

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Statement of Decision under Rule 38 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (contained in Schedule Part 1 of the Chamber Procedure Regulations 2017 (SSI No 328), as amended) (“the Procedure Rules”) in relation to a request for permission to appeal under section 46(3)(a) of the Tribunals (Scotland) Act 2014**

**In connection with**

**Chamber File Reference number: FTS/HPC/RP/23/3742**

**Re: Property at Flat 22 Taypark, 30 Dundee Road, Broughty Ferry, Dundee DD5 1LX (registered under title number ANG82535) (“Property”)**

**The Parties:**

**Carolann Curran Flat 22 Taypark, 30 Dundee Road, Broughty Ferry, Dundee DD5 1LX (“Tenant”)**

**Douglas McLennan and Linda McLennan, 44 Hamilton Street, Broughty Ferry, Dundee (“Landlord”)**

**Rent Locally, Lindsay Court, Gemini Crescent, Dundee DD2 1SW (“Landlord’s Representative”)**

**Tribunal Members :**

**J Devine (Legal Member); D Godfrey (Ordinary Member)**

### **1. DECISION**

The Tribunal refuses permission to appeal on all grounds in terms of Rule 38 of the Procedure Rules.

### **2. BACKGROUND**

- i. By application dated 24 October 2023, the Tenant applied to the Tribunal for a determination that the Landlord had failed to comply with their duties under Section 14(1) of the Housing (Scotland) Act 2006 (“Act”). The Tribunal inspected the Property on the morning of 21 February 2024 and proceeded to a Hearing thereafter which was attended by the Tenant and her daughter, the Landlord and the Landlord’s Representative. Thereafter the Tribunal

determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act. The Tribunal issued a decision and Repairing Standard Enforcement Order both dated 23 February 2024 (“Decision and RSEO”).

- ii. By email dated 4 March 2024, the Landlord applied to the Tribunal for permission to appeal parts 1 and 4 of the RSEO. Section 2 of the Scottish Tribunals (Time Limits) Regulations 2016 provides that the application for permission to appeal must be received within 30 days of the date the decision was sent to the Respondent. The application is timeous. By email dated 5 March 2024 the Tenant objected to the application for permission to appeal for the reasons set out in the email.
- iii. Rule 37(2) of the Procedure Rules provides that the written application to the Tribunal for permission to appeal must:
  - (a) identify the decision of the First-tier Tribunal to which it relates;
  - (b) identify the alleged point or points of law on which the person making the application wishes to appeal; and
  - (c) state the result the person making the application is seeking.

The email identifies the Tribunal decision to which it relates and states that the result sought by the Landlord is “*I would like to appeal the repair orders (1) and (4)*”.

The email also sets out 2 grounds of appeal. In terms of Rule 38 of the Procedure Rules, the Tribunal must determine whether to give permission to appeal on each ground.

Section 46(2) (b) of the Tribunals (Scotland) Act 2014 provides that an appeal is to be made on a point of law only. Section 46(3) of that Act provides that an appeal requires the permission of the First-tier Tribunal. Section 46(4) of that Act provides that such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are “arguable grounds for appeal”.

The case of ***Advocate General for Scotland v Murray Group Holdings Ltd [2015] CSIH 77. 2016 SC 201 (affirmed by UKSC in [2017] UKSC 45; 2018 SC (UKSC) 15*** sets out what is meant by “a point of law” at paragraphs 41-43. It identified four different categories that an appeal on a point of law covers: (i) General law, being the content of rules and the interpretation of statutory and other provisions; (ii) The application of law to the facts as found by the First Tier Tribunal; (iii) A finding, where there was no evidence, or was inconsistent with the evidence; and (iv) An error of approach by the judicial decision maker, examples of which could be “ asking the wrong question, or by taking account of manifestly irrelevant considerations or by arriving at a decision that no reasonable tribunal could properly reach.”

The phrase “arguable grounds for appeal” is not defined in the Tribunals (Scotland) Act 2014 nor in secondary legislation. The Upper Tribunal in the

case of **Indigo Square Property Ltd and Mark Welsh (2023) UT22** provided guidance on the test. At paragraph 6 Sheriff Kelly stated:

*“The threshold for arguability is, therefore, relatively low. An appellant does, however, require to set out the basis of a challenge from which can be divined a ground of appeal capable of being argued at a full hearing.....The respondent in a hopeless appeal ought not to have to meet any further or additional procedure in a challenge with no merit. It is in the interest of justice that a ground of appeal which is misconceived, is stopped in its tracks.”*

### **3. GROUNDS OF APPEAL AND REASONS FOR DECISION**

The grounds of appeal founded upon by the Respondent are as follows:-

- i. As regards item 1 of the RSEO the Landlord submitted that the Tenant had lied to the Tribunal by saying the vent hole had never been repaired. He submitted that a secure and adjustable vent system had been installed in April / May 2023 which had been accepted by the Tenant. The Landlord stated that during the inspection it was noted that the cover had been removed. The Landlord asked the Tribunal to clarify if the adjustable vent system was acceptable and therefore inform the Tenant not to remove the fixture.

At the inspection the Tribunal noted the vent and the cover for the vent on the floor adjacent to the hole in the wall. The vent and the vent cover were both slatted which meant the cover was not wind and watertight. The Tribunal made that point at the hearing. The Tribunal also noted that the cavity wall behind the vent cover was exposed and had not been lined. In the ground of appeal the Landlord appears to seek clarification as to whether the vent and cover are acceptable. The Landlord does not identify a point of law.

**The ground of appeal does not raise an arguable point of law. Leave to appeal is refused.**

- ii. As regards item 4 of the RSEO the Landlord submitted that the Property has gas central heating with 2 fully functioning radiators in the living room. The Landlord submitted that an additional gas fire in the living room was not justified. The Landlord stated that the gas fire had been disconnected before the Tenant took entry and was a display feature only. The Landlord submitted that as the Tenant has modified the gas fire it is now unfit for purpose and reconnecting it to the gas supply was no longer feasible.

In terms of section 13(1)(c) of the Act, a house meets the repairing standard if, *inter alia*, 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. The Tribunal took the view that if there was an installation in the Property for the supply of space heating it must comply with the repairing standard. The submission by the Landlord does not explain why section 13(1)(c) should not apply to the gas fire appliance. The Landlord does not identify a point of law.

**The ground of appeal does not raise an arguable point of law. Leave to appeal is refused.**

## **APPEAL PROVISIONS**

**4. A party aggrieved by the decision of the tribunal may seek permission to appeal to the Upper Tribunal for Scotland on a point of law only. That party must seek permission to appeal within 30 days of the date the decision was sent to them. The request for permission to appeal must be in writing and you may wish to consult the Scottish Courts and Tribunals Service website which includes an application form with information on the details required.**

5. Where a party seeks permission to appeal and this permission to appeal is refused, the decision will be treated as having effect from the day on which the refusal was made (unless the party then seeks permission from the Upper Tribunal to appeal the decision. In that event, if permission to appeal is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses permission.)

If permission to appeal against the decision of the First-tier Tribunal is granted, the effect of the decision and of any order made in consequence of it is suspended until the appeal is abandoned or finally determined by the Upper Tribunal. In the event that the decision is upheld, then the decision will be treated as having effect from the day on which the appeal is abandoned or determined.

# J Devine

**Legal Member of the Tribunal**

**Dated: 12 March 2024**