

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision under Rules 38 and 39 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 and a request for a Review of a Decision of the Tribunal

Chamber Reference number: FTS/HPC/RP/24/5358

Re: Property at 30 Parkhead Gardens, Edinburgh EH11 4RR (“the Property”)

Title No: MID119927

The Parties:

Mr Andrew Campbell, 30 Parkhead Gardens, Edinburgh EH11 4RR (“the Tenant”)

Mr William Goodfellow, 36 Atheling Grove, South Queensferry EH30 9PF (“the Landlord”)

**Tribunal Members: George Clark, Legal Member
Greig Adams, Ordinary (Surveyor) Member**

Decision

The Tribunal refuses the Tenant’s application for permission to appeal its Decision of 6 August 2025 in terms of Rule 38 of the Procedure Rules and the request for a Review under Rule 39 of the Procedure Rules.

Background

1. On 6 August 2025, following an Inspection and Hearing held on 16 July 2025, the Tribunal made a Repairing Standard Enforcement Order in respect of the Property. The Order required the Landlord:
 1. to replace defective plasterwork in the bedroom adjacent to the rear external door and thereafter redecorate as necessary.

2. to instruct a suitably qualified electrician to reattach the hall light fitting to the ceiling.
 3. to provide the Tribunal with a full copy of a current Electrical Installation Condition Report in respect of the Property, issued by an electrical contractor who is registered with NICEIC, NAPIT or SELECT, showing the overall condition of the installation to be Satisfactory and containing no C1 or C2 items of disrepair.
 4. to replace the toilet flush handle and ensure the flushing mechanism is in proper working order and
 5. to replace the broken handle to the top hopper of the kitchen window.
2. On 17 September 2025, the Tenant requested leave to appeal and/or review the Tribunal's Decision. He disagreed with the Tribunal's view that mould in the Property was caused by condensation, when he had pointed out that the gutters at the front and back of the property were leaking and had caused damage to the external walls. He felt that his concerns were not addressed appropriately by the Tribunal. He did not think that the installation of extractor fans would get rid of the mould already in the property. He also repeated that he was concerned about the bathroom flooring being carpeted, a point that he had raised in his application and at the Inspection and Hearing, and that there were ongoing issues with the bedroom with regard to insulation, as there was an obvious draught coming from the floor in front of the back door.
 3. The Tenant wished the Tribunal to require the landlord to instruct a professional mould remediation company to inspect the property externally and internally and to take necessary action to remove mould from the Property, remedy crumbling brickwork and carry out necessary repairs. The landlord should also ensure adequate waterproofing and ventilation in the bathroom, namely replace the carpet with something that would not retain moisture, replace water damaged parts and inspect the bathroom for further issues and repairs as necessary. He also wished the Order to include a requirement that the Landlord install a carbon monoxide detector in the hallway near the boiler.
 4. The Decision and Order were sent to the Parties on 19 August 2025.

Reasons for Decision

5. 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”.

6. 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.”
7. 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.”

8. The Tribunal’s view was that the Tenant had not set out an alleged point of law on which he wished to appeal. The Tribunal, therefore, refused leave to appeal.
9. Rule 39 of the Procedure Rules states that the Tribunal may either at its own instance or at the request of a party review a decision made by it where it is necessary in the interests of justice to do so. An application for review must be made within 14 days of the date on which the decision was made or within 14 days of the date that the written reasons (if any) were sent to the Parties and must set out why a review of the decision is necessary.
10. The Tribunal noted that the application for Review had not been made within 14 days of the date on which the Decision with written reasons was sent to the Parties. The Tenant had provided reasons for the delay, namely medical

issues, and the Tribunal decided that it would not be in the interests of justice to reject the application as being out of time.

11. The Tribunal considered carefully the reasons for the Tenant seeking a Review of its Decision. The view of the Tribunal was that it had set out clearly the reasons that it had determined that the mould in the Property resulted from condensation and had recommended the installation of mechanical ventilation in the kitchen and bathroom. The Tribunal noted that the Tenant did not consider that this would resolve the problem, but was not persuaded to reconsider that determination, made after careful inspection of the Property with the aid of appropriate testing equipment. It was not for the Tribunal to determine what sort of floorcovering should be laid in a bathroom. The Tenant had not sought, in his application to the Tribunal, the replacement of carbon monoxide detectors purchased by the Tenant with detectors to be supplied by the Landlord. The Tribunal's role was, in any event, simply to establish that suitable detectors were in place.
12. The Tribunal's view was that the application for review was wholly without merit, that it was, therefore, not in the interests of justice that it should be granted and that it should be refused.
13. The Tribunal noted that, since the date of the Inspection and Hearing, the Landlord has advised that, during repairs following a leak in the w.c., the presence of timber decay in the floor has been identified and has been partly addressed by the Landlord. This did not form part of the application, but if the Tenant is not satisfied when repairs to the flooring have been completed by the Landlord, it will be open to him to make a new application to the Tribunal in respect of the timber decay.

Right of Appeal

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.

G Clark

Legal Member

Dated 1 October 2025