



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/23/0988**

**Re: Property at Flat 0/3, 32 Rannoch Street, Glasgow, G44 4DG (“the property”)**

**Parties:**

**Ms Janey Henry, Flat 0/3, 32 Rannoch Street, Glasgow, G44 4DG (“the Applicant”)**

**Jesolo Properties Ltd, 169 West George Street, Glasgow, G2 2LB (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Greig Adams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.**

**Background**

1. By application dated 28 September 2023 the Applicant applied to the Tribunal for an order for payment in respect of alleged damages arising from her tenancy of the property. The Applicant submitted a copy of her tenancy agreement, an Energy Performance Certificate, medical records, Peter Cox Report, hotel booking receipts, a fan heater receipt together with emails and photographs and videos in support of her application.
2. By Notice of Acceptance dated 18 October 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. The Applicant submitted further written representations to the Tribunal by email dated 4 December 2023.

4. A CMD took place on 6 December 2023 with both parties participating. The damages claimed by the Applicant amounted to £4525.26. The Respondent denied liability.
5. It was agreed that the tenancy endured from 10 November 2022 until 25 April 2023; that the Respondent purchased the property on 27 October 2022; that the landlord registration number was pending at the date of the CMD; that the rent was £795.00 per calendar month; that the Applicant's deposit of £900.00 was repaid in full to her at the end of the tenancy; that she also received a repayment of rent for the months of March and April 2023 of £1590.00 without any admission of liability on the part of the Respondent; that the Respondent provided the Applicant with an additional heater around mid-March 2023; that there was a leak from the washing machine that caused a damp patch on the hallway wall that was reported on 12 January 2023 and repaired on 16 January 2023.
6. The Tribunal determined to adjourn the CMD to a further CMD to allow the parties to clarify the issues.
7. Following the CMD the Tribunal issued directions to both parties to provide further documentation in advance of the adjourned CMD.
8. The Applicant submitted further written representations by email dated 17 January 2024.
9. The Respondent's representatives submitted written representations by email dated 18 January 2024
10. A further CMD was held by teleconference on 24 January 2024. The Tribunal determined a hearing was required and that the issues to be determined were:-
  - (1) Were the heating installations when used properly sufficient to heat the Property? The Applicant states all heaters were working but the single storage heater in the bedroom was insufficient, and a second heater was provided.
  - (2) Did the Applicant use the heating installations appropriately?
  - (3) What was the cause of the issues complained of by the Applicant? The Respondent's contention is that this was caused primarily by the failure of the Applicant to adequately heat and ventilate the Property. The Applicant disagrees for the reasons set out in her case.
11. The Tribunal directed the parties to prepare a joint bundle of documents for the hearing and to make efforts to agree a fuller set of facts.
12. By email dated 1 May 2024 the Respondent's solicitor submitted a Third Inventory of Productions together with a List of Witnesses for the Respondent, adjusted written representations and List of Authorities.

13. By email dated 13 May 2024 the Respondent's solicitor submitted a joint bundle of documents in compliance with the Tribunal's direction of 24 January 2024.

### **The Hearing**

14. A hearing was held by videoconference on 15 May 2024. The Applicant attended in person. The Respondent was represented by Mr Ford, Solicitor.

15. The Tribunal noted the Applicant was seeking reimbursement of rent for the period from November 2022 to February 2023 in the sum of £3833.88. The cost of an electric heater of £28.00 and reimbursement of hotel costs of £391.38 making a total claim of £4253.26.

16. The Applicant referred the Tribunal to her written submissions in support of her claim. She said that during her tenancy it had been suspected that the property had been affected by water ingress from a leak or rising damp but it had subsequently been confirmed that this was not the case but not until after she had vacated the property. The Applicant went on to refer the Tribunal to her comments on pages 10, 11 and 12 of the joint bundle and also referred to the timeline she had prepared (pages 29-36). The Applicant confirmed that the electric storage heaters in the living room and bedroom were not broken over the winter of 2022 – 2023 but submitted that one heater in the bedroom was insufficient to heat the room. The Applicant said that the bed head was on an external wall and this resulted in the bed being cold. She said that the living room was not as cold as the bedroom. The Applicant said that there was a panel heater in the hall which was on most days and if she was drying laundry in the hall as it was a lot warmer.

17. The Applicant went on to say that once she had familiarised herself with the use of the storage heaters, she found that the flat was still cold and would stay with her partner or family if the temperature was below zero. The Applicant said that she had been coughing all the time but that it had been her priority to get back to full health. The Applicant said it had been her intention to stay in the property for the long term but only remained for five months as she did not consider it a safe space. The Applicant went on to say that she had purchased a fan heater for £28.00 to try to help with the heat in the property. She said she had also stayed in a hotel in Dundee when visiting family members. She said she had not booked the hotel with the intention of getting money back but she had been unable to remain in the property because it was too cold and she wanted to recover and get back to work.

18. The Applicant explained that she had been treated by paramedics and at A & E and suffered from asthma. She said that she had suffered from a chest infection prior to taking up the tenancy but this had cleared up but had recurred as a result of the cold condition in the property and had been

advised that this was the case by the medical professionals who treated her.

19. The Applicant acknowledged it was her responsibility to heat and ventilate the property. She referred the Tribunal to the photographs submitted and the dark spots that could be seen. She said that it had been a daily task to wipe down the walls to remove mould marks and condensation. The Applicant went on to say she had used disposable dehumidifiers to remove moisture from the air but thought that mould had got into her lungs.
20. The Applicant referred the Tribunal to an inspection undertaken by a surveyor from Peter Cox. She said that when a bedside cabinet had been moved the back had been contaminated with mould.
21. In response to questions from the Tribunal the Applicant said that with the benefit of hindsight she ought to have taken temperature readings during the tenancy. She went on to say that she was confident that she was using the storage heaters correctly and even although they were turned up at maximum the property was freezing cold. The Applicant went on to say she had asked the letting agent for curtain poles as this would allow her to hang heavy curtains to help with retaining heat at the property. The Applicant said that she had not analysed the electricity bills submitted by the Respondent but that she was certain the property was too cold.
22. In response to a further query from the Tribunal as to whether the property complied with the repairing standard the Applicant said that she just felt that there should have been an extra heater provided and to provide one in March was too late.
23. The Applicant explained that she had stayed with other people as often as she could and had stayed in the hotel to cheer herself up and had gone for the cheapest one she could find.
24. In response to a question from Mr Ford the Applicant acknowledged the issue to be determined was whether the storage heaters were sufficient to heat the property. The Applicant said that she had to use a hot water bottle and wear a hat because the property was so cold.
25. Mr Ford suggested that as the property had an EPC rating of "D" and the national average was "D" the property did not have a low rating. The Applicant acknowledged this to be the case.
26. Mr Ford directed the Applicant to the EPC Certificate and the Applicant confirmed that the property had double glazed windows with a 4\* rating, Electrical heating with a 3\* rating and a 4\* rating for main heating controls.
27. Mr Ford referred the Applicant to the estimated total usage of 5413 kWh per year for space heating contained in the EPC and suggested that this

would equate to about 900 kWh for the six months over winter as the heating would not be required in the summer. The Applicant agreed this might be the case. Mr Ford went on to suggest that the Applicant had concerns about her finances and had been worried about the cost-of-living crisis. The Applicant said that she had economised by not using the tumble drier and agreed that she had been doing what she could to conserve costs.

28. Mr Ford asked the Applicant how much electricity a 2Kilowatt heater would use in an hour and the Applicant confirmed it would use 2 Kilowatts per hour. Mr Ford referred the Applicant to the electricity bills lodged as productions. The Applicant said that when she was in the property the heaters had been on and when she was not there the heaters were switched off. In response to a further question from Mr Ford the Applicant said that she had first stopped staying in the property at the end of February 2023.
29. Mr Ford referred the Applicant to the electricity statements for the period 10 November 2022 to 5 March 2023 and suggested that the Applicant had used less than one fifth of the electricity that she would have been expected to have used. The Applicant explained that this was because she was not always staying at the property.
30. When asked how many days she had not stayed at the property the Applicant said she had spent four nights each week at her partner's home and confirmed she had not mentioned this to the letting agents.
31. Mr Ford suggested that if the property was cold, it was because the Applicant had not been heating it properly as storage heaters did not provide instant heat. The Applicant disagreed that she had not heated the property properly.
32. Mr Ford asked the Applicant if she used an electric clothes horse to dry her laundry and the applicant confirmed that she did and that it was located in the living room bay window or the hall. The Applicant confirmed that she had been unwell during her period of occupancy and that although she could have dried her laundry in the bedroom, she had only taken the clothes horse there once the clothes were dry in order to put them away. The Applicant denied there was any evidence to show that she was drying clothes in the bedroom and that the photograph taken by Mr Daniel Kennedy did not show clothes being dried in the bedroom.
33. Mr Ford referred the Applicant to her email replies of 3 February 2023 and 22 March 2023 where in the latter the Applicant had said she had ceased to dry clothes in the bedroom. The Applicant said that this did not actually mean she had previously dried clothes in the bedroom but that she had just been following Mr Kennedy's instructions and went on to say that being asthmatic there was no way she would do anything to make her condition worse.

34. Mr Ford referred the Applicant to the Peter Cox Survey report (pages 219, 220 and 223) and asked the Applicant to confirm that the report recommended no treatment. The Applicant confirmed that this was the case but said that the surveyor had said at the time of the survey that there was penicillin mould in the bedroom. The Applicant went on to say that she had been told by the surveyor that even once professionally cleaned the mould remained in the fibres of the furniture and could never be completely removed.
35. When advised by Mr Ford that a new tenant was in the property and that no issues with the property the Applicant said she could not comment on the new tenant.
36. Mr Ford led evidence from Mr Brian Timony who confirmed he was an electrician with 25 years' experience and had been self-employed for 12 years. He confirmed he was familiar with the property and had fitted an additional convector heater in the bedroom in the Spring of 2023. Mr Timony went on to say that the bedroom also had a 2-kilowatt storage heater and that it was of a more than sufficient size to heat the room. He said he did not think the additional heater had been necessary but he had not been asked to carry out an assessment just the installation.
37. Mr Timony was referred to the electricity bills submitted as productions. He said that if the heaters were used correctly, they would only heat up overnight and looking at the bills for the period he would have expected them to have been a lot higher. He explained that the heaters usually charged from 11.00 pm until 5.00 am.
38. Mr Timony also said that when he installed the convector heater it did not look as though the storage heater had been switched on.
39. Mr Timony referred the Tribunal to the method of calculating the size of heater required to heat a room and explained that this involved the dimensions of the room and also the type of insulation in the property. He said he had not looked at the EPC. He confirmed that if the Applicant had been away from the property and the heating switched off for a period of time then on her return the heating would not be instantaneous. The applicant confirmed she would stay with her partner returning on a Friday lunchtime. She said she used an extra duvet and hot water bottle plus the electric heater she had bought to keep warm. She said she had started staying with her partner from late November. She also said that she got on a lot better with gas central heating.
40. Mr Ford led evidence from Daniel Kennedy. Mr Kennedy confirmed he was a member of ARLA and had 7 years' experience in all aspects of lettings and worked mainly in Glasgow, Stirling and Edinburgh and was currently responsible for 70 HMOs.

41. Mr Kennedy confirmed he was familiar with the property firstly along with his former colleague Chantelle Mann in November 2022 and then as property manager in January 2023. Mr Kennedy described the property as being in excellent condition having been fully refurbished with a new bathroom and kitchen. When asked to comment on the EPC, Mr Kennedy noted that it had a rating of D with potential to be C and said that this was standard for properties of this age and type. Mr Kennedy went on to say that the storage heaters in the property looked quite new and were more than sufficient to heat the property.
42. Mr Ford referred Mr Kennedy to an email of 27 January 2023 (Page 90) and confirmed that he had wished to inspect the property due to the number of issues that had been raised by the Applicant. Mr Kennedy confirmed he had gone on to carry out an inspection of the property on 1 February and said that generally the condition of the property was excellent with the exception of the presence of some mould. He said there had been a previous issue with damp. He had pulled out furniture and saw some mould. He said he did note that the bedroom was cold and thought some further investigation was needed to rule out any possible external issues. Mr Kennedy said he passed the Applicant's number on the property Factor and raised installing a panel heater and supplying a curtain rail with the Respondent. Mr Kennedy also said that to help with condensation he advised the Applicant not to dry clothes in the bedroom and to use the drying facility in the washing machine.
43. Mr Kennedy said that the clothes horse in the bedroom was situated on the right-hand side of the bed close to where the mould was found. He was unable to say whether or not the clothes were wet or dry.
44. Mr Ford referred Mr Kennedy to photographs (pages 92-98) and Mr Kennedy said that he always gave tenants advice on condensation and mould. He said that mould generally formed due to a lack of heating and condensation. Mr Kennedy said that the Applicant had not been happy and had thought that installing a panel heater was necessary as it would provide instant heat. Mr Kennedy went on to say that providing a curtain rail would help retain heat in a ground floor flat. He also said that he understood that the Applicant had found instructions on how to use the storage heaters online and had given no indication she was unable to use them.
45. Mr Ford referred Mr Kennedy to his email of 2 February 2023 (page 99) and the Applicant's reply of 3 February 2023 (page 100) and confirmed that there was no mention about not drying clothes in the bedroom in her reply.
46. Mr Kennedy went on to say that following his inspection on 1 February 2023 he arranged for a contractor to fix curtain rail in the bedroom and checked to make sure the washing machine was not leaking. He also arranged for Peter Cox to carry out a survey of the property and raised

possible issues with the Factor which were subsequently ruled out including in the basement of the property.

47. Mr Kennedy said that the Applicant had mentioned that there was penicillin mould in the property, that she had been cleaning it and that following the Peter Cox report she had asked for a professional clean to be carried out. Mr Kennedy went on to say that after any external issues had been ruled out, he had determined the issues were down to the Applicant's lifestyle and were not for the Respondent to resolve.
48. In response to a further question from Mr Ford, Mr Kennedy said that the Respondent agreed to end the tenancy following discussion with Ross McLeod. He said that the property was not suitable for the Applicant as it was affecting her health and it was therefore in her best interests to end the tenancy and bring it to an amicable conclusion.
49. Mr Kennedy went on to say that the property was inspected on 3 April 2023. He said it was unclear if the Applicant was living in the property as she had been coming and going and living with friends and family. He said that the property needed to be heated and ventilated as otherwise it would contribute to the creation of mould. Mr Kennedy said that at the inspection on 3 April 2023 a damp meter had been used in the presence of the Applicant and the readings were normal. Mr Kennedy was referred to his email to the Applicant of 3 April 2023 (page 134) which confirmed that the damp meter readings were normal and that the Applicant intended to move out of the property and that an arrangement would be made to accommodate her move out date. Mr Kennedy said that he felt he had done all that could be done for the Applicant by installing the panel heater and curtain rail and obtaining the Peter Cox report and had exhausted everything that could be done. He went on to say that it could be seen from the Applicant's emails that she was not paying attention to the advice that had been given and when he later looked at the Applicant's electricity bills, he could see that she was not properly heating the property.
50. Mr Kennedy said that the property was re-let on 23 June 2023 and had been professionally cleaned following the Applicant leaving the property. He said one wall had been stain blocked and repainted but no furniture had been replaced as any damage was cosmetic. Mr Kennedy went on to say that since that time he had inspected the property three or four times and there had been no issues with the tenant who was very happy with the property and there was no mould or damp.
51. In response to a query from the Tribunal Mr Kennedy estimated the bedroom to measure about 5 metres by 4 metres with a standard ceiling height.
52. In response to a further query from the Tribunal Mr Kennedy confirmed that he had instructed the Peter Cox report and agreed that it was restricted to identifying if there was rising damp at the property. Mr



Kennedy said that in his experience the surveyor would point out if there was anything else identified. He agreed there was nothing in the report about condensation.

53. When asked by the Tribunal about his conclusion that the mould had been caused by the Applicant's lifestyle, Mr Kennedy spoke of the damp meter readings and that other external sources had been ruled out. Mr Kennedy confirmed that as far as he was aware the Tribunal had not been provided with any technical data regarding temperature and damp readings. He again said that the Applicant had been offered advice and help and that she had an obligation to heat and ventilate the property but that it was evident that she was not doing this.

54. The Applicant pointed out that she had purchased a heater from Asda.

55. In response to a query from Mr Ford, Mr Kennedy agreed that the bedroom accounted for almost half of the total floor area of the property. Mr Kennedy also confirmed that when he attended at the property the storage heater was not producing any heat.

56. Mr Ford led evidence from Mr Ross Macleod. Mr Macleod confirmed he was a member of ARLA, Level 6 and had 29 years' experience property letting in the Central belt of Scotland and also in England. Mr Macleod confirmed he was familiar with the property which had been proposed to him by an agent and he had referred it to a client. He described the property as being a ground floor flat in a red sandstone tenement built around 1890 and being in perfect condition. He said he had seen the Home Report and had no concerns about the property. He said he was aware the heating was by off peak white meter storage heaters. He said these were not as common as they used to be but were still used when gas central heating was not an option. Mr MacLeod said he had not been involved in the day-to-day management of the property but had become involved towards the end of the tenancy. He confirmed he had sent an email to the Applicant dated 27 March 2023 (Page 130). Mr Macleod said that although the email referred to as yet unidentified issues within the property, he did not find anything wrong with the property but had felt the property was just not suitable for the Applicant and the email had been written to entice her to leave. He said that in discussions with the Respondent and given the catalogue of apparent issues and the Applicant's apparent unhappiness it was better that the tenancy ended.

57. Mr Macleod said that when he visited on 3 April 2023 the property was cold. He said he took damp meter readings on every wall. He said there were cold spots on some walls and mould on the back of the bedside table and thought that could be caused by drying clothes in a cold environment. Mr Macleod referred to photographs taken by Mr Kennedy in this regard.

58. Mr Macleod could not recall what had been discussed with the Applicant at the inspection saying it had been over a year. Mr Ford referred Mr

Macleod to an email from Mr Kennedy to the Applicant dated 3 April 2023 (Page 134) and Mr Macleod confirmed that it was a fair summary of the inspection and that he had mentioned it was the Applicant's lifestyle that was the issue although he could not recall exactly what was said.

59. Mr Macleod went on to say that he did not regularly use a damp meter but that condensation and mould is a very current topic in the housing market and that he thought that in the majority of cases it was lifestyle that was the cause rather than cold and damp. Mr Macleod went on to say that the property was re-let on 20 June 2023 and had no significant repairs carried out other than some paint work. He said there had been no issues with the new tenant.
60. The Applicant referred to her previous evidence as regards her use of the clothes horse.
61. In response to a query from the Tribunal as to why Mr Macleod had concluded it was the Applicant's lifestyle rather than a poor thermal envelope that caused the mould Mr Macleod said that the property had new double glazing and new-style storage heaters and that he himself lived in a tenement. He said that he would expect that the heating would be switched on 24/7 from November to April given that temperatures can fluctuate by ten degrees in a day.
62. In response to a further query from the Tribunal Mr Macleod reiterated that it was the Applicant's lifestyle that was the problem and not a problem with the storage heaters. He said that since the Applicant left the property the issues had not recurred. He said that the Peter Cox report had not identified an issue with rising damp. If there had been an issue it would still be occurring.
63. The Applicant submitted that it was untrue that she had dried laundry in the bedroom. She said she had hoped to remain longer in the property but that the constant delays in dealing with the issues raised had forced her to leave. The Applicant said that she had previously been a landlord and had also worked in property. She said that the current tenant had no issues because there was now another heater in the property. She submitted that the Respondent's letting agents had done the bare minimum to deal with the issues she had raised and the property was heated by an old-fashioned system. She referred to Mr Kennedy's evidence that ground floor flats were notoriously difficult to heat. The Applicant went on to say that there was a gas supply to the tenement and a neighbour had gas central heating and if the Respondent had installed gas central heating the application would not have been necessary. The Applicant said that she thought that she had probably been labelled as a troublesome tenant but that all the issues raised had not been her fault and had all been genuine complaints and she had not been asking for anything out of the ordinary. The Applicant submitted that she had the Respondent's best interests at heart.

64. The Applicant went on to say that the entrance door to the common close had no lock and regularly blew open and the close was cold. She said this could explain why the flat door would swell up. She explained that she had asked for curtain rails with the intention of buying heavy lined curtains. The applicant referred to the delays in the issues raised being resolved and submitted that she did not think she had been a problem tenant. She also queried why the Respondent would have taken the actions they did such as installing the extra heater and curtain rails if they were unnecessary.
65. For the Respondent, Mr Ford submitted that the issues for the Tribunal to determine were whether the heaters at the property sufficient and did the Applicant use the heaters properly and what was the cause of the issues complained of by the Applicant and no other cause. Mr Ford said that the Applicant had not predicated her case on the issue raised by the Tribunal of a poor thermal envelope. He said that the Applicant's written statement was one of conjecture and opinion but that her account could not be reconciled with the documents produced and the evidence of the witnesses. Mr Ford said that from the beginning of the tenancy the Applicant had been staying in the property for 50% of the time but in her written representations (Page 18) the Applicant had said that "The storage heaters in the Bedroom and Lounge were set to come on every day due to the fact that I was at home unwell for the majority of winter 2022/2023." Mr Ford went on to say the mould issues identified at the inspection on 1 February made complete sense given that the Applicant had not been staying in the property for much of the time. Mr Ford submitted that given the electricity used there was no evidence to support the Applicant's claimed usage. Mr Ford referred to the amount of electricity that would be used by one heater for six hours and to the Applicant's evidence that the heaters had not been switched on when she was not staying in the property which he submitted would result in the property not reaching the required temperature. He submitted that at least at one point the Applicant had been drying clothes in the bedroom.
66. Mr Ford referred the Tribunal to Mr Timony's evidence and said that as an electrician with 25 years' experience that his evidence with regards to the Applicant's usage of electricity, the sufficiency of the heater in the bedroom and his comments on the EPC and Home Report should be accepted.
67. Mr Ford said that Mr Kennedy had reacted appropriately to the Applicant's concerns and had carried out investigations to exclude any external issues and concluded that the Applicant was not properly heating the property. Mr Ford said that although the additional heater had not been necessary Mr Kennedy had arranged for this to be installed and submitted that he was a credible and reliable witness.
68. Mr Ford referred to Mr Macleod's 30 years of experience in property letting and referred the Tribunal to his evidence with regards to the reasons for

terminating the tenancy and the arrangements made with the Applicant. Mr Ford submitted Mr Macleod was a credible and reliable witness.

69. Mr Ford invited the Tribunal to make Findings in Fact: to the effect that the storage heaters in the property were in good condition and in working order. That the panel heater supplied was additional but not necessary. That the storage heaters were sufficient to heat the property when used appropriately. That between 10 November 2022 and 5 March 2023 the Applicant used 713 Kilowatts of electricity in the let property. That between 10 November 2022 and 5 March 2023 the Applicant used an average of 6.13 Kilowatts of electricity per day. That a 2kw heater uses 2 Kilowatts of electricity in 1 hour. That the Applicant failed to use the heating installed properly and that her use was infrequent and ineffective. That the Applicant used an electric heated clothes drier in the bedroom. That the damp and mould was as a result of lack of heating and drying clothes in the bedroom. That the Applicant had not established that the Respondent had failed to maintain the property in a reasonable condition.

70. Mr Ford submitted that the Applicant had been in control of the property and that the application ought to be dismissed. Mr Ford went on to say that there was nothing unusual about having storage heaters in a property and they were fine when used properly but that the evidence showed they were not being used in a proper manner. He said that drying laundry was not a failure on the part of the Applicant but would be if she failed to heat the property properly. The additional heater was supplied because the Applicant was not heating the property properly. Mr Ford submitted that it was a tenant's responsibility to heat the property. He went on to say that by sporadically heating the property and leaving the property with no heating on it was hardly a surprise that the property was cold. He submitted that was not heating the property in a proper manner.

71. Mr Ford also submitted that if the Tribunal was not supportive of his arguments, then when considering the correspondence as a whole from January 2023 and the various contractors instructed and attempts made to resolve the issues and have them addressed by 15 March 2023 then this was a reasonable time and given that the Applicant had been given a rebate of two months' rent there was no further loss to the Applicant.

### **Findings in Fact**

72. The Respondent purchased the property on 27 October 2022.

73. The property consists of a ground floor flat with one bedroom, a living room, kitchen and bathroom.

74. The Applicant's tenancy commenced on 10 November 2022 and ended on 25 April 2023.

75. The rent for the property was £795.00 per calendar month.

76. The Respondent repaid the Applicant's rent for the months of March and April 2023.
77. The Applicant's deposit of £900.00 was repaid to her at the end of the tenancy.
78. The EPC rating of the property is Band D.
79. The heating in the property is provided by two electric storage heaters, one in the living room and one in the bedroom.
80. A further electric panel heater is located in the hall.
81. The storage heaters are of an adequate size and capacity to provide sufficient heat to adequately heat the property if used properly.
82. The Applicant emailed the Respondent's letting agent on 13 November 2022 with photographs of potential damp in the bedroom and asked for a damp specialist to attend.
83. The letting agent responded by suggesting these were paint marks.
84. The Applicant sent a further email on 14 December 2022 along with photographs and a video suggesting the marks on the wall were spreading and also requesting curtain rails be installed in the bedroom and living room.
85. The Applicant suffers from asthma and attended hospital on 8 December 2022 and was again treated by paramedics at home on Saturday 9 December 2022 at which time the property was very cold.
86. The Applicant purchased a fan heater from Asda on 11 December 2022 at a cost of £28.00
87. The Applicant was unwell on 27 December 2022 when staying with friends in Fife for Christmas and taken to hospital with severe asthma.
88. The Applicant emailed the letting agents on 12 January 2023 regarding the cold in the flat and cold patches on the wall in the bedroom and again requested curtain rails. In the same email the Applicant advised the letting agents of concerns regarding the swollen entrance door and leak from washing machine.
89. On 12 January 2023 the Applicant received an email from Mr Kennedy advising contractors had been instructed.

90. On 17 January 2023 a new internal door handle was fixed to the door and the washing machine leak fixed.
91. On 23 January 2023 the Applicant was taken to hospital by ambulance as a result of an asthma attack.
92. On 1 February 2023 the property was inspected by Mr Kennedy in the presence of the Applicant.
93. At the inspection mould was found on the bedroom wall and on the bedroom furniture.
94. Mr Kennedy noted that an electric heated clothes drier was located in the bedroom with clothes on it. It was not plugged in at the time of his visit.
95. Mr Kennedy advised the Applicant to use the washer/drier in the kitchen for drying clothes.
96. Following the inspection it was agreed that an additional panel heater would be installed in the bedroom.
97. The additional heater was installed on 15 March 2023.
98. On 19 February 2023 a curtain rail was installed in the bedroom.
99. On 24 February the Applicant paid £84.00 to stay in a hotel in Dundee when visiting family there.
100. From November 2022 until the end of the tenancy the Applicant spent much of the time away from the property.
101. The Applicant regularly stayed at her partner's home from a Monday night until a Friday morning and also stayed at other times when not there with friends and family.
102. When not staying at the property the Applicant switched the electric storage heaters off.
103. Between 10 November 2022 and 5 March 2023 the Applicant used 713 Kilowatts of electricity in the property.
104. Between 10 November 2022 and 5 March 2023 the Applicant used an average of 6.13 Kilowatts of electricity per day.
105. Had the Applicant used both storage heaters 7 hours every day they would have been expected to have used 14 Kilowatts of electricity every day.

106. A survey to inspect for rising damp was carried out by Peter Cox Timber Specialists on 15 March 2023 and no rising damp was found.
107. On 21 March 2023 the Applicant was readmitted to hospital following a further asthma attack.
108. On 28 March 2023 the Applicant paid £116.38 for a two-night stay in a hotel when visiting family in Dundee.
109. On 3 April 2023 a further inspection of the property was carried out by Mr Macleod and Mr Kennedy in the presence of the Applicant.
110. Following investigations by the property factor for the tenement it was confirmed to the Respondent's letting agents that there were no external issues affecting the property.

### **Reasons for Decision**

111. It was for the Applicant to prove her case on the balance of probabilities. That meant that the Applicant had to satisfy the Tribunal that it was more likely than not that even if used properly the electric storage heaters installed in the property were insufficient to adequately heat the property and that she was using the heaters properly.
112. The Applicant did not lead any evidence from witnesses and chose to rely on her written representations and productions and her oral evidence. The Tribunal was satisfied that the Applicant suffers from a serious asthma condition and that may well be exacerbated by damp cold conditions. The Tribunal had no reason to doubt that the Applicant's health would benefit from living in a dry and warm environment although it did note that even when staying in Fife over Christmas 2022 the Applicant still experienced an asthma attack.
113. The Applicant raised the issue of the property being cold and the possibility of there being damp in the property with the Respondent's letting agents from early in the tenancy. There was a delay until the beginning of February 2023 before Mr Kennedy from the Respondent's letting agents inspected the property to ascertain the cause of the Applicant's concerns although they were in email communication with the Applicant in November, December and January. The Tribunal noted that at the inspection on 1 February Mr Kennedy found the bedroom to be cold and decided to contact the property factor for the tenement to see if there were any external factors affecting the property. At that time Mr Kennedy thought that the storage heater in the bedroom was not producing any heat. He also offered advice to the Applicant as regards heating and ventilating the property and advised against drying clothes in the bedroom. The Tribunal noted that it was the Applicant's position that she did not dry clothes in the bedroom but did store dry clothes on the electric clothes drier there. Mr Kennedy also found the presence of mould on the wall of

the bedroom and on furniture. The Tribunal found Mr Kennedy to be a credible and reliable witness.

114. Mr Timony was an electrician with some 25 years' experience and was satisfied that the electric storage heater in the bedroom was of sufficient size to adequately heat the room. The Tribunal had no reason to doubt his evidence and the Applicant did not lead any evidence of her own from either an expert witness or documents to contradict Mr Timony's evidence. The Tribunal was also referred by Mr Ford to the information contained in the Home Report and Energy Performance Certificate and it was submitted that supported the storage heaters being adequate for the property.

115. The Applicant admitted that she switched off the storage heaters when not staying in the property and that she spent up to four nights per week at her partner's home returning on a Friday morning. The Applicant also said that when not staying with her partner she also stayed with her friends and family. The Tribunal found that this explained the very low consumption of electricity disclosed in the Applicant's electricity bill for the period from 10 November 2022 to 5 March 2023. The Tribunal also concluded that as the heaters only stored heat during off-peak hours, even if the Applicant turned on the heating when she came home on a Friday lunchtime the heaters would not start to give out any heat until Saturday morning at the earliest. The Tribunal also concluded that if there had been no heating on in the property for several days over winter the base temperature would be very low and therefore it would be more difficult to heat. As Mr Macleod pointed out in his evidence it was important that over winter the heating in the property remained on every day to maintain the temperature.

116. The Tribunal was unable to reach a definite conclusion as to whether or not the Applicant dried clothes in the bedroom. If she did that would no doubt increase the moisture in the air that would condense on a cold unheated wall and contribute to the creation of mould. The photograph taken by Mr Kennedy on 1 February showed the electric clothes drier unplugged but close to an electric socket. The Applicant's evidence was that she moved the drier to the bedroom once the clothes were dry but in her email of 22 March 2023 the Applicant confirmed to Mr Kennedy that she had stopped drying clothes in the bedroom.

117. The Tribunal found much of Mr Macleod's evidence to be credible and reliable. Although lifestyle may well play a role in cases involving condensation and mould other factors can be involved. The Tribunal accepted Mr Macleod's evidence that there was no damp issues in the property from either rising damp or other external issues and agreed that it would be appropriate for the heating to be switched on constantly over the winter period.

118. The Tribunal was not satisfied that it would be reasonable for the Applicant to recover the cost of her hotel stays from the Respondent. The



Applicant chose to visit friends and family in Dundee and Fife. She said she did not do so with the intention of recovering the cost of accommodation from the Respondent. The Tribunal was not persuaded that the heaters in the property were not working properly or were not sufficient to adequately heat the property if used properly therefore the Applicant cannot recover the cost of hotel accommodation from the Respondent.

119. The Applicant chose to purchase an additional fan heater from Asda as she found the property to be cold. For the reasons given above the Tribunal has concluded that the Applicant was not using the heaters at the property adequately. The Applicant ought to have kept the heaters switched on even when not staying at the property in order to prevent the temperature in the property from falling too low. The Applicant has provided no independent evidence to support her assertion that the heaters were inadequate and insufficient to heat the property if used properly.

120. The Tribunal noted that the current tenant in the property had not experienced any issues with damp or mould and had not complained about the heating being inadequate. The Applicant's position was that this was because the Respondent had provided an additional heater in the bedroom in March 2023 however no evidence was led by either party as to whether or not the additional heater was used by the new tenant. Therefore the Tribunal cannot reach any conclusion from the parties' submissions in this regard.

121. The Tribunal was satisfied from the documents submitted and the oral evidence that the Respondent's letting agents attempted to deal with the issues raised by the Applicant in the main in a timely and professional manner. Although the Applicant did not accept that the heaters were inadequate it was agreed that an additional panel heater be fitted in the bedroom and that curtain poles also be fitted. The Respondent also agreed without any admission of liability to refund the Applicant's rent for March and April 2023 and repaid her deposit in full. The Tribunal considers that to be a significant attempt on the part of the Respondent made as indicated by Mr Macleod in an effort to reach an amicable settlement with the Applicant.

122. The Tribunal considers that the condensation and mould in the property was primarily caused by the failure on the part of the Applicant to keep the electric storage heaters at the property switched on adequately from the commencement of the tenancy even when not staying in the property. The lack of heating resulted in the property being very cold during times when the Applicant returned to the property making it more likely to have condensation and mould.

123. By her own admission the Applicant was more used to living in a property with gas central heating where room temperatures were perhaps

easier to control with radiators providing heat whenever the system was switched on. Electric storage heaters charge up overnight and release heat during the following day. As indicated above the Applicant whilst expressing her own opinion that the heat provided by the heaters was insufficient failed to provide the Tribunal with any independent evidence to support that contention. Accordingly, the Tribunal has concluded that the Applicant has failed on the balance of probabilities to prove her case and the application is refused.

### **Decision**

124. The application is refused.
125. The decision of the Tribunal is unanimous.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (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.**

**Graham Harding  
Legal Member/Chair**

**20 June 2024  
Date**