

Housing and Property Chamber First-tier Tribunal for Scotland



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

Notice of Variation of a Repairing Standard Enforcement Order

In terms of Section 25 of the Housing (Scotland) Act 2006

Tribunal reference: RP/16/0222

Re 22 Dundonald Crescent, Auchengate, Irvine, Ayrshire, KA11 5 AX being the subjects registered in the Land Register of Scotland under title number AYR85278 ('the Property')

The Parties:-

Mr Kenneth Taylor, residing at the Property ("The Tenant")

G1 Property Investments Limited (in Administration), (SC325033) Grant Thornton UK LLP, Level 8, 110 Queen Street, Glasgow, G1 3BX ("The Landlord")

Members of The First-tier Tribunal for Scotland Housing and Property Chamber ("the Tribunal"): Martin J. McAllister, solicitor, legal member and Kingsley Bruce, surveyor, ordinary member.

NOTICE TO

G1 Property Investments Limited (In Administration)

The Tribunal having determined on 18th April 2017 that the Repairing Standard Enforcement Order relative to the Property and made on 16th August 2016 should be varied, the said Repairing Standard Enforcement Order 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 extended for a period of eight weeks from the date of service of this Notice.

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

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

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; In WITNESS WHEREOF these presents on this and the preceding page are executed at Kilwinning on 18th April 2017 by Martin Joseph McAllister, Solicitor, legal member of the Tribunal before Kayleigh Guthrie, 84 Main Street, Kilwinning

K Guthrie

M McAllister

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination: Sections 43(2) (a), 44(1) (b) and 44(2) (a) of the Tribunals (Scotland) Act 2016 and Sections 25(1) (a) and 25(2) (a) of the Housing (Scotland) Act 2006

Chamber Ref: RP/16/0222

Title no: AYR85278

Re 22 Dundonald Crescent, Auchengate, Irvine, Ayrshire, KA11 5 AX being the subjects registered in the Land Register of Scotland under title number AYR85278 ('the Property')

The Parties:-

Mr Kenneth Taylor, residing at the Property ("The Tenant")

G1 Property Investments Limited (in Administration) (SC325033), Grant Thornton UK LLP, Level 8, 110 Queen Street, Glasgow, G1 3BX ("The Landlord")

Members of The First-tier Tribunal for Scotland Housing and Property Chamber: Martin J. McAllister, solicitor, legal member and Kingsley Bruce, surveyor, ordinary member.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determines

(One) having reviewed its decision made on 16th August 2016 that the Tenant is no longer a party to the proceedings, to set the decision aside and, having reconsidered the matter, determines that the Tenant is a party to the proceedings,

(Two) that the repairing standard enforcement order (RSEO) made on 16th August 2016 and subsequently varied be varied to allow the Landlord a further period of eight weeks to carry out the works and said period of eight weeks commencing from the date of service of the Notice of Variation on the Landlord and

(Three) that the inspection and hearing fixed for 4th May 2017 be discharged.

Reasons:

1. A private rented housing committee had made a repairing standard enforcement order on 16th August 2016 following upon an inspection and

hearing on 8th August 2016. At the hearing the committee determined that the Tenant was no longer party to the proceedings because the tenancy had been lawfully terminated by the sheriff who had granted a decree for possession on 20th July 2016 in terms of Section 18 of the Housing (Scotland) Act 1988. The Tribunal assumed responsibility for the matter on 1st December 2016.

2. The Tribunal intimated to parties that it was considering reviewing its Decision and also varying the repairing standard enforcement order and they were given an opportunity to make representations.
3. The tribunal reviewed its determination with regard to the status of the Tenant and decided that it had been wrong to make the finding. The decree of possession granted by the Sheriff and upon which the then committee placed reliance had not taken effect. The Tribunal set aside its finding, reconsidered matters and determined that the Tenancy had not been lawfully terminated by the granting of the decree of possession and that the Tenant was and is a party to proceedings. The Landlord had submitted that it would not oppose such a determination.
4. The then committee had varied the repairing standard enforcement order to allow more time for the RSEO to be completed. This decision had been appealed by the Tenant. The appeal had been refused but, until it had been determined by the Sheriff on 8th February 2017, the effect of the RSEO had been suspended in terms of Section 63 of the Housing (Scotland) Act 2006 (the 2006 Act).
5. The Landlord made application to the First- tier Tribunal for assistance with access to the Property under Section 28A of the 2006 Act and a determination was made by a member of the Tribunal not involved with consideration of the application with regard to the alleged failure to maintain the house to the repairing standard.
6. The terms of the original RSEO were such that the Landlord submitted that, taking into account the period of suspension in terms of Section 63 of the 2006 Act and also the difficulties experienced by the Landlord in getting access to carry out the works required by the RSEO, a variation be granted allowing further time for the works to be carried out. The Landlord also referred to a lack of clarity in determining the time limit for works to be done. The Tenant's position set out in representations was that he had not denied access and that the Landlord had submitted misleading information.
7. The Landlord submitted that it had made a further application for assistance with access to the Property in terms of Section 28A of the 2006 Act.
8. The Tribunal considered that it is in the interest of both parties that the works required by the RSEO be completed. It saw no need to determine, for the purposes of the matters before it, whether or not the Landlord had failed to

carry out the works through lack of effort or whether or not the Tenant had been obstructive and prevented the Landlord carrying out works. The Tribunal considered that there was lack of clarity in the time allowed for works required by the RSEO to be done and accepted that, until Mr Taylor's status in relation to the application, is determined, the Landlord cannot progress any application under Section 28A of the 2006 Act.

9. The Tribunal determined that it is appropriate for the RSEO to be varied to allow more time for its completion. In coming to its determination the Tribunal noted that the Landlord had indicated that some works required by the RSEO had been done. The Tribunal determined that the RSEO be varied to allow the Landlord eight weeks from service of the Notice of Variation to complete the works required by the RSEO.
10. The tribunal considered the need to have the Inspection and Hearing which has been fixed for 4th May 2017. Both parties agree that the works required by the RSEO have not been done. The tribunal considered that, in all the circumstances of the case, there would be nothing to be achieved by inspecting the Property at this stage. It also followed that a Hearing is not necessary. The tribunal determined that the Inspection and Hearing be discharged and cancelled.
11. In coming to its Decision the tribunal had regard to the terms of the overriding objective set out in Rule 3 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016.

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

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M McAllister

Martin J. McAllister
Legal member of the tribunal
18th April 2017