

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



Cover Sheet

Martin J. McAllister

**Case Reference
RP/16/0232**

Documents Lodged:

**Decision
And
Variation**

Special Instructions/Notes

Please action asap

Expenses

Usual

**Special Requirements re Expenses
See above**

Other Matters

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 Assingation 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 Mr Mark David Alder, residing at 58 Rose Crescent, Perth, PH1 1NT, trading as Alder Properties, Hanwell House, Clarencefield Road, Dumfries, DG1 and The Accountant in Bankruptcy in respect of the sequestered estate of Mr Maxwell William Elder Alder.

(“The Landlord”)

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 21st December 2018 that the repairing standard enforcement order (RSEO) relative to the House served on 6th October 2016 and subsequently varied should be further varied, the said RSEO is hereby 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 further extended to 31st January 2020.

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 executed by Martin Joseph McAllister, solicitor, legal member of the Tribunal, at Glasgow on 21st October 2019 in presence of **JOYCE SPENCE**
Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT

J Spence

M McAllister

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: 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 ('the Property')

Parties:-

Mr Francis McFaul and Mrs Jacqueline McFaul, sometime 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 and the Accountant in Bankruptcy in respect of the sequestered estate of Mr Maxwell William Elder Alder.

("The Landlords")

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 should be further 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 31st January 2020.

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 previously dealing with matters and The First-tier Tribunal for Scotland (Housing and Property Chamber) had 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 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. On 25th September 2018 the Tribunal made directions under Rule 16 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
3. A reinspection and Hearing in respect of the Property had been arranged for 21st December 2018.
4. After representations from Mr Johannes Alder, the Inspection was cancelled and, at the Hearing which he attended, the members of the tribunal accepted that there were particular difficulties with completing the repairs to the Property. The tribunal accepted that significant progress had been made to comply with the RSEO and varied it to allow until 30th September 2019 for the RSEO to be complied with.
5. On 9th October 2019, Mr Johannes Alder wrote to the Tribunal seeking a further variation.
6. Mr Alder supplied a considerable amount of detail and supporting documents.
7. Mr Alder indicated that he had health issues which had delayed the work. He produced documentation confirming that the local authority is providing an empty home grant and he said that asbestos in the property had been removed and that treatment had started in respect of dry rot and wood boring insects. His letter also gave information on the preparatory work which had been done and the contractors which will be carrying out extensive work in the next few months.
8. The Tribunal considered it reasonable to permit more time for completion of works and noted that the tenancy had been terminated some time previously. The tribunal considered that a variation giving the Landlord until 31st January 2020 should be sufficient and that, in the particular circumstances of this case, the Landlord has made satisfactory progress in doing the works required.

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.
21st October 2019