

Housing and Property Chamber
First-tier Tribunal for Scotland



**Statement of Decision: Section 25(1) (b) 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")

Tribunal Members

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

Decision

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 revoked in terms of Section 25 (1) (b) of the Act and that this is with effect from the date hereof.

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 for many years.
2. Inspections of the Property had been carried out by the tribunal on various occasions and the last one had been on 25 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.
8. The tribunal determined that the RSEO should be further varied allowing the period for compliance to be extended to 30 April 2024.

Hearing

9. A Hearing was held by teleconference on 21 June 2024. Mr Alder was in attendance.
10. The Landlord said that the works required by the RSEO had not been completed. He said that they were well advanced. He set out his plans for completion of the Property and detailed what had been done. The Property was now wind and watertight and extensive damp and rot works had been carried out and he said that the floor which was not in place at the time of the last reinspection had now been reinstated. He said that the Property is to be completely replumbed and rewired. He said that a kitchen had been selected and that it was a case of coordination with tradespeople to bring matters to a conclusion.
11. Mr Alder said that the Property was one of a number which had belonged to his mother and which he and his brothers had inherited. He said that the condition of

the properties had deteriorated and that he had moved his family home from Ayrshire to Dumfries with the intention of selling some of the properties and using the funds realised by the sales to bring others up to standard. In achieving this, he had to buy out the interests of his brothers.

12. Mr Alder said that it had always been his intention that the Property would become his family home. He said that the funds expended on it and the standard of finish were such that, in any event, the Property would not be suitable for the rental market.
13. Mr Alder said that he, his wife and his daughter hoped to move into the Property within four or five months.

Discussion and Determination

14. The tribunal found Mr Alder to be straightforward in his evidence and to be credible. His wife had been at previous Hearings and they had both been consistent in stating that the Property was to become the family home.
15. The Landlord had great challenges in dealing with repairs to the Property and it was now wind and watertight and the tribunal accepted that he was in the final stages of finishing the works.
16. In terms of the relevant legislation, it is open to the tribunal to determine that the RSEO had not been complied with. Alternatively, it could vary it in terms of Section 25 (1) (a) of the Act or revoke it in terms of Section 25 (1) (b) of the Act.
17. The tribunal accepted that the Landlord intends to reside in the Property with his family and it did not consider that it was in the public interest to further delay final determination of the matter which had been ongoing since 2016.
18. The tribunal accepted that a considerable amount of the work required by the RSEO had been completed and that the specific terms of the RSEO which had not been complied with were no longer necessary. The tribunal determined this because of the extensive refurbishment which is being carried out to the Property and the Landlord's intention to live in it as his family home.

Decision

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 revoked in terms of Section 25 (1) (b) of the Act and that this is with effect from the date hereof.

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 The First-tier Tribunal
4 July 2024**