

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Variation of Repairing Standard Enforcement Order ("RSEO"): Housing (Scotland) Act 2006 Section 25

Chamber Ref: RP/16/0232

Re: 1 Leafield Road, Dumfries, DG1 2DS being the subjects described in Disposition and Assignation 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 ('the House')

The Parties:-

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

("The Tenants")

Mr Johannes Maxwell Gerhard Alder, residing at 3 Kilmarnock Road, Symington, KA1 5PT, Mr Maxwell William Elder Alder, residing at 86A Queensbury Street, Dumfries, DG, 1BG and Mark David Alder, residing at 58 Rose Crescent, Perth, PH1 1NT, trading as Alder Properties, Hanwell House, Clarencefield Road, Dumfries, DG1

Tribunal Members: Martin J. McAllister, solicitor, legal member and Kingsley Bruce, surveyor, ordinary member.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") having determined on 1st August 2017 that the RSEO relative to the House served on 6th October 2016 should be varied, the said RSEO is hereby varied with effect from the date of service of this Notice in the following respects:-

The period allowed for the completion of the work required by the order is further extended to 30th November 2017.

Subsection 25(3) of the Housing (Scotland) Act 2006 as amended does apply in this case.

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.

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 the house at any time during which an RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page are execute by Martin Joesph McAllister, solicitor, legal member of the Tribunal, at Kilwinning on 2nd August 2017 in the presence of Kayleigh Guthrie, 83 Main Street, Kilwinning.

M McAllister

K Guthrie

Housing and Property Chamber First-tier Tribunal for Scotland



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

Chamber Ref: RP/16/0232

Re 1 Leafield Road, Dumfries, DG1 2DS 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 ('the Property')

The Parties:-

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

("The Tenants")

Mr Johannes Maxwell Gerhard Alder, residing 3 Kilmarnock Road, Symington, KA1 5PT, Mr Maxwell William Elder Alder, residing at 86A Queensbury Street, Dumfries, DG 1BG and Mr Mark David Alder, residing at 58 Rose Crescent, Perth, PH1 1NT, trading as Alder Properties, Hanwell House, Clarencefield Road, Dumfries, DG 1BG

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 and served on 6th October 2016 should be VARIED with effect from the date of service of this Notice in the following respect:-

The period allowed for the completion of the work required by the order is extended until 30th November 2017.

Background

The members of The First-tier Tribunal for Scotland (Housing and Property Chamber) dealing with the application are Martin J. McAllister, solicitor, legal member and Kingsley Bruce, surveyor, ordinary member. They had formed the Committee of the

Private Rented Housing Panel and the tribunal assumed responsibility for the matter 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 committee determined that the repairing standard enforcement order requires to be completed within a period of five weeks from its service on the Landlord.

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 requires to be complied with by the date six months from service of the repairing standard enforcement order upon the Landlords.

1. On 24th May 2017 the Tribunal varied the repairing standard enforcement order (RSEO) to extend the period for completing the works to 31st July 2017.

2. On 31st July 2017 the Landlord wrote to the Tribunal requesting that the Tribunal vary the terms of the RSEO to allow the Tenant until 30th November 2017 to complete the works required by the order.
3. The Landlord stated that the works required are extensive and indicated that some works had been done and that a specialist contractor had indicated that he would start work in a couple of weeks.
4. The Landlord indicated that some works would involve a neighbouring proprietor.
5. The Landlord gave an undertaking that works would be completed by 30th November 2017.
6. The Tribunal considered it reasonable to permit more time for completion of works and noted that the tenancy had been terminated some time previously. It also had regard to the undertaking provided by the Landlord.
7. The Tribunal considered that an extension to 30th November 2017 would be more than adequate to allow the Landlord to complete the works required by the RSEO.

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.

M McAllister

Martin J. McAllister, solicitor,
Legal member of tribunal.
2nd August 2017