Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) to refuse a request by the Landlord and Respondent to review a decision in terms of Rules 39(1) and (2) of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the Rules")

Parties:

Ms. Mairi Watt residing at 32, Cumbernauld Road, Moodiesburn, G69 0AA ("the Tenant")

Mr. James McEwan residing at 29, Willowbank Gardens, Kirkintilloch, G66 3AN ("the Landlord") per his agents, Jones Whyte ("the Landlord's Agents")

Property: Upper flat at 32, Cumbernauld Road, Moodiesburn, G69 0AA being the subjects registered under title sheet number GLA20931

Tribunal Members

Karen Moore (Chairperson) and Nick Allan (Surveyor and Ordinary Member)

Outcome

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") considers that the application for review does not comply fully with Rule 39(2) and so the Tribunal refuses the application for this reason.

The Tribunal considered if it should review its decision at its own instance in terms of Rule 39(1) and declines to do so for the reasons set out herein.

Background

1. By application received between 9 May 2024 and 28 May 2024 ("the Application"), the Tenant applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a), 13 (1) (b) and 13(1) (h) of the Act.

2. Following a series of Inspection of the Property and Hearings, none of which the Landlord attended, the Tribunal by Decision dated 17 October 2025 ("the FtT" Decision") determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order issued by it on 27 February 2025. In addition, the Tribunal imposed a Rent Relief Order of 15% of the monthly rent.

Rule 39 request for review.

3. By email dated 4 November 2025, the Landlord's Aents submitted a request for a review.

Application of Rule 39

4. Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the Rules") states:

"(1) The First-tier 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.

(2) An application for review under section 43(2)(b) of the Tribunals Act must (a)be made in writing and copied to the other parties; (b)be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties; and (c)set out why a review of the decision is necessary."

5. The review request is in writing and was not copied to the other Party by the Applicant's Agents. Accordingly, the review request must be refused as not complying with Rule 39(2).

Application of Rule 39 (1)

6. The Tribunal, mindful of the technical nature of the refusal, then considered whether or not it is necessary in the interests of justice to exercise a discretion and review its Decision at its own instance.

7. In this regard the Tribunal had regard to the content of the review request.

8. The review request states: *"We note, for completeness, that the tribunal is not satisfied that the works were sufficient to bring the property to the required repairing standard in accordance with section 13 (1)(a), (b) and (h) of the Housing (Scotland) Act 2016 (the "2016 Act"). It is Our Client's position that the works that he has instructed previously and which are reiterated in the undernote to this email (with attachments) brought the Property to the repairing standard set out in section 13 (1)(a), (b) and (h) of the 2016 Act. Upon receipt of the Recent Decision Our Client became aware that the tribunal still consider that the Property does not meet the Repairing Standard and that the reason for this was that the dampness issue in the living room had not been fully eradicated and that the wall around the fireplace and the gable wall within the living room remained affected."*

9. The review request goes on to list various works carried out by the Landlord both before and after the FtT Decision. With regard to the works carried out before the date of the FtT Decision, all of these have been considered and discussed in the FtT Decision. The fact remains that, at the Inspection on 26 August 2025, the Tribunal recorded unacceptable levels of dampness in the living room of the Property and it is this on which the Tribunal based the FtT Decision.

10. The Tribunal notes that the review request states that the Landlord's position is that the Property has been brought up to the Repairing Standard. Regardless of this, Section 26 of the Housing (Scotland) Act 2006 states:-*"It is for the First-tier Tribunal to decide whether a landlord has complied with a repairing standard enforcement order made by the First-tier Tribunal".* The Landlord has no locus in that decision making.

11. The Tribunal notes that the review request states that it is not clear to the Landlord what works are required and suggests that the Tribunal provide a specification of works. It is not for the Tribunal to specify works. It is for the Landlord to take whatever action or actions are necessary to ensure that the Property meets the Repairing Standard, in this case to ensure that the Property is free from dampness.

12. With regard to works carried out after the date of the FtT Decision, the Landlord is entitled to request a further re-inspection of the Property.

13. The review request further requests that the Tribunal review the RRO. The review request does not set out why or on what basis a review of the RRO is required. The Tribunal is satisfied that the RRO is reasonable and reflects loss of amenity to the Tenant.

14. Accordingly, the Tribunal refuse to review both the FtT Decision and the RRO at its own instance.

Outcome

15. The Tribunal refuses the review in terms of Rule 39(2). The Tribunal is of the view that it is not necessary in the interests of justice to review its Decision at its own instance in terms of Rule 39 (1).

K Moore

Legal Member/Chair **Date 19 November 2025**