

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, 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 30TH September 2021.

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 Alder wrote to the Tribunal seeking a further variation and this was granted allowing the Landlords until 31st January 2020 to complete the works.
6. An inspection was arranged for 11th February 2020. On 7th February, Mr Alder wrote to the Tribunal seeking a further variation of the RSEO. In view of the terms of the letter, the tribunal decided to cancel the inspection.
7. Mr Alder supplied a considerable amount of detail in his letter of 7th February 2020 together with supporting documents.
8. The RSEO was varied to extend the time for completion of the works to 30th September 2021.
9. A reinspection of the Property should have been carried out after 30th September 2021 but this could not happen because of the restrictions caused by the coronavirus restrictions.

10. A case management discussion was scheduled for 18th February 2021 and was held on that date.
11. Mr Alder sent a detailed letter to the Tribunal which was dated 12th February 2021. This set out the works which had been done on the Property and works requiring to be done. The letter referred to delays as a consequence of getting tradespeople to carry out work, difficulties with Scottish Water, the ill health of the Landlord and the restrictions imposed by the coronavirus. The letter sought a further variation of the RSEO.

The Case Management Discussion

12. Mr Alder participated in the Hearing and was accompanied by his wife, Mrs Elizabeth Alder, who also participated.
13. Mrs Alder said that it was the intention for the Property to become their private home. She said that she and her husband had moved from Ayrshire with their family and were renovating not only the Property but also three others in Dumfries which had all been inherited.
14. It was considered useful to go through the terms of the RSEO and assess progress:

15. **The washhand basin has to be properly secured to the wall.**

Mrs Alder said that it was the intention to remove that particular bathroom and, in conjunction with reconfiguration of the house, install a new one elsewhere.

16. **Smoke alarms, heat alarms and carbon monoxide detector require to comply with current regulations.**

Mr Alder said that it was the intention to rewire the Property and that the alarms and detector would be installed at that time.

17. **Provision of an EICR.**

Mr Alder said that the Property will be rewired and that an appropriate report will be produced subsequent to that.

18. **The roof, rainwater goods and external fabric are to be in good repair.**

Mr and Mrs Alder said that a considerable amount of work had been done. New windows had been installed, the gutters and downpipes had been renewed/ made good and some of the external render had been dealt with and the remainder will be attended to when weather and the availability of the contractor allows. They said that the roof had been repaired.

19. **The employment of a competent specialist to establish the cause and extent of water ingress, dampness, rot and timber decay throughout the Property. Mr and Mrs Alder said that Richardson and Starling, specialist contractors had carried out work to eradicate rot and deal with dampness and woodworm. Mrs Alder said that she would send copies of their report and invoice to the Tribunal.**
20. **Mr Alder said that extensive work had been carried out to the Property which had been necessary, although not forming part of the RSEO, and he gave some examples. He said that specialist contractors had to remove asbestos and Scottish Water had to carry out work to stop sewage draining into the Property. The floorboards and joists on the first floor had been removed in line with the recommendation of Richardson and Starling. These have still to be reinstated.**
21. **Mr Alder's letter of 12th February 2021 detailed extensive work which had been done and which was programmed.**
22. **Mrs Alder said that she thought it would take eighteen months before the works were done and her family would be able to move into the Property. She said that they were working with the local authority to bring the Property and the three other properties back into use and she said that there were financial issues in achieving this. She said that a gradual approach had been taken to ensure that there were sufficient finances.**
23. **Mr Alder said that work had been delayed because of his illness in 2019 and that it had been delayed further because of an operation had had required to his arm in December 2020 and from which he was still recovering. He said that Covid-19 has also delayed matters.**
24. **The tribunal considered matters. The tenancy had been terminated some time previously. The members of the tribunal accepted that a considerable amount of work had been done and that more was programmed. It noted the Respondent's position that it might take eighteen months for all the works to be completed but, considering what is required to be done to comply with the RSEO, they found that it would not be appropriate to vary the RSEO to allow that period of time for compliance. The RSEO had been granted on 30th September 2016 and, whilst the Respondent had encountered various difficulties and there are challenges with the work still to be done, the tribunal considered it reasonable that the works required by the RSEO be completed by 30th September 2021. The tribunal hoped that priority would be given to completion of works for the Property rather than the other three properties referred to by Mrs Alder.**
25. **In varying the terms of the RSEO, the tribunal considered the terms of Section 25 (3) (b) (i) of The Housing (Scotland) Act 2006 and determined**

that, in the particular circumstances of this case, the Landlord has made satisfactory progress in carrying out 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.

**Martin J. McAllister, solicitor,
Legal member of tribunal.
1st March 2021**

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 Kilwinning on 1st March 2021 in presence of Audrey Boylan, 83 Main Street, Kilwinning, KA13 6AN

M J McAllister

A Boylan