

# 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 Assigment 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, 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 30<sup>th</sup> September 2016, served on 6<sup>th</sup> 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 30<sup>th</sup> September 2019.**

## 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 1<sup>st</sup> December 2016.

A repairing standard enforcement order (RSEO) dated 30<sup>th</sup> 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 25<sup>th</sup> 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 21<sup>st</sup> December 2018.
4. Prior to 21<sup>st</sup> December 2018 Mr Johannes Alder indicated that he wanted matters to be postponed because the work to the Property had not been completed.
5. The Tribunal determined that, in the circumstances, the reinspection could be cancelled but that it was appropriate for the Hearing to proceed.
6. The Hearing was held in Lochvale House, Dumfries. Mr Mark Alder was present.
7. The tribunal considered the Directions it had made on 25<sup>th</sup> September 2018. It noted that it had been provided with the Accountant in Bankruptcy details and had been provided with representations with regard to whether the Accountant in Bankruptcy should have the application before the Tribunal intimated to him. It noted that it had not received a proposed programme of work but Mr Alder said that he had submitted one to the Tribunal office and that he would send a copy. It noted that representations had been made with regard to the possible variation of the RSEO.
8. Mr Alder explained that a certain amount of work had been done and that there had been issues with regard to reaching an agreement with Mr Maxwell Alder's Trustee in connection with the way forward. He said that he had reached an understanding with his brother Mr Mark Alder and that ultimately it was he, Johannes Alder, who would be taking ownership of the Property and that it was his intention that it become his family home.
9. Mr Alder said that the roof had been repaired to stop water ingress and that the electrics had been isolated to a single point to facilitate future work. He said that two load bearing partition walls had been removed and that timbers in those areas had been rotten. Because of the removal of the walls, appropriate supports had been installed in the basement.
10. Mr Alder said that he had received a quotation to have asbestos removed from the Property and that, when this was done a specialist damp and rot specialist could then do work which would involve treatment of dry rot. The plasterwork could then be restored and the electrics and plumbing reinstated. Mr Alder said that the asbestos work should be done in January 2019.
11. Mr Alder said that he had managed to get some funding support from the local council to assist with the work to the Property and that his own house was on the market which would allow equity to be released to assist with the work which needed to be done.

12. Mr Alder said that there was ongoing legal work because the Property was not a registered title and there was an issue with garden ground which required to be resolved and that there would also be legal work involved in dealing with his two brothers' share of ownership of the Property.
13. Mr Alder said that he thought it would be appropriate for the RSEO to be varied to allow him another year to do the work.
14. The tribunal considered the representations which it had before it in connection with variation of the RSEO. These had been submitted by Mr Mark Alder and were contained within his letters of 18<sup>th</sup> June 2018 and 5<sup>th</sup> October 2018.
15. 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 did have concerns that to vary the RSEO to allow a year to do the works would be excessive but it did accept that there is extensive renovation required and that there are particular issues with regard to ownership of the Property and the involvement of the Accountant in Bankruptcy. The tribunal noted that the works required by the RSEO are not necessarily all the works which Mr Mark Alder intends to do to make the Property suitable for his occupation but that its only concern was that the order is implemented. The tribunal considered that a variation giving the Landlord until 30<sup>th</sup> September 2019 should be more than sufficient and that, in the particular circumstances of this case, the Landlord has made satisfactory progress in doing the works required.
16. The tribunal noted that it had already intimated the application to the Accountant in Bankruptcy and determined that it would intimate any future decisions in the same way. It did, however, determine that it was for the parties to come to their own arrangements with regard to carrying out any works and allocating responsibility for payment for them.

**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.  
11<sup>th</sup> January 2019

# 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 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.

**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 21<sup>st</sup> December 2018 that the repairing standard enforcement  
order (RSEO) relative to the House served on 6<sup>th</sup> 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 respects:-

**The period allowed for the completion of the work required by the order is  
further extended to 30<sup>th</sup> September 2019.**

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 Joesph McAllister, solicitor, legal member of the Tribunal, at Glasgow 11<sup>th</sup> January 2019 in the presence of *DAVID WILSON, 40 HELENVALE ST.*  
*GLASGOW.*

M McAllister