



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp 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")

G1 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, Mark David Alder, residing at 58 Rose Crescent, Perth, PH1 1NT, trading as Alder Properties, Hanwell House, Clarencefield Road, Dumfries, DG1

("The Landlords")

NOTICE TO JOHANNES MAXWELL GERHARD ALDER, MAXWELL WILLIAM ALDER AND MARK DAVID ALDER trading as ALDER PROPERTIES

Whereas in terms of their decision dated 30TH September 2016 the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and, in particular, that the Landlords have failed, in terms of Section 13 of the said Act to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation; that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of

detecting fires and for giving warning in the event of fire or suspected fire; that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

the Private Rented Housing Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard in terms of Section 13 of the said Act and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Private Rented Housing Committee requires the following:-

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 require 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 said Act, the 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.

A landlord or a tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision

and the 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 said Act, a landlord who, without reasonable excuse, fails to comply with a repairing standard enforcement order 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 a house at any time during which a repairing standard enforcement order has effect in relation to the house. This is in terms of Section 28(5) of the said Act.

In witness whereof these presents executed by Martin Joseph McAllister, Solicitor, Chairperson of the Private Rented Housing Committee at Saltcoats on 30th September 2015 before Paula Sinclair, witness, 51 Hamilton Street, Saltcoats.

M. MCALLISTER

P. SINCLAIR



Determination by Private Rented Housing Committee

Statement of decision of the Private Rented Housing Committee under Section 24 (1) of the Housing (Scotland) Act 2006

prhp 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")

G1 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, Mark David Alder, residing at 58 Rose Crescent, Perth, PH1 1NT, trading as Alder Properties, Hanwell House, Clarencefield Road, Dumfries, DG1 4NU ("The Landlords")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) of The Housing (Scotland) Act 2006 ("the 2006 Act") in relation to the Property, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act and made a repairing standard enforcement order in terms of Section 24(2) of the said Act.

Background

1. By application received on 29th June 2016 the Tenants applied to the Private Rented Housing Panel for a determination of whether the Landlords have failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act.
2. The application by the Tenants states that they consider that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing

standard. The application states that the Tenants believe that the Property is not wind and watertight and in other respects reasonably fit for human habitation, that the structure and exterior of the house (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order, that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order, that any fixtures, fittings and appliances provided by the landlords under the tenancy are not in a reasonable state of repair and in proper working order, that the house has not satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. The application made specific reference to penetrating dampness in two bedrooms and the toilet, defective pointing at rear of house, blocked guttering and downpipes at rear of property, rising damp in basement, downstairs toilet not working and sink not properly secured to wall, water penetration in upper rooms coming from roof and unsafe electrical sockets and switches. The application also stated that there are no installed smoke alarms and no carbon monoxide detector.

3. Subsequent to submission of the application, the Tenants advised that the tenancy was to be lawfully terminated. The President considered matters and, on 7th July 2016, stated that the application should continue to be determined, all in terms of Schedule 2 Paragraph 7(2) of the 2006 Act. On the same day she referred the application to a Private Rented Housing Committee in terms of Section 23(1) of the 2006 Act. The Committee comprises of Martin McAllister (Chairperson) and Kingsley Bruce (Surveyor Member). Notwithstanding the fact that Mr and Mrs McFaul are no longer parties to the application they are referred to as such in this Decision for the sake of consistency with the application.

4. The Private Rented Housing Panel served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlords on 25th July 2016.

5. A Hearing was fixed for 5th September 2016.

6. The Landlords raised issues about intimation of the Hearing notwithstanding that the Notice of Referral had been served on Alder Properties at the address shown in the Register of Landlords. It was also served on individuals at the addresses known.

7. The Committee determined that a new date for a Hearing be arranged and this was fixed for 22nd September.

8. Mr Mark Alder wrote to the Committee on 5th September 2016 indicating that he wanted to make written representations. In view of the fact that the Tenants were no longer a party to the application, the Committee advised the Landlords that they could lodge written representations up until 19th September 2016. No written representations were made other than the letter from Mr Mark Alder dated 5th September.

9. In his letter Mr Alder indicated that he did accept that, although there is an obligation on Landlords to maintain properties to a repairing standard at the commencement of the tenancy and during the period of the tenancy, he did not consider that this obligation extends beyond termination of the tenancy. He stated that he did not consider that a property owner has an obligation to meet the repairing standard if there is no tenancy. The letter goes on to state that Mr Alder's understanding of the statutory provisions is that the role of the Committee is to protect current tenants and not to determine the position historically for tenancies that have ended. The letter refers to Paragraph 7, Schedule 2 of the 2006 Act and Mr Alder stated that he considered that this provision requires to be read with Section 14(1) of the Act which clearly sets out when a Landlord has an obligation to meet the repairing standard.

Mr Alder's letter also invites the Committee to consider Section 25(1) of the Act which deals with revocation of a Repairing Standard Enforcement Order. Mr Alder's letter states that "the current intention is to sell the property" and that if the property were to be let "then we would need to register that with the local authority and no doubt that would re-institute investigation as to whether the property was to a particular standard." The letter also refers to Mr Alder's intention to refer to his letter in relation to an argument on expenses if it becomes necessary to appeal any decision of the Committee.

10. The Committee attended at the Property on 22nd September 2016 for an inspection. Messrs Mark and Johannes Alder were present. The Property comprises a terraced house on three levels with a basement area in addition. There is also accommodation on a half landing. A schedule of external and internal photographs is attached to this Determination. The committee found the following:-

11. Findings on Inspection

11.1 There is no carbon monoxide detector.

11.2 There are battery operated smoke detectors in the property some of which are not attached to wall or ceiling. None are functioning.

11.3 There is no heat detector in the kitchen.

11.4 The WC does flush and appears to be operating effectively and the wash hand basin is not properly secured to the wall. There is evidence of water penetration/damp ingress in the toilet.

11.5 There is evidence of water ingress in the rooms on the top/attic floor and high moisture readings in walls and ceilings in these rooms.

11.6 There is evidence of water penetration/damp ingress in the rooms on the ground/first floor and high moisture readings.

11.7 Wet rot was evident to floor joists in the ground floor rear room.

11.8 There are rotten window sills throughout the property and evidence of water ingress at windows.

11.9 There is evidence of water/damp ingress/penetration at basement level and dry rot in the basement room.

11.10 There is evidence of defective pointing at the rear of the Property.

11.11 There is evidence of blocked and defective rainwater goods at the rear of the Property.

11.12 Electrical fittings appear dated.

12. The Hearing

Following the Inspection, a Hearing took place at the Station Hotel, Dumfries. Messrs Mark and Johannes Alder was present. Mr Mark Alder made representations and gave evidence.

13. Preliminary issues

The Committee noted the terms of the Mr Alder's letter of 5th September 2016. Mr Alder said that the letter should be considered to be his written representations. He said that it was not intended to rent the Property "any time soon if at all." He said that he and his brothers (the co-owners) are currently considering matters. Mr Alder reiterated the position as set out in his letter. He said that he did not consider that a landlord is required to maintain a property to the repairing standard if there is no tenancy. He accepted that, in terms of paragraph 7 of Schedule 2 of the 2006 Act, the President can continue to refer a case to a private rented housing committee when a tenancy is lawfully terminated. He stated that when a committee was considering an application in such circumstances it had to apply the obligation imposed on a landlord by Section 14 (1) (a) and (b) of the 2006 Act. This states that a landlord in a tenancy must ensure that the house meets the repairing standard at the start of the tenancy and at all times during the tenancy. In this case Mr and Mrs McFaul's tenancy had been lawfully terminated and Mr Alder's submission was that the Committee could not determine the application because no tenancy was in existence. He said that he did not accept that the Committee could do anything other than dismiss the application.

Mr Alder conceded that the Property had not met the repairing standard prior to lawful termination of the tenancy.

Mr Alder also stated that battery powered smoke detectors had been provided to the Tenants at the commencement of the tenancy in 2004. He said that his understanding is that, if a tenancy existed prior to 2007, a landlord was not obliged to comply with the current regulations.

Mr Alder requested that, if the Committee was to make a repairing standard enforcement order, the Landlords be allowed a period of six months to complete the works.

14. The Repairing Standard

The repairing standard is set out in Section 13 of the 2006 Act as amended:
A house meets the repairing standard if—

- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,*
- (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,*

- (c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,*
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,*
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,*
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and*
- (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.*

15. Findings

15.1 There is no carbon monoxide detector.

15.2 There are battery operated smoke detectors in the property some of which are not attached to wall or ceiling. None are functioning.

15.3 There is no heat detector in the kitchen.

15.4 The WC does flush and appears to be operating effectively and the wash hand basin is not properly secured to the wall. There is evidence of water penetration/damp ingress in the toilet.

15.5 There is evidence of water ingress in the rooms on the top/attic floor and high moisture readings in walls and ceilings in these rooms.

15.6 There is evidence of water penetration/damp/ingress in the rooms on the ground/first floor and high moisture readings.

15.7 Wet rot was evident to floor joists in the ground floor rear room

15.8 There are rotten window sills throughout the property and evidence of water ingress at the windows.

15.9 There is evidence of water/damp ingress/penetration at basement level and dry rot in the basement room.

15.10 There is evidence of defective pointing at the rear of the Property.

15.11 There is evidence of blocked and defective rainwater goods at the rear of the Property.

15.12 Electrical fittings appear dated.

16. Reasons

The Committee made these findings as a result of what had been found on inspection.

17. Decision

17.1 The Committee considered whether or not any defects it found established brought the Property below the repairing standard in terms of the 2006 Act as amended.

17.2 Prior to considering the repairing standard the Committee considered Mr Alder's submissions that it could not determine the application. It was accepted by Mr Alder that the provisions of paragraph 7(2) (b) allowed the President to exercise her discretion as to whether or not to refer a case to a private rented housing committee. The Committee did not accept Mr Alder's submission that it could not determine the application because there was no longer a tenancy in existence. It was clear that Parliament must have intended that, in circumstances where a tenancy had been lawfully terminated and a case referred to a private rented housing committee, a committee would be entitled to determine an application and, if appropriate, make a repairing standard enforcement order. The Committee considered that Section 24 (1) of the 2006 Act clearly stated the Committee's duty:

The private rented housing committee to which a tenant's application under section 22(1) is referred must decide whether the landlord has complied with the duty imposed by section 14(1) (b). In this case an application has been referred to a committee by the President and the Committee must consider whether the Landlords have complied with the duty to ensure that the house meets the repairing standard at all times during the tenancy. The Committee noted that the case had been referred to it after the tenancy had been lawfully terminated and it was therefore entitled to apply the terms of Section 14 (1) (b) of the 2006 Act to the condition of the Property. It did not accept that Parliament would have given power to the President to refer an application but give no powers to a private rented housing committee to determine an application. The Committee was strengthened in its view by the terms of Paragraph 7 (3) of Schedule 2 of the 2006 Act which stated that, if a tenancy was lawfully terminated after referral to a private rented housing committee, such a committee could continue to determine an application and make a repairing standard enforcement order.

The Committee considered that Mr Alder's reference in his letter to Section 25(1) of the 2006 Act. It considered the reference to be irrelevant since it dealt with the situation after a repairing standard enforcement order had been made. The Committee did not accept Mr Alder's submissions regarding the smoke alarms. Landlords must comply with current regulations.

17.3 The Committee noted that Mr Alder conceded that the Property had not met the repairing standard prior to termination of the tenancy.

In respect of the Findings it had made, the Committee considered that a repairing standard enforcement order should be made and proceeded to do so. In respect of the electrical system the Committee could make no determination and considered it

appropriate that the Landlords have the electrical systems checked and a condition report provided.

The Committee considered that would be reasonable for the Landlords to be given six months to complete the works.

The Committee accordingly determined that the Landlords have failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) and 24(2) of the 2006 Act 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 complied with by the date six months from service of the repairing standard enforcement order upon the Landlords.

Right of Appeal

A landlord or tenant aggrieved by the decision of the Private Rented Housing committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

Effect of section 63

Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

M. MCALLISTER

Signed Date 30th September 2016
Martin J. McAllister
Chairperson

Schedule of photographs relating to 1 Leafield Road, Dumfries







