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the variation 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 page are executed by George Barrie Clark, solicitor, Lasswade, chairperson of the Private Rented Housing Committee at Lasswade on 21 January 2017 before this witness Valerie Elizabeth Jane Clark, 5 School Brae, Lasswade, Midlothian.  
V Clark G Clark

\_\_\_\_ witness

\_\_\_\_ chairman

# **Housing and Property Chamber**

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



### **Statement of decision of the First-tier Tribunal for Scotland, Housing and Property Chamber under Section 24 (1) of the Housing (Scotland) Act 2006**

**prhp Ref: prhp/rp/16/0173**

**Re: Property at 16 Bathgate Road, Blackburn, West Lothian EH47 7LW ("the Property/  
the house")**

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

**Miss Noreen Keenan, 16 Bathgate Road, Blackburn, West Lothian EH47 7LW ("the  
Tenant")**

**Braidwood Motor Company Limited, incorporated under the Companies Acts  
(Company No. 235866) and having its registered office at 16 Drumshoreland Road,  
Pumpherston, West Lothian EH53 0LN ("the Landlord")**

#### **Decision**

**The Committee, having made such enquiries as it saw fit for the purposes of  
determining whether the Landlord has carried out the works required by the Repairing  
Standard Enforcement Order in respect of the Property made on 6 September 2016,  
determined that one matter remained outstanding and that the Order should be varied  
in order to allow the Landlord a further period within which to complete the works  
required by the Order.**

#### **Background**

- 1. By application received on 28 April 2016 the Tenant applied to the Private Rented  
Housing Panel for a determination of whether the Landlord had failed to comply with the  
duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").**
- 2. The application by the Tenant stated that the Tenant considered that the Landlord had  
failed to comply with his duty to ensure that the house meets the repairing standard.**
- 3. The Private Rented Housing Committee inspected the Property on the morning of 6  
September 2016.**
- 4. The Committee and tribunal (from 1 December 2016) comprised George Clark (chairman)  
and Andrew Taylor (surveyor member).**
- 5. Following the inspection of the Property the Private Rented Housing Committee held a  
hearing at Blackburn Community Centre, Ash Grove, Bathgate EH47 7LJ and heard from  
the Tenant, who was accompanied by her support worker, Hazel Martin, of Places for  
People. The Landlord was neither present nor represented at the inspection or hearing.**
- 6. Following the inspection and hearing, the Committee proceeded to make a Repairing  
Standard Enforcement Order in respect of the Property. The Order required the Landlord  
to:**

- Instruct an RICS registered building surveyor to carry out a survey and report on the condition of the subfloor of the property with particular reference to the water ingress at the kitchen area. The report should also examine the condition and operation of the soil, waste and rainwater pipework at that area and any relationship to the water ingress. Carry out and complete any and all repairs to the property identified and recommended by the said report.
  - On completion of these works make good or replace the kitchen chipboard flooring, skirting etc. and supply and fit vinyl floor covering
  - Engage a suitably qualified and Gas Safe registered heating engineer to carry out an inspection and report on the gas fired heating and hot water supply installation including boiler, all radiators, valves, programmers, thermostats and shower valves. Follow the recommendations of that report to ensure that the entire system is safe and in proper working order. Provide a valid CP12 Gas Safety Certificate.
  - Engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certificated electrical condition check (EICR) on the entire electrical installation of the property. The inspection and report should include the connections to the gas fired central heating boiler. Follow the recommendations of that report to ensure that all wiring, equipment, appliances and light fittings are safe and in proper working order.
  - Repair or replace the door to main bedroom including all frames, facing and ironmongery.
  - Provide and install smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 - Fire, sub- section 2.11 Communication
  - Form brick/concrete seating at the drain rodding point in the side driveway and provide a suitable cast iron removable cover.
  - Carry out all making good and decoration associated with the completion of the foregoing works.
7. The Private Rented Housing Committee ordered that the works specified in the Order must be carried out and completed within the period of 6 weeks from the date of service of the Notice of the making of the Order.
  8. The jurisdiction of the Private Rented Housing Panel was transferred to the Housing and Property Chamber of the First-tier Tribunal for Scotland on 1 December 2016. This is, therefore, a decision of the tribunal.
  9. The surveyor member of the tribunal reinspected the Property on 6 December 2016. The Tenant was present at the reinspection. Mr Neil Hogarth, one of the Directors of the Landlord, was present at the reinspection and was accompanied by the Landlord's building contractor, Mr Alex Cowan.
  10. The surveyor member advised the tribunal that a report by Shepherd Chartered Surveyors had identified issues with an escape of water from the drainage system of the Property. The recommended works in the report had been carried out. Flooring and insulation had been replaced and a ceramic tile floor laid, with all works completed to make good the skirting. Gas Glow Ltd, a Gas Safe Registered engineer had carried out an inspection of the gas central heating system and work had been carried out to ensure that the controls work effectively. There was an issue with the effectiveness of the bedroom radiator, but the Landlord's representatives undertook to bleed the radiator following the reinspection. The bedroom door and associated furnishings have been replaced. Fire detection and alarm equipment have been installed in accordance with the

British standard on the design of fire detection installations for dwellinghouses. A new cast iron cover has been provided to the drain rodding point and is suitably seated and all making good and decoration works associated with the works have been completed.

11. The surveyor member of the tribunal further advised that the Landlord had engaged an electrician to check the system and an electrical installation report had been provided, but that the electrician engaged by the Landlord to carry out the electrical condition check was not registered with SELECT or NICEIC. In addition, the report was not on the form specified in the Order, namely an Electrical Installation Condition Report.
12. A copy of the reinspection report was sent to the parties for comment. The Tenant did not make any comments on the report. The Landlord's response, received on 16 December 2016, advised the tribunal that the Landlord had engaged the same electrical contractor on many occasions because of his knowledge and attention to detail. He had 25 years of experience and had the City and Guilds Electrical Installation Certificate Part 236 (1 and 2).

### **Summary of the issues**

13. The issue to be determined was whether the Landlord had complied with the terms of the Repairing Standard Enforcement Order in respect of the Property and, if not, whether the Order should be varied.

### **Findings of fact**

14. The tribunal finds the following facts to be established:-
  - All of the work required by the Repairing Standard Enforcement Order has been carried out, apart from the requirement to engage a suitably qualified and registered SELECT or NICEIC electrical contractor to carry out a certified electrical condition check (EICR) on the entire installation of the Property, including the connections to the gas fired central heating boiler. Consequently, the tribunal did not know whether that report would have contained recommendations which the Order required the Landlord to follow, to ensure that all wiring, equipment, appliances and light fittings are safe and in proper working order.

### **Reasons for the decision**

15. The tribunal considered the representations made by the Landlord, but was not prepared to accept a report on the electrical installation which was not on the Electrical Installation Condition Report form and was not prepared by a SELECT or NICEIC registered electrical contractor. Sections 13(4A) and 198(4) of the Housing (Scotland) Act 2006 require, with effect from 1 December 2015, that private landlords in Scotland carry out an electrical safety inspection before a tenancy starts. Such inspections must be carried out by a firm that is a member of an accredited registration scheme operated by a body recognised by the Scottish Government. This will usually mean that they are registered with NICEIC, a voluntary regulatory body for the electrical contracting industry, or are a member firm of SELECT (the Electrical Contractors' Association of Scotland). Whilst not in any way questioning the technical ability or experience of the electrician employed by the Landlord, the tribunal is not willing to depart from the accepted requirements on matters relating to the health and safety of tenants or occupants of buildings. The tribunal accepted that there was only this one matter outstanding from the works required by the Order and that the Landlord had acted in good faith in using the electrical contractor that he had used on many previous occasions and determined, therefore, to vary the Order to permit the Landlord a further period of 30 days from the date on which the Variation is

intimated to the Landlord within which to provide the Committee with an Electrical Installation Condition Report as required by the Order.

### **Decision**

16. The Committee accordingly determined that the Repairing Standard Enforcement Order in respect of the Property made on 6 September 2016 should be varied.
17. The decision of the Committee was unanimous.

### **Right of Appeal**

**A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

### **Effect of section 63**

18. Where such an appeal is made, the effect of the decision and of 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 decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

G Clark

Signed .....  
Chairperson

..... Date 21 January 2017 .....