

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision: Section 25(1) of the Housing (Scotland) Act 2006: (the Act).

Chamber Ref: FTS/HPC/RP/16/0232

Re 1 Leafield Road, Dumfries, DG1 being the subjects described in Disposition and Assignment by Thomas Aitken Halliday and another recorded in the General Register of Sasines applicable to the County of Dumfries on seventh day of October Eighteen Hundred and Ninety Nine and now registered in the Land Register of Scotland under Title Number DMF31252 ('the Property')

Parties:-

Mr Francis McFaul and Mrs Jacqueline McFaul, sometime residing at the Property

("The Tenants")

Mr Johannes Maxwell Gerhard Alder, sometimes residing 3 Kilmarnock Road, Symington, KA1 5PT and now residing at 65 Queen Street, Dumfries, DG1 2JW.

("The Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determines that the Repairing Standard Enforcement Order relative to the Property dated 30th September 2016, served on 6th October 2016, and subsequently varied on a number of occasions, should be further varied with effect from the date of service of this Notice as follows:-

Decision

The period allowed for the completion of the work required by the order is extended until 30 April 2024.

Tribunal Members

Mr Martin J. McAllister, solicitor, legal member and Mr Kingsley Bruce, chartered surveyor, ordinary member ("the tribunal")

Background

The members of The First-tier Tribunal for Scotland (Housing and Property Chamber) dealing with the application are Martin J. McAllister and Kingsley Bruce. They had formed the Committee of the Private Rented Housing Panel previously dealing with matters and The First-tier Tribunal for Scotland (Housing and Property Chamber) had assumed responsibility for the application on 1st December 2016.

A repairing standard enforcement order (RSEO) dated 30th September 2016 had been made in the following terms:

- a) The Landlords require to properly secure the wash hand basin to the wall.
(Section 13 (1) (c) of the Act).**
- b) The Landlords require to ensure that heat and smoke alarms comply with the requirements of the revised Domestic Technical Handbook issued by Scottish Government's Building Standards Division (Technical Handbooks 2013:- Domestic-Fire)
(Section 13 (1) (f) of the Act).**
- c) The landlords requires to install a functioning carbon monoxide detector.
(Section 13 (1) (g) of the Act).**
- d) The Landlords are to produce an electrical installation condition report prepared by a suitably competent person confirming that the electrical system within the Property is in a safe and efficient condition.
(Section 13 (1) (c) of the 2006 Act)**
- e) The Landlords require to ensure that the roof is in good repair, that rainwater goods are in efficient working order and that the external fabric of the property is in good repair all to ensure that the Property is wind and watertight.
(Section 13 (1) (a) of the Act).**
- f) The Landlords require to engage a competent specialist to establish the cause and extent of water ingress, dampness, rot and timber decay throughout the Property, undertake such works as necessary and reinstate where required including decoration.
(Section 13 (1) (a) and (b) of the Act).**

In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, the then committee determined that the repairing standard enforcement order required to be complied with by the date six months from service of the repairing standard enforcement order upon the Landlords.

1. On various occasions, the Tribunal had varied the repairing standard enforcement order (RSEO) to extend the period for completing the works. The tenancy has been terminated.
2. An inspection of the Property was conducted by the legal and ordinary members on 25th November 2021 and, as a consequence of that, a variation of the RSEO was granted on 11 February 2022.
3. The terms of the variation of the RSEO were that the time for compliance was extended to 31 August 2023.
4. Arrangements were made for the Legal Member and the Ordinary Member to reinspect the Property on 23 November 2023.
5. On 12 October 2023, the Landlord contacted the Tribunal office and asked for the RSEO to be varied to allow more time for compliance.
6. The Landlord detailed the work which had been completed since the previous inspection by the tribunal. Lead plumbing had been renewed, flooring had been reinstated, plumbing work had been done and electrical work had commenced.
7. The Landlord gave information on works which require to be done. This included plumbing and electrical work, installation of the kitchen and bathrooms and plastering of walls.

Deliberations and Decision

8. **In coming to its determination, the tribunal noted the concerns which it had at the Hearing which had taken place after the inspection in February 2022. There were issues about the priority given to work at other properties owned by the Landlord.**
9. **The tribunal accepted that, from what was stated by the Landlord, a substantial part of the repairs to the property had been completed but it noted that a considerable number of items were outstanding.**

10. The tribunal considered its options. The RSEO had not been complied with and, in terms of Section 26 (2) of the Act, it could issue a certificate of non-compliance.
11. **The tribunal considered matters. The tenancy had been terminated some time previously and the tribunal accepted that progress had been made toward satisfying the terms of the outstanding RSEO. In the particular circumstances of the extensive work required by the RSEO, the tribunal determined that satisfactory progress had been made in terms of Section 25 (3) (b) (i) of the Act.**
12. The tribunal determined that the RSEO be varied and that the Landlord be given until 30 April 2024 to comply.
13. Given the time that has been taken for compliance with the RSEO, the tribunal will require to consider issuing a certificate of non-compliance if the RSEO is not complied with by 30 April 2024.

A landlord, tenant or third party applicant 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.

In terms of Section 63 of the Act, 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.

**Martin J. McAllister, solicitor,
Legal member of tribunal.
9 November 2023**