Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/24/0488

Re: Property at 2 Spittal Barn, Mye Road, Stirling, FK8 3LY ("the Property")

Parties:

T R Bennie and Son, Oxhill, Buchlyvie, Stirling, FK8 3NU ("the Applicant")

Mrs Lisa Rourke, 2 Spittal Barn, Mye Road, Stirling, FK8 3LY ("the Respondent")

Tribunal Member: Shirley Evans (Legal Member)

Decision

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

Background

1. This is an application for an order for repossession of the Property under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations"). The action is based on Ground 11 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (Breach of Tenancy Agreement).

2. A Case Management Discussion ("CMD") was held on 21 June 2024. The Applicant was represented by Ms McNicol from McNabs, solicitors. Mr and Mrs Bennie as partners of the Applicant were also in attendance. Mrs Rourke appeared for herself. Her husband Simon Rourke was in attendance. Ms McNicol submitted the main issues for the Applicant was the unauthorised alterations to the roof space by the installation of flooring and a loft hatch, the extensive landscaping of the garden and the lack of electrical certification for works carried out at the Property including the installation of an electric vehicle charger. The Applicant was also concerned about the refusal by the Respondent to give access. Ms McNicol was uncertain whether the keeping of rabbits was still an issue for her clients. The Applicant relied on alleged breach of Clause 19 of the tenancy agreement (the Respondent's failure to give

access), Clause 27 (unauthorised alterations) and Clause 34 (keeping of pets without permission). The Respondent opposed the application and submitted the Applicant had given permission for the works to be carried out and where she had not given access it was because she had felt threatened at times. The case was continued to a Hearing for evidence to be heard to determine whether a ground of eviction had been established and if so whether it was reasonable to evict. Reference is made to the Notes from the CMD.

Hearing

3. The Hearing took place in person at STEP Stirling on 1 November 2024. The Applicant was again represented by Ms McNicol from McNabs, solicitors. Mr and Mrs Bennie as partners of the Applicant were also in attendance. Mrs Rourke appeared for herself. Her husband Simon Rourke was in attendance.

4. The Tribunal had before it five Inventories of Documents for the Applicant, an affidavit from Mrs Bennie, written representations from the Respondent comprising her response to the Notice to Leave with supporting evidence including text messages and photographs, her response to Mrs Bennie's affidavit and her closing statement, further written submissions from the Respondent dated 19 June 2024, an EICR Certificate for the Electric Vehicle Charger installation and an Inventory of Documents for the Respondent.

5. After confirming with parties that they had copies of all the documents lodged, the Tribunal asked parties to confirm there was no issue with the fact the written tenancy was dated 3 July 2019 despite the Respondent moving into the Property on 19 January 2019. Parties confirmed there was not. The Tribunal also queried whether the Applicant was insisting on the alleged breach of Clause 34 in relation to the keeping of pet rabbits. Ms McNicol confirmed the Applicant was no longer proceeding on that basis. The Tribunal noted that parties had lodged a number of documents relating to alleged outstanding repairs at the Property and made it clear that this was not a matter that was before this particular Tribunal. The Tribunal explained the order of proceedings for the benefit of the Respondent before commencing the hearing of evidence.

Mrs Bennie

6. Ms McNicol called Mrs Bennie as her first witness. After discussion and agreement with the Respondent, the Tribunal accepted Mrs Bennie's affidavit as read. Mrs Bennie expanded her evidence on the alterations and access to the Property.

Alterations

7. Mrs Bennie confirmed that Production 38 for the Applicant was a document she had prepared in response to the Respondent's written submissions of 19 June 2024. She confirmed she was a housewife and had lived at Oxhill Farm since 2008. Her daughter and the Respondent's daughter attended the same school

and that she had known the Respondent since their children had been in Primary 1. She had had other tenanted properties previously managed by Clyde Properties. They had converted the barn on the farm and built two properties of which the Property was one. The Respondent had enquired about leasing the Property which she agreed to do . As she knew the Respondent, she did not take references or a deposit and the Respondent and her family moved into the Property in January 2019.

8. She stated there had been a complaint about a crack in the worktop by the sink after the Respondent moved in and a request to do some tiling. There had been some discussion between Mrs Bennie and the Respondent regarding fitted wardrobes. Mrs Bennie wanted to use her own joiners to fit some wardrobes and the Respondent was to send her drawings of what she wanted, but she did not do so. In her affidavit her evidence was that the Respondent had gone ahead and installed her own fitted wardrobes.

9. The first inspection of the Property was in May 2021. Mrs Bennie explained that she and her husband Tom attended the inspection. The Respondent and her husband Simon were both present. She was shocked to see that some of the walls had been painted in dark coloured paint. She complained also that the grass had been dug up and replaced with decking and pergolas. She had noticed the garden before the inspection, but had not said anything. She gave affidavit evidence that the Respondent had replaced the glass light fittings in the kitchen without permission.

10. Mrs Bennie's evidence was that they continued to have a friendly relationship between May 2021 – 24 April 2023 when they discovered the Respondent was laying flooring in the attic and had replaced the loft hatch. She stated that her husband Tom had not received any communication from the Respondent or her husband seeking permission to install flooring in the attic.

11. Ms McNicol took Mrs Bennie to paragraph 7 of her affidavit relating to when they discovered that flooring was being installed in the attic on 24 April 2023. Her concern was that the flooring had been attached to the angled roof trusses which would affect the structural integrity of the roof. She was worried about the damage this could cause due to gravity and weigh bearing. After Tom had had a look from the ladder into the attic, they wanted their own joiner to attend to have a look at the flooring and check for structural damage. She was referred to Production 24 which was a drawing of the roof trusses showing the angled trusses.

12. Mrs Bennie was referred to Production 20, an email dated 15 September 2023 from their joiner from Callander Builders and Joiners who built the house. They advised that some of the flooring was directly attached to the truss chords which would compress the insulation. She was also referred to Production 24, an email dated 16 June 2024 from G1 Architects. Mrs Bennie gave evidence that she had sent G1 Architects photographs of the flooring. Immediately after that on 21 June 2024 the structural engineers visited and discovered the flooring had been stripped out and accordingly had not produced a report. Mrs Bennie

was referred to various photographs at Production 49 taken by the structural engineer James O'Hagan on 21 June 2024 showing the attic space. She was also referred photographs in Production 7 which she explained had been taken by Rob Roy Homes on 16 August 2023 and which showed the flooring attached to the angled trusses and where the flooring had compacted the insulation next to the roof hatch.

13. Mrs Bennie also gave evidence that they were aware there were some works being carried out at the Property in September 2023 after neighbours had reported noise and work vans being at the Property. They went to the door to enquire what was going on and were told by the Respondent's husband that they were carrying out works to replace the cornicing after the EV charger had been installed. However, that had been installed in May 2022. After that, she explained the Respondent had reported the Applicants to the Police for stalking and harassment. The Police advised them to stay away from the Respondent and to get her evicted.

Access

14. Mrs Bennie then gave evidence regarding the Respondent's refusal to give access. She spoke to Production 39, a timeline of dates inspections/access requested. On 28 April 2023 they wrote to the Respondent to advise that an inspection of the Property was overdue. They had not inspected the Property since May 2021. She explained that they decided to appoint Galbraith to manage the Respondent's tenancy. She confirmed Production 40 (4) was a letter from Galbraith requesting access for an inspection. After a response from the Respondent, Galbraith sent an email to the Respondent on 30 June 2023 suggesting that an inspection take place with Rob Roy Homes on 6 July 2023.(Production 40(11)). She was referred to Production 40 (14) which was a letter from the Respondent's husband to Galbraith dated 30 June 2023. This queried in what capacity Galbraith were acting. She also advised the Respondent and her husband wrote to them on 30 June 2023 raising the issue of Galbraith's capacity and advising 6 July was not suitable but suggesting an inspection could be arranged week beginning 17 July 2023 with reference to Production 40 (15).She explained that Galbraith had to chase up the inspection for 17 July 2023 on 11 and 14 July 2023. On 16 July 2023 the Respondent emailed them to advise that it was not suitable for an inspection to proceed on 17 July 2023. By that stage Mrs Bennie explained they decided not to use Galbraith.

15. Mrs Bennie explained at that time they also wanted to carry out an EICR and that they emailed the Respondent on 19 July 2023 to request access on 24 July 2023. They also suggested a maintenance check be carried out on 14 August 2023 (Production 40 (23)).On 21 July 2023 the Respondent emailed them to suggest that access could be taken week beginning 14 August 2023. She gave evidence that Rob Roy Homes obtained access on 16 August 2023 following on their email of 1 August in which they suggested access on 14, 15 or 16 August 2023 (Productions 41 (2) and 41 (4)) Mrs Bennie advised the Respondent queried the qualifications of the electrician. At that point the

electrician refused to attend. They stopped trying to get the PAT testing and the EICR done. It was carried out on 10 January 2024.

16. They tried to arrange access to fix the blinds and spoke to their email of 22 January 2024 when they offered to attend on 24 January 2024 (Production 42(18)). There was no response to that email.

17. Mrs Bennie explained they also wanted access for Bastion for rent reassessment purposes. They emailed on 5 March 2024 suggesting 11,12 or 14 March 2024 (Production 42 (19)). There was no response to that email. Bastion did not get access and carried out an assessment based on the plans.

18. On 8 July 2024 Mrs Bennie gave evidence that they had emailed the Respondent to advise they would paint the shed but that the Respondent queried the maintenance required and raised issues regarding the cutting of the communal grass. (Production 43 (1)).

19. Mrs Bennie explained the relationship with the Respondent had totally broken down and that she was concerned about dealing with the Respondent going forward. She explained that it was not difficult to find alternative accommodation in the area.

20. Mrs Rourke then cross examined Mrs Bennie. Mrs Bennie confirmed she did not have any qualifications in construction. Although Mrs Bennie agreed with Mrs Rourke that the wardrobes the Respondent had installed were not inbuilt and could be dismantled, Mrs Bennie was concerned that due to the turn on the stairs large furniture should not be moved on the stairs. Mrs Rourke referred Mrs Bennie to her Document E which was a text message dated 3 November 2018 and suggested to Mrs Bennie that they had had a conversation about the paint colours Mrs Rourke was planning. Mrs Bennie responded that she could not remember the details of the conversation other than she was planning to paint everything white and that Mrs Rourke was going to supply some colours but that never happened.

21. Mrs Rourke then referred Mrs Bennie to Production 40 (4), the letter dated 1 June 2023 from Galbraith to Mrs Rourke. Mrs Rourke put it to her that the content of that letter was wrong as she had checked with other neighbours who had not received the same letter and that no-one else was having their tenancies managed by Galbraith. Mrs Bennie confirmed that was correct and that it was unfortunate that Galbraith had said that as that was not the position. From that, in response from questioning by the Tribunal as to the point she was making, Mrs Rourke explained that letter had made her nervous as it was clear that other neighbours were not aware that Galbraith was taking over the management of the Property and referred to her letter to Galbraith of 14 June 2023 (Production 40(5)).

22. Mrs Rourke asked Mrs Bennie about when she attended at the Property on 1 September 2023. Mrs Bennie explained she had been alerted by one of the neighbours that there appeared to be works being carried out at the Property

and that she had warned Mrs Rourke in her letter in April 2023 that no further works were to be carried out without consent, hence the fact she rang the doorbell to find out what was happening on 1 September 2023. Mrs Bennie confirmed to Mrs Rourke that she filmed this as she wanted her own evidence as she was aware Mrs Rourke had a Ring doorbell and CCTV.

23. Mrs Rourke referred to the Notice of Direction issued by the Tribunal and put it to Mrs Bennie that she had not lodged a structural engineer's report. Mrs Bennie confirmed that the structural engineer only gave them photographs from his visit on 21 June 2024. Mrs Rourke put it to her that the roof space had been inspected three times and referred Mrs Bennie to Production 42 (24) being an email dated 18 June 2024 requesting access for the structural engineer to compile a report and further emails dated 19 June 2024 that access was agreed for 8.30am on 21 June 2024 for Mr O'Hagan from David Reid Group. Mrs Rourke asked Mrs Bennie whether she had requested that the David Reid Group supply a structural report. Mrs Bennie advised that Mr O'Hagan had not seen all the photographs and had only seen the attic space when the flooring had been removed. Mrs Rourke put it to her that there was no evidence of structural damage. Mrs Bennie's position was that there would have been long term damage to the Property with the extra weight on the roof trusses caused by the storage of boxes and other items on the flooring attached to the trusses.

24. Mrs Rourke put it to Mrs Bennie that she was aware that access in July was difficult as that was when Mrs Rourke had to take a holiday. Mrs Bennie stated she was not aware of that. Regarding access for painting of the shed, Mrs Bennie agreed with Mrs Rourke that Mrs Rourke had previously done that. Mrs Bennie went on to state that the Respondent had also screwed wall lights into a firewall and that she should not have done that.

25. Ms McNicol's re-examination was brief. Mrs Bennie re-iterated the flooring should never have been attached to the trusses and that there had been no conversation regarding specific paint colours. Mrs Bennie concluded her evidence.

Mr Bennie

26. Ms McNicol then called Mr Bennie to give evidence. Mr Bennie's evidence was that he farmed livestock at the farm. He had both cattle and sheep and would have to tend to them by taking access to the field next to the Property. After they had had a visit from the Police telling them to keep away from the Respondent, he had had to change the way he farmed and had rented out one of the field for grazing to another farmer. He stated this had a detrimental effect on their income and estimated they lost about £10 000 per annum.

27. Ms McNicol referred Mr Bennie to the Respondent's Production B, being a text message dated 23 May 2019 from Mr Rourke regarding installing flooring. Mr Bennie's evidence was that this text message was not on his phone and in any event the flooring was installed in April 2023, four years later. There had been no mention of installation of flooring at that time. He saw the joiner's van and

chipboard flooring on 23 April 2023 and called his wife. He went to the Property and was let in. He saw the joiner working in the attic and decided he wanted his own joiner to have a look at the work. He confirmed that neither the Respondent or her husband had asked for permission regarding flooring the attic or widening the attic hatch.

28. Mr Bennie stated that after that it had been difficult to get access to the Property. They felt they were out of their depth and decided to instruct Galbraith to manage the tenancy of the Property. His joiner Mr MacLeod looked at the photos taken by Rob Roy on 16 August 2023 and had been surprised by the amount of boxes on the flooring on the trusses and that the insulation was being squashed which could lead to dampness. He explained Mrs Bennie had arranged for Mr O'Hagen to inspect the attic on 21 June 2024 by which time the Respondent had removed the flooring. He did not know when the flooring had been removed.

29. Mr Bennie went on to give evidence that he had never been aggressive towards Mrs Rourke or her husband; it was not in his nature. He had simply gone to the door on 1 September 2023 to find out what works the Respondent was carrying out at the Property. Mr Rourke came to the door and stated they were doing some work to the cornicing and that Mr Bennie was trespassing. After that the Police came to speak to them and told them that they should evict Mrs Rourke and stay away from the Property. Mr Bennie has followed that advice as he is fearful if he goes near the Property he will be entrapped. He does not feel safe going near the Property and had to go around another two field to tend to his livestock. He has no issues with any other tenant.

30. Mrs Rourke then cross examined Mr Bennie. She asked Mr Bennie if they had ever said to him he could not access the field near the Property. Mr Bennie explained he followed the advice from the Police to stay away from the Property. Mrs Rourke also queried the consequence of the warning letter of 28 April 2023. Mr Bennie advised that his wife had written it. Mr Bennie agreed with Mrs Rourke that it was not possible to tell how much the boxes weighed from the photographs.

31. In re-examination, Mr Bennie gave evidence that he has to check his livestock and uses a quad bike to go round the boundary to get to them. He would never go near the boundary fence to the Property on his own.

32. The Tribunal asked Mr Bennie if he had ever taken legal advice regarding access. Mr Bennie advised he had not.

33. Due to the lateness of the day the Hearing was continued.

Continued Hearing

34. A continued Hearing was assigned to proceed in person on 20 February 2025.

35. On 5 February 2025 the Applicant's solicitor lodged a Sixth List of Documents. This included further emails between the parties and a Report on alterations by McLeish Design Consultants Ltd dated 29 January 2025.

36. On 12 February 2025 the Applicant's solicitor lodged a Seventh List of Documents. This comprised a summary of events since 1 November 2024 by Applicants and a summary of grazing losses for 2023/2024 and 2024/2025.

37. On 12 February 2025 the Respondent also lodged a further List of Documents. This included various internal and external photographs, a map of the area, a legionella risk assessment and a Loft inspection Report by Douglas McDonald from Surveying Solutions Ltd dated 22 October 2024.

38. The continued Hearing took place in person at Wallace House, Stirling on 20 February 2025. The Applicant was represented by Ms McNicol from McNabs, solicitors. Mr and Mrs Bennie as partners of the Applicant were also in attendance. Mrs Rourke appeared for herself.

39. As a preliminary point, Ms McNicol sought clarification as to how the Tribunal intended to treat the reports prepared by McLeish Design Consultants Ltd and Surveying Solutions Ltd as neither author was present to speak to their report. The Tribunal stated it was treating the reports as having been read.

Mrs Rourke

40. Mrs Rourke gave evidence on her own behalf. She submitted that this was an application for eviction. The burden of proof was on the Applicants. The tenancy agreement was a Private Residential Tenancy, and the ground of eviction founded on by the Applicants was discretionary. The Applicants had lodged sixty six documents over seven inventories of productions, a large proportion of which did not relate to the grounds of eviction. There were duplicate documents lodged. The Applicants had failed to comply with the previous Notice of Direction issued by the Tribunal for the Applicants to lodge a building surveyor or structural engineer's report showing any structural damage to the Property and the nature and extent of that damage.

41. Mrs Rourke explained that when they moved into the Property in 2019, she and her husband had been friends with the Applicants as their daughters were at primary school together. When the Applicants were developing the properties at Spittal Barn, Mrs Rourke expressed an interest in moving in. That was agreed and because of the existing relationship the Applicants did not ask for references or for a deposit. Mrs Rourke discussed paint colours with Mrs Bennie, who had no issue with the colours Mrs Rourke wanted to use. The first they knew that the Applicants were unhappy was after the Applicants had served the Notice to Leave. That had been served after Mrs Rourke and her husband had reported the Applicants to the Police for harassment and stalking. Mrs Rourke stated it was of no consequence that other tenants thought the Applicants were good landlords.

42. Mrs Rourke referred to an email to Mrs Bennie from Hill and Robb solicitors dated 20 December 2018 and which gave certain legal advice regarding setting up their tenancy agreement properly (Production 35, the Applicant's Third Inventory of Productions). Mrs Rourke gave evidence that that advice had been ignored by the Applicants as they had not given her a lease until July 2019, six months after they moved in.

43. Mrs Rourke's evidence was that parties had had an informal arrangement whereby she as tenant would ask for to make alterations and the Applicants would be happy to let them carry out these alterations. In the case of the garden, they had carried out certain alterations which the Applicants had had no issue with. Mrs Bennie would ride along the fence line of the garden in the neighbouring field and never once mentioned that they were unhappy with the garden. The garden was reinstated back to lawn in October 2023 after the Applicants expressed their unhappiness of the decking and other alterations to the garden.

44. Mrs Rourke explained the CCTV was wireless and was to give them some peace of mind as their daughter slept downstairs. There is proper CCTV signage.

45. She had met Mrs Bennie in person to discuss the paint colours. She referred the Tribunal to Document E lodged with her submissions which was a text message. Since the Applicants had taken issue with the paint colours, which they previously had no issue with, Mrs Rourke had painted all the rooms white as shown in the photographs she had lodged.

46. She gave evidence that the Applicants gave them verbal permission to replace the glass light shades in the kitchen. The Applicants came round to pick up the glass shades and took them away.

47. Mrs Rourke also gave evidence that she had discussed wardrobes with Mrs Bennie. She explained that they had installed free standing Ikea wardrobes which they had assembled and which could be removed. Her evidence was that Mrs Bennie knew that and in any event, they did not need permission to put up furniture.

48. With regard to the loft, Mrs Rourke referred the Tribunal to the loft inspection report she had lodged prepared by Douglas McDonald from Surveying Solutions. This followed on from the email she had previously lodged. She referred to paragraph 3.3 of this report headed "Structural Integrity". She gave evidence that Mr McDonald had inspected the loft and could see no visible signs of cracking, bulging to the plasterboard below or any signs that the loft had been subject to excessive loads. She referred also to an email dated 24 October 2024 from Mr McDonald in which he advised he could see no issues with any alterations that had been made and which were removed. She also referred to a text message her husband had sent to Mr Bennie on 23 May 2019 requesting permission to install flooring in the loft. She explained Mr Bennie had been up to the loft on a number of occasions after her husband had floored

a small area of the loft in 2019 so they could store items such as unused toys and Christmas decorations. The Applicants knew they had done that and had had no issue with that. The neighbours had also floored their loft and the Applicants did not have any issues with this either. The alterations to the loft which the Applicants had an issue with were made in April 2023 and removed in June 2024.

49. Mrs Rourke gave evidence that the Applicants had had access to inspect the loft but on no occasion had they asked for access for a surveyor to inspect the loft. Mrs Rourke referred to the Applicant's Appraisal of the Alterations dated 5 February 2025 from McLeish Design Consultants Ltd. She was critical of this appraisal and gave evidence that the author had never visited the Property and that the appraisal was predicated on information given by the Applicants and conjecture. They had no evidence of the weight of items that had been previously stored in the loft. As could be seen from the photographs Christmas decorations and the like were stored. They were hardly heavy items.

50. Mrs Rourke explained that her job as a musician meant that she had little flexibility as to when she could take holidays. She had always tried to accommodate requests for access but due to her work pattern it was not always possible to give access when requested particularly if this was at short notice or changed.

51. With reference to Document D1 lodged by Mrs Rourke, she submitted there had been numerous requests for access between June -October 2023. Mrs Rourke explained that she and her husband had arranged to take time off so access could be granted but that on four occasions there had been "no shows" by the Applicants' contractors which had led to her using annual leave and a loss of wages. Mrs Rourke explained that they had on occasions refused access when too short notice had been given. In terms of clause 19 of the tenancy agreement the Applicants were obliged to give her at least 48 hours notice. She referred to an email dated 16 July 2023 when she had refused access due to short notice (Production 19 for the Applicants).

52. Mrs Rourke explained that with reference to an email dated 17 December 2024 regarding a roofer attending on 21 December 2024 there was no request as to whether this was convenient (Production 60 for the Applicants). That date was changed by the Applicants to 20 December 2024 by an email dated 19 December 2024 (Production 61). This was too short notice and did not ask whether that was convenient. Mrs Rourke explained her father had just undergone surgery. She was exhausted and was resting at home when the roofer arrived on 20 December 2024. He was verbally abusive to her husband when he asked the roofer to leave. She also referred to emails from 22 January 2025- 31 January 2025 (Production 64) regarding access for an engineer to come to service the air source heat pump which showed the Applicants changed the dates from 19 to 18 February 2025 and that although Mrs Rourke could juggle things around to give access first thing or later on 19 February, she had not indicated they could grant access on 18 February 2025 which never been discussed as a possible appointment day. Mrs Rourke also referred to production 65 which showed the appointment was cancelled by the Applicants.

53. Mrs Rourke gave evidence that the Applicants had breached the terms of the tenancy agreement regarding access. Mrs Bennie had just turned up at the front door requesting access at some point in July 2023 to paint the shed. This was refused as Mrs Rourke and her husband had always done that themselves. On 1 September 2023, the Applicants just turned up at the front door when they found out that there were power tools being used at the Property. The Applicants were aggressive, and Mrs Rourke felt that she and her husband were being harassed.

54. Mrs Rourke continued by giving evidence that she felt that Galbraith who acted for the Applicants had misled her to thinking they were managing all the properties owned by the Applicants when in fact they had only been instructed to manage her tenancy (Production 40/4).She disputed that "all compliance" was in place as stated by Galbraith in their email of 30 June 2023 (Production 40/11) as PAT testing and legionella testing were still outstanding. She and her husband had emailed Galbraith on 30 June 2023 querying in what capacity Galbraith were acting to request access. A few weeks later the Applicants decided not to instruct Galbraith.

55. Mrs Rourke stated that they had never challenged the Applicants' access rights to the field with reference to the map and photographs lodged by her as documents E2 and F2.

56. Mrs Rourke further stated that eviction would have a disproportionate affect on her family. This was a discretionary ground of eviction. Any alterations had been put back with the exception of the loft hatch. The surveyor had found no evidence of structural damage. There had never been any issue when they first put some flooring in as everything between the parties was very informal. However, if they were evicted it would be a massive upheaval to leave their home of 6 years with a 14 year old daughter. They had cared for the Property and looked after it. On being questioned by the Tribunal she described the relationship with the Applicants as "hostile". If they stayed, they would have to work with the Applicants, but she would like them to ask her availability for inspections first before arranging contractors. They like where they live and whether other properties to rent were available was of no relevance. If they were to move, they would be looking to buy.

57. In cross examination by Ms McNicol, Mrs Rourke agreed that the Applicants had taken no refences or deposit in 2019 as there was no written tenancy agreement and that parties had been on good terms as friends until April 2023. Ms McNicol put it to Mrs Rourke that the Applicants were entitled to be trusting of their relationship with her and her husband, yet with reference to text messages with another neighbour, Mrs Rourke had been derogatory towards the Applicants. Mrs Rourke in answer explained these had been private text messages from which it was clear that the other neighbour also had issues with the Applicants. Mrs Rourke did not agree that she had been backbiting and taking advantage of the Applicants. She agreed that as they were friendly, Mrs

Bennie would have modified her behaviour if she had thought she was being intrusive or that she had overstepped the mark.

58. Ms McNicol put it to Mrs Rourke that she had no permission to paint in dark colours, change the lights or install decking. Mrs Rourke stated she had already given evidence regarding the painting, the garden and that the Applicants had taken their lights away after they had been replaced without any comment. Ms Nicol raised the issued of the wardrobes and that they had no permission to instal these. Mrs Rourke explained the wardrobes were attached to each other but could be removed. She explained that they would not need permission to e.g. build a bed and felt that building the wardrobes was no different.

59. With regards to the flooring in the attic, Ms McNicol put it to her that the only time Mrs Rourke or her husband had asked for permission was a brief exchange of text messages in 2019 when they put in a couple of boards. Mrs Rourke stated the relationship with the Applicants up until 2023 was very casual and they did not think there was an issue with them flooring the attic.

60. With reference to the Respondent's email of 16 July 2023 (Production 19) Ms Nicol suggested that it appeared that Mrs Rourke had decided not to speak to the Applicants and that the Applicants were understandably anxious about the extensive works and that if they were on good terms it was not unreasonable for the Applicants to come to the door. In answer, Mrs Rourke stated the Applicants had been rude and that they had written to her to say she was in breach of the tenancy agreement. Up until that point Mrs Rourke was not sure if she was being held to the PRT with reference to a letter dated 28 April 2023 from the Applicants to the Respondent and her husband (Production 1). Mrs Rourke denied their joiner had sworn at the Applicants. She explained the Applicants had come to their door three times that day but had never asked them to ask the joiner to stop work.

61. With regards to access, Ms McNicol put it to the Respondent she had repeatedly refused access in July and August 2023. Mrs Rourke felt the Applicants were being very aggressive and intrusive, that it was not clear whether Galbraith were acting on behalf of the Applicants, that she took her holidays in July which the Applicants were aware of and that access was given on 16 August 2023.

62. Ms McNicol then questioned the Respondent regarding the events in September 2023 when the Respondent was carrying out further works at the Property and whether it would have been reasonable for her to notify the Applicants of the works they were doing, Mrs Rourke explained that the works had already been agreed and that the coving had to be removed after the instillation of the EV charger point as the Applicants did not want trunking. She disagreed with Ms McNicol who suggested the Applicants had not been aggressive when they came to the door in September 2023. Mrs Rourke stated that Mr Bennie was taking photographs on his phone. She felt the Applicants were stalking and harassing her and her husband.

63. In further questioning regarding access, Ms McNicol referred Mrs Rourke to her letter dated 16 July 2023 addressed to the Applicants (Production 19) and that she had indicated in that letter that the Applicants had no access to the "boundary areas" which the Applicants had interpreted as including the field next to the Property. In response Mrs Rourke stated the Applicants had misconstrued that letter and that she had no right to prohibit access to the field.

64. Ms McNicol also referred to the request for access in December 2024 for roof repairs. Mrs Rourke stated that they had been told when the roofer would attend on 21 December 2024 but on 19 December 2024 that had been changed to 20 December 2024. However, due to her father being hospitalized she did not know the roofer was coming on 20 December. Ms McNicol also put it to Mrs Rourke that there were ongoing issues with regards to access for the servicing of the air source heat pump and boilers (Production 65). Mrs Rourke stated that it was the Applicants who had cancelled the appointment with the engineers. The Applicants had changed the dates from 19 to 18 February 2025 but Mrs Rourke could not grant access on 18 February 2025. They did not have family nearby who could assist with access.

Mr Bennie - Recalled

65. Ms McNicol concluded her cross examination of Mrs Rourke. She asked whether she could recall Mr Bennie to speak to the issues he had with accessing the field next to the Property. The Tribunal allowed this. He was referred to a map and photographs of the area lodged by the Respondent (Documents E2 and F2). He explained the main drive went up to Spittal Barn and as seen in photograph 3 the gate to the field was next to the Property. After everything that has gone on he does not want to go near the field which he would normally have sheep grazing on. Sheep take a lot more work and more access is required. They now rent the fields out at a great loss as shown in Production 66.

66. In cross examination Mrs Rourke queried whether he could take access through another gate, but Mr Bennie explained that that gate was too narrow for a tractor and trailer. Mrs Rourke put it to him that she had not denied him access. Mr Bennie felt that he was being accused of intimidation if he took access.

Mr Rourke

67. Mr Rourke the Respondent's husband then gave evidence. He had a BSE in building surveying and was involved in the sale and development of properties. He was aware of matters such as legionella testing and fire risk and is involved in assessing buildings for such risks. He is aware of the compliance regime for tenancies. He has been in this business for 19 years.

68. He gave evidence that access by the Applicants was a cause of frustration, as they never checked with him or his wife as to whether they were available. They both had work commitments. He explained that the email they sent the Applicants on 14 June 2023 (Production 18 for the Applicants) was their

response to what had happened in April. He felt they were always being watched by the Applicants. In September 2023 he had asked a colleague to come to the Property to discuss training and to do work on the coving to hide the cable from the consumer unit. The Applicants came to the door, and queried why Mr and Mrs Rourke had not told them they were doing this work. Mr Bennie had his mobile phone in his hand recording the conversation.

69. He had originally cleared it with Mr Bennie to put flooring in the attic. They stored things like Christmas decoration and toys there. They installed a larger hatch for access. Mr Bennie had been up there on more than one accession and had never taken issue with the flooring or the hatch until April 2023. He now found the Applicants frustrating and controlling with no respect for privacy.

70. Mr Rourke was referred to a report dated 29 January 2025 by McLeish Design Consultants (Production 63 for the Applicants) and to page 5 with reference to the load calculations in the attic and damage to the upstairs coombe including cracked plasterwork and popped screwheads which then went onto state that these defects were as a result of the attic flooring and storage of excessive items. Mr Rourke disputed that; the plasterwork throughout was rough and referred to an email dated 9 October 2024 from him and his wife to the Applicants complaining amongst other things of poor plasterwork (Production 47 for the Applicants). He explained the plasterwork was like that when they moved in. They had never referred to popped screws.

71. Mr Rourke complained that the legionella report completed by Mr Bennie was riddled with false statements (Production G2 for the Respondent).

72. He explained there were no issues with the bedside lights on the walls as the were protected by an intumescent sealant.

73. Mr Rourke stated he wanted things to change and was happy to work with the Applicants going forward. They needed better communication which was common sense and would hopefully de-escalate the current situation they all found themselves in.

74. Ms McNicol then cross examined Mr Rourke. He denied they had no written permission from the Applicants to instal the flooring. They had the original permission in 2019 when they had originally put in some flooring and an informal agreement for the rest. He denied he was in breach of clauses 19 and 27 of the tenancy agreement. He denied there had been excessive storage which had affected the structure of the Property.

75. With regard to the flooring being installed in April 2023, Ms McNicol put to him that they should have put the Applicants on notice that they intended to floor the attic, that her clients were understandably concerned that flooring had been attached to the sloping beams. In response Mr Rourke stated that at no point in time did the Applicants ask for the work to be stopped.

76. With regard to access, Ms McNicol put it to him they had breached the tenancy agreement regarding access, that early on when the relationship was good between the parties, they would carry out work and that her clients would do things quickly with no issues regarding access but after April 2023, their attitude to access changed. Mr Rourke disagreed with those statements.

77. With reference to the letter from her clients of 28 April 2023, despite making it clear that no further works should be carried out without authorisation, she put it to Mr Rourke that it was hardly surprising in September 2023 that they were concerned about further works and had they not thought that her clients would want to know. Mr Rourke responded by stating that the Applicants had questioned their visitors who were parked on their car parking spaces and that the Applicants should not have been approaching their visitors. Ms McNicol put it to him the Police had suggested to her clients to keep away for their own safety. Mr Rourke advised that they were concerned that the Applicants were stalking them and by then the relationship had completely broken down. He did not feel the need to move and felt they should not be forced out of their own home.

78. With regards to repairs and inspections, Ms McNicol suggested they were obstructive even when the Applicants were seeking solutions such as the change of the dates for the roofer in December. Mr Rourke stated that insufficient notice had been given and that there were specific circumstances as to why it was not convenient for access to be taken to the roof and denied being rude to the roofer. Ms McNicol concluded that a bit of flexibility was required once in a while.

79. Evidence was then concluded. The Hearing was continued to a third day for submissions.

80. It should be noted that the Tribunal had originally comprised of Mrs Evans and also Mr Blackwood as the Ordinary Member. Due to a conflict of interest then coming to light, Mr Blackwood recused himself. The final day of the Hearing on Submission was heard by Mrs Evans alone.

Submissions

81. Parties made written submissions and submissions in response ahead of the third day of the Hearing when they were given an opportunity to supplement these with oral submissions. The Tribunal read both parties ahead of the continued Hearing.

The Applicants' Submissions

82. The Applicants submitted that the Respondent had repeatedly breached the terms of Clauses 19 and 27 of the tenancy agreement by making unauthorised

alterations and refusing access. Their submissions emphasised that there was no dispute that flooring had been laid in the attic and that a larger hatch with ladder had been installed. They also highlighted other breaches such as a failure to seek consent to paint the Property, replace light fittings and install CCTV and fitted wardrobes. They also highlighted instances when in Respondent and her husband had failed to give access to the Property with reference to the evidence.

83. The Applicants submitted it was reasonable to evict. They submitted that they felt unable to access the filed by using the gate next to the Property as a result of which they had lost income. They submitted the Respondent's behaviour had an effect on neighbouring tenants who had complained about the CCTV installed by the Respondent. They submitted they had treated the Respondent and her husband with the same care and consideration as all their tenants. The Property was still under warranty and it was reasonable that they would expect their tenants not to make unauthorised alterations or without the need to comply with the warranty. Further they submitted that with regard to reasonableness it was a consideration that the parties' relationship had broken down and that the Applicants were fearful of further allegations being made against them which had led to them having to rent out the field next to the Property. They further submitted that there were other suitable properties in the large school catchment area where the Respondent and her family could live.

The Respondent's Submissions

84. The Respondent submitted that she and her husband had been friends with and had had a very informal relationship with Mr and Mrs Bennie. She submitted they had made verbal agreements during the tenancy to carry out alterations to the Property such as painting the Property. She referred to the inspection in May 2021, where the Applicants expressed no issues with the Property. She submitted they had had verbal consent to install the flooring from the Applicants. She submitted that the Applicants had failed to provide any evidence that stated there had been any structural alterations made to the roof space. She submitted they had given access on three separate occasions to carry out an inspection of the attic. The Applicants' report was full of supposition and conjecture and produced by someone who has never visited the Property and who based his findings on out of date photos. She submitted there was no longer flooring in the attic and that they had offered to reinstate the original loft hatch at their own expense. The Respondent submitted that their own report categorically states that no structural alterations or damage has been caused by the installation of the new loft hatch and ladder. She referred to the inspection in May 2021, where the Applicants expressed no issues with the Property.

85. With regards to access the Respondent submitted she had always granted access to the property, often at short notice, and that on occasions if access was not suitable it was because they were working. On occasions the Applicants' tradesmen have not shown up. She felt it would have been helpful

if the Applicants check their availability before making appointments with tradespeople.

86. The Respondent submitted that eviction was unreasonable. The Property has been their home for the last six and a half years. Their daughter has a chronic and serious health condition, which is a recognised disability, which will involve their daughter getting further surgery. She requires stability and a familiar home environment. The Property is fully accessible and provides a degree of privacy and independence to their daughter who has her own bedroom and ensuite bathroom on the ground floor. They are seeking to buy a property which will be suitable for their daughter's needs. The Respondent questioned the reasonableness of granting an eviction order based on unproven grounds and invited the Tribunal to refuse the application.

The Applicants' Submissions in Response

87. In their submissions in response to the Respondent's submissions, the Applicants acknowledged efforts to accommodate the Respondent's availability for maintenance but highlighted the difficulties in securing tradespeople and the need to coordinate with their other tenants. They submitted the Respondent refused access for essential electrical safety checks from June 2023 until qualifications of electricians were verified, delaying inspection until January 2024.

88. Their submissions re-iterated the Respondent had made several alterations, including installation of attic flooring and installation of a ladder, without their written consent in breach of the tenancy agreement. There was no requirement for alterations to be structural before permission to make alterations had to be sought. The flooring of the attic included the compression and coverage of the loft insulation and was contrary to the provision made by the architect in designing the house. The attic space was not designed for usage beyond having an inspection hatch. The report from McLeish Design Consultants indicated these changes could have caused both short- and long-term damage had they not been removed following Tribunal intervention.

89. They submitted the Ikea wardrobes used by the Respondent should be fixed to the walls. They submitted that any discussion regarding the putting up of a summer house took place at the inspection in May 2021. The Applicants' evidence was that there was no mention of not putting consent for alterations in writing.

90. The Applicants had incurred significant financial loss due to restricted access to farmland, with rental payments from the Respondent often delayed, affecting cash flow. They submitted that Mrs Bennie had her own health issues. They submitted that whilst they sympathised with the Respondent's daughter illness, that had not stopped her from undertaking in school sports and other activities at school without the use of a wheelchair.

91. They also submitted there were alternative suitable properties for the Respondent's family needs that were available.

The Respondent's Submissions in Response

92. The Respondent made various submissions regarding the lead up to the signing of the written tenancy agreement. She submitted they never got as far as arranging access with Galbraith. She had always given access and submitted the Applicants did not always read the email correspondence or respond coherently. She submitted the Applicants had cancelled access on occasions. An electrician instructed by the Applicants was not properly qualified. She submitted they had reported the Applicants to the Police as they had entered the Property without the Respondent's permission. The Respondent and her husband felt harassed and that the Applicants were stalking them. Their Ikea bookcases or wardrobes were not attached to the Property. The Respondent submitted there was no evidence that the Applicants had requested access for electrical inspections between September 2023 and January 2024. There was no evidence that all further requests for access had been refused until the Tribunal application had been raised. She submitted they had permission to install flooring in the attic but as they had been accused of damaging the structure of the Property decided to remove the flooring. The Respondent disputed that they had failed to give access for the boiler to be serviced and submitted the Applicants' tradesmen had failed to turn up. Any delay in the servicing was caused by the Applicants who did not request access again for a period of five months. She reiterated they were willing to pay for the loft hatch to be re-instated and that the wardrobes were free standing. The Respondent submitted she had not stopped Mr Bennie from accessing the field adjacent to the Property and has no issue with him doing so. She further submitted that the perceived access issues to the field do not form part of the grounds on which the Applicants seek to evict. The Respondent submitted that their daughter's needs restrict the number of properties that are suitable for them. She submitted the Applicants had not proven the grounds of eviction and that it was not reasonable or proportionate for an order for eviction to be made.

Findings in Fact

93. The Applicants are the heritable proprietors of Oxhill Farm, Buchylvie. They are a farming partnership, the partners of whom are a married couple, Tom and Margaret Bennie. In or about 2018 the Applicants demolished an old farm building at Spittal Barn within the farmlands of Oxhill Farm and built a new build property which they split into two semi-detached rental properties. The Property is one of the two new build properties. They intended to let out the three properties.

94. The parties were former friends having met as their daughters attended school together. The Respondent enquired whether she could lease one of the properties. The Applicants agreed to lease the Property to the Respondent. The Respondent, her husband and her daughter moved into the Property on or

about 19 January 2019. There are two bedrooms in the Property. The Respondent's daughter's bedroom has an en-suite bathroom and is on the ground floor of the Property. The Applicants did not take any references or a deposit prior to letting the Property due to the parties' friendship. There was no written tenancy agreement between the parties at the commencement of the tenancy on 19 January 2019.

95. The Respondent or her husband informally sought the verbal approval of the Applicants to paint the Property in dark colours, replace the glass light shades in the kitchen and make alterations to the garden. The friendly relationship between the parties was such that Applicants did not object to the redecoration of the Property, (which the Respondent had stated would be painted back to white should they leave the Property), the replacement of the light shades or the alterations to the garden. Mrs Bennie had noticed the garden had been dug up and replaced with decking and a pergola when she had passed the garden. She made no comment or objection to the Respondent about the garden.

96. There had been some discussions between the parties regarding the Applicants employing a joiner to install fitted wardrobes in the Property. Fitted wardrobes were not installed. The Respondent installed free standing wardrobes at the Property.

97. On or about 23 May 2019 the Respondent's husband texted Mr Bennie to request that they be allowed to put some flooring in the attic. Mr Bennie had no objection to that request. The Respondent thereafter laid some flooring in the attic which was used for storage of items such as Christmas decorations and toys.

98. The parties entered into a written Private Residential Tenancy Agreement dated 3 July 2019 ("the Agreement").

99. Clause 19 of the Agreement provides that –

> "*The Tenant must allow reasonable access to the Let Property for an authorised purpose where the Tenant has been given at least 48 hours' notice, or access is required urgently. Authorised purposes are carrying out work in the Let Property which the Landlord is required to or is allowed to, either by law, under the terms of this Agreement, or any other agreement between the Landlord and the Tenant; inspecting the Let Property to see if any such work is needed; and carrying out a valuation of the Let Property. The right of access also covers access by others such as a contractor or tradesman hired by the Landlord.*
>
> *There is nothing to stop the Tenant and Landlord from mutually agreeing more generous rights of access if both parties want to resolve a non-urgent problem more promptly.*
>
> *The Landlord has no right to use retained keys to enter the Let Property without the Tenant's permission, except in an emergency*."

Clause 27 of the Agreement provides that –

"*The Tenant agrees not to make any alteration to the Let Property, its fixtures or fittings, nor to carry out any internal or external decoration without the prior written consent of the Landlord* ".

100. The Applicants first inspected the Property in May 2021. No inspections had taken place prior to then due to the restrictions caused by the Covid pandemic. During the inspection the Applicants made no comment or objection to the redecoration, the replacement of the glass shades or alterations to the garden.

101. On or about 24 April 2023 the Respondent employed a joiner to replace the existing loft hatch with a larger loft hatch with ladder and to lay further flooring in the attic of the Property. Some of the flooring was laid directly on to the angled roof trusses. The Applicants discovered these alterations were being carried out on 24 April 2023.

102. Some of the flooring compacted the insulation next to the loft hatch. The flooring should not have been attached to the roof trusses.

103. The Respondent did not obtain the Applicants' prior written permission to carry out these alterations in terms of clause 27 of the Agreement. By failing to do so, the Respondent is in breach of clause 27 of the Agreement with the Applicants.

104. On 28 April 2023 the Applicants sent a letter to the Respondent and her husband asking that the Respondent should seek permission before any further work was carried out to the Property. The Applicants also stated that the annual check of the Property was overdue and that they needed to arrange a mutually suitable time for this to be carried out. The Applicants did not request access on a specific date nor did they suggest any date or dates for access.

105. The relationship between the parties became strained from on or about 24 April 2023.

106. In June 2023 the Applicants appointed Galbraith to manage the Property. On 1 June 2023 Galbraith wrote to the Respondent to advise they were acting as managing agents.

107. On 14 June 2023 the Respondent wrote to the Applicants regarding the works to the Property and the events of 24 April 2023 when the Applicants discovered that works were being carried out to the Property without their consent.

108. On 30 June 2023 Galbraith emailed the Respondent seeking access on the 6 July 2023 for Rob Roy Homes to inspect the Property. On 3 July 2023 the Respondent emailed Galbraith to advise 6 July 2023 was not suitable for an inspection and suggested that she had availability week beginning 17 July 2023.

109. On 11 and 14 July 2023 Galbraith emailed the Respondent to carry out an inspection. On 16 July 2023 the Respondent emailed the Applicants to advise that their request of the 14 July 2023 for access to carry out an inspection on the 17 July 2023 was not suitable. The Respondent suggested that access be arranged for week commencing the 14 August 2023. The letter also advised that the Respondent had arranged for a surveyor to attend at the Property to inspect the flooring installed in the loft.

110. On 19 July 2023 the Applicants requested access to carry out EICR and PAT testing on the 24 July 2023. The Respondent replied on 21 July 2023 to refer to her email of 16 July 2023 with reference to access on week beginning 14 August 2023.

111. On 28 July 2023 the Applicants emailed the Respondent requesting dates and times to carry out safety, maintenance and electrical checks on the Property. The Applicants did not request access on a specific date nor did they suggest any date or dates for access.

112. On or about July 2023 the Respondent installed wireless CCTV at the Property. She did not seek permission to install CCTV. In terms of the tenancy agreement she was not required to seek permission where no alterations to the Property were made. The system is wireless and did not result in any alterations being made to the Property.

113. On 1 August 2023 the Applicants emailed the Respondent and asked for confirmation that access could be taken on 14, 15 and 16 August 2023

114. On 6 August 2023 the Respondent and her husband provided dates for week beginning 14 August 2023 and provided times for the Property to be inspected on 16,17 and 18 August 2023.

115. On 9 August 2023 the Applicants emailed the Respondent to advise that access would proceed on 16 August 2023 for the electrician and Rob Roy Homes and requested confirmation by 11 August 2023 that 16 August 2023 was still suitable. The Respondent did not reply.

116. On 12 August 2023 the Applicants emailed the Respondent again seeking confirmation that access would be granted on 16 August 2023. On 12 August 2023 the Respondent confirmed access for Rob Roy Homes on 16 August 2023 but queried the electrician's qualifications. The Respondent requested documentary evidence that the electrician was suitably qualified and stated that access would not be granted unless proof of qualifications could be provided.

117. On 16 August 2023 Rob Roy Homes inspected the Property on behalf of the Applicants. They took photographs of the attic flooring.

118. On 17 August 2023 the Applicants forwarded an email dated 14 August 2023 from their electrician stating he could provide documentary evidence of his qualifications.

119. On 28 August 2023 the Applicants requested access from the Respondent for PAT testing by another electrician on 5 September 2023. On 30 August 2023 the Respondent confirmed access was suitable for 5 September 2023 and requested a copy of the electrician's Insurance cover, a copy of calibration certificates for the testing machine to be used and a copy of the suitable qualifications of the electrician.

120. On 1 September 2023 the Respondent or her husband instructed a coving repair to hide the cable from the EV charger. The Applicants had previously verbally agreed to the coving being repaired when the EV charger which was installed in May 2022. The Applicants visited the Property to enquire about the works in September 2023.

121. On 3 September 2023 the Respondent emailed the Applicants to advise that due to "unacceptable behaviour" on 1 September 2023 access was no longer granted for 5 September 2023, that they would be happy to give access to a suitably qualified electrician at a mutually agreeable time on 48 hours' notice.

122. Thereafter in or about September 2023 the Respondent and her husband contacted the Police to complain the Applicants were harassing and stalking them. The Police attended the Applicants' home. The Police took no action but warned the Applicants against approaching the Respondent or her husband without independent witnesses.

123. On 12 September 2023 the Applicants served a Notice to Leave on the Respondent by Sheriff Officer based on Ground 11 of Schedule 3 of the 2016 Act.

124. On 22 December 2023 the Applicants emailed the Respondent to request access by an electrician to carry out PAT testing and the EICR testing on 10 January 2024. Access was given by the Respondent on 10 January 2024

125. On 22 January 2024 the Applicants emailed the Respondent requesting access on 24 January 2024 to repair a blind. The Respondent did not reply to that email.

126. On 5 March 2024 the Applicants emailed the Respondent suggesting dates for access for a valuation of the Property by Bastion on either 11, 12 or 14 March 2024 and requesting the Respondent advise them if any of these dates were suitable. The Respondent did not reply to that email. Bastion did not get access and carried out an assessment based on the plans. The Applicants gave the Respondent adequate notice of their requirement for access in terms of Clause 19. The Respondent is in breach of Clause 19 of the Agreement by failing to give access. The Respondent could reasonably have emailed the

Applicants to advise that access was not suitable on the dates suggested or confirmed what date was suitable or suggested another date or dates.

127. On 18 June 2024 the Applicants requested access for an inspection of the attic. On 19 June 2024 the Respondent agreed access could be taken. On 21 June 2024 Mr O'Hagan from David Reid Group inspected the attic as instructed by the Applicants. By then the Respondent had removed the attic flooring. The Respondent has also reinstated the garden to grass.

128. The Respondent did not seek permission from the Applicants to remove the flooring in the attic or the re-instate the garden by removing the landscaping. The loft hatch and ladder installed by the Respondent remain in the Property. The Respondent has offered to re-instate the loft hatch or pay for the works to be carried out at the instance of the Applicants. The Respondent has repainted the Property in white.

129. On 31 July and 1 August 2024, the Applicants emailed the Respondent seeking agreement for the heat pump to be serviced on 2 August 2024. The heating engineer was then unable to attend on 2 August 2024.

130. On 7 August 2024 the Applicants emailed the Respondent seeking agreement for the heat pump to be serviced on 9 August 2024. The Respondent agreed that access could be taken on 9 August 2024. The Applicant emailed on 9 August 2024 to rearrange the time for servicing to 10 August 2024.

131. On 25 September 2024 the Applicants arranged for contractors to carry out the annual boiler service. The Respondent agreed to grant access. The Applicants' contractors failed to attend as arranged.

132. The Respondent instructed Surveying Solutions to carry out a report on the alterations in the attic. Douglas McDonald from Surveying Solutions inspected the attic and produced a report dated 22 October 2024. He could see no visible signs of cracking, bulging to the plasterboard below or any signs that the loft had been subject to excessive loads. His report concluded there were no remedial works required to the attic and that the new loft hatch did not have a negative impact on the Property.

133. On 17 December 2024 the Applicants requested access for a roofer to attend the Property to replace slipped slates and check the gutters on 21 December 2024. On 19 December 2024 the Applicants emailed the Respondent to change the date for the roofer to attend on 20 December 2024. The Respondent's husband refused access to the roofer on 20 December. The Applicants had not given 48 hours notice in writing that access was required on 20 December 2024, having changed the date.

134. After September 2024, no further access was requested by the Applicants for the servicing of the boiler until 22 January 2025 when the Applicants emailed the Respondent to request access on 19 February 2025. On 23 January 2025 the Respondent advised that if the Applicants could give

them an hour slot first thing in the morning or later in the day they could accommodate access on 19 February 2025.

135. On 28 January 2025 the Applicants emailed to advise access was on 18 February 2025. On 31 January 2025 the Respondent emailed to advise that access was not suitable for 18 February 2025 but that they had agreed to access on 19 February 2025.

136. The Applicants instructed McLeish Design Consultants to carry out a report on the alterations in the attic. Adam McLeish from McLeish Design consultants produced a report on the attic alterations dated 2 February 2025. Mr McLeish did not inspect the attic. The report proceeded on the basis that the flooring was in situ. The report contained load calculations in the attic. His calculations were based on photographs of items previously stored in the attic. It concluded damage to the upstairs coombe including cracked plasterwork and popped screwheads were as a result of the attic flooring and storage of excessive items. McLeish Design Consultants had no evidence of the weight of items that had been previously stored in the attic when the flooring had been in place. The report concluded that the flooring be removed, and the loft hatch be replaced. The flooring had been removed in June 2024. The report stated that it was unclear as to whether or not unwarranted structural modifications were undertaken when the flooring and new loft hatch were installed. Mr McLeish recommended that the roof structure should be inspected after the removal of the flooring to ensure there were no structural issues. The Applicants have not produced such a report.

137. The large gate to the side of the Property leads to a field owned by the Applicants. The Applicants previously used this field for farming livestock. The gate and the field do not form part of the Property. Mr Bennie is fearful of allegations of harassment being made to the Police by the Respondent or her husband and accordingly does not use the gate to access the field. The Applicants currently rent the field out to a third-party in winter. The Applicants have not taken any legal advice with regards to their use of the gate to access their field.

138. Mrs Bennie has some health issues.

139. The Respondent and her husband have no right to prevent the Applicants from using the gate to access the field. Neither the Respondent or her husband have prevented the Applicants from using the gate to access the field. The Respondent has no objection to the Applicants using the gate to access the field.

140. The Respondent’s daughter has recently undergone emergency surgery and now requires to use a stoma bag. She requires further surgery and will need to use a wheelchair through her recovery. The Property and the Respondent’s daughter’s bedroom and ensuite bathroom are accessible and afford her independence and privacy.

Findings in Fact and in Law

141. The Tribunal is satisfied that on the facts, Ground 11(2) (a) of Schedule 3 to the 2016 Act has been established in that the Respondent has failed to comply with a term of the tenancy.

142. The Tribunal is not satisfied that it is reasonable to issue an order for eviction on account of those facts in terms of Ground 11(2) (b) of Schedule 3 of the 2016 Act.

Reasons for Decision

143. The order for eviction is sought in terms of Section 51 and paragraph 11 of Schedule 3 to the 2016 Act. Not only does the Tribunal have to be satisfied that the Respondent has breached the terms of the tenancy agreement, but the Tribunal also has to be satisfied that it is reasonable to evict.

144. The Tribunal accepted that all parties were credible and believed their positions to be correct. However, the difficulty lies is that the lines between the original friendship between the parties and the landlord and tenant relationship had become blurred. As a result, both parties up to April 2023 treated their relationship more casually and informally than a landlord and tenant relationship. Accordingly matters such as discussions regarding the painting of the Property and the fitting of wardrobes clearly only went so far. The Applicants never insisted on formal written permission, nor did the Respondent formally request permission. These appeared to be friendly discussions between the parties which both parties accepted was a reasonable way to proceed. It would appear some of these discussions were made in the excitement of the early days before and just after the tenancy commenced. It may be that part of the issue at that stage was that there was initially no written tenancy agreement and as such those discussions were the basis upon which parties had agreed to proceed. The Applicants accept that the wardrobes installed by the Respondent are in fact free standing. The Applicants did not insist that consent be given for decoration or the alterations to the garden, which on Mrs Bennie's evidence she had seen, but had never objected to. The Applicants cannot now, a number of years later, complain that no formal consent was given for e.g., painting or the alterations to the garden, when they themselves had never taken issue with these matters. There was evidence that the painting of the Property and the alterations to the garden had taken place by the time of the first formal inspection in May 2021, but there was no evidence as to when the decoration had taken place or when the garden had been dug up and replaced with decking and a pergola. It was not until approximately six months after the tenancy commenced that there was any obligation on the Respondent to seek prior written consent for any

alterations to the Property when the written tenancy agreement was entered into. Some of the alterations which the Applicants now complain about appear to have been made prior to the written tenancy agreement being entered into.

145. The Respondent did not seek formal written consent as required by the tenancy agreement or even mention to the Applicants that she was installing attic flooring and replacing the attic hatch. This was something that the Applicants objected to immediately, for fear that the structural integrity of the Property had been compromised. That is entirely understandable. This was clearly a turning point in the parties' relationship. Whilst the Tribunal accepts that Mr Rourke texted Mr Bennie in May 2019 regarding installing some attic flooring which Mr Bennie did not object to, it cannot be said that four years later that same exchange of text messages covered the situation where the Respondent wished to replace the attic hatch and install further flooring to the roof trusses. These were clearly new alterations to the Property and were more than cosmetic. The Respondent should have sought the consent of the Applicants prior to carrying out these works. She did not and as a result she was in breach of Clause 27 of the tenancy agreement.

146. There is no evidence before the Tribunal that there has been any structural damage to the Property as a result of the flooring being attached to the trusses. Mrs Bennie is simply not qualified to state that long-term damage would have been caused to the Property with the extra weight on the roof trusses. Both parties submitted structural engineers' reports. The Applicant's report by McLeish Design Consultants was prepared without the benefit of an inspection. The report was prepared on the premise that the flooring remained when as a matter of fact by the time the time they came to prepare their report in February 2025 the flooring had not been *in situ* for approximately nine months. The Tribunal accepted the Respondent's position that the Applicants' report was predicated on information given by the Applicants and conjecture as the weight of items that had been previously stored in the loft. In cross examination, Mr Bennie agreed with the Respondent that it was not possible to tell how much the boxes in the attic weighed from the photographs. That puts into question the calculations made in the report submitted on behalf of the Applicants. McLeish Design Consultants had recommended a report on the roof be prepared. No such report was produced by the Applicants.

147. The Tribunal preferred the Respondent's report dated 22 October 2024 prepared by Douglas McDonald from Surveying Solutions. Mr McDonald inspected the attic. As such his report acknowledged that the flooring had in fact been removed. He could see no visible signs of cracking, bulging to the plasterboard below or any signs that the loft had been subject to excessive loads. His report concluded there were no remedial works required to the attic and that the new loft hatch did not have a negative impact on the Property. The Tribunal was of the opinion that Mr McDonald's report provided a first hand and up to date assessment of the attic and roof based on a physical inspection.

148. The issues with regards to access which started to arise after April 2023 on occasions come down to a simple lack of clear communication between

parties. Some emails which the Applicants rely on as a basis for stating the Respondent refused access do not in fact request access or if they do, do not request access for a specific date. Some requests for access gave insufficient notice in which case the Respondent is under no contractual obligation to give access. The Tribunal is of the opinion that the communication between parties could have been a lot less complicated than it was; dates and time were changed, contractors failed to appear, the contents of emails were misconstrued, requests were not always pursued and months went by without access requests being followed up for the boiler inspection. That was clearly all very frustrating for the Applicants. However, their perception that access was being refused is a misconception probably brought about due to the sensitivities surrounding the case and the ill feeling between parties. The Respondent also could have been more forthcoming on occasions. She certainly did not revert back to the Applicants when they requested access for Bastion to carry out a survey of the Property. She was in breach of Clause 19 of the tenancy agreement by doing so. Further the Applicants are wrong if they think the Respondent can refuse them access to their own field by using the gate next to the Property. The Respondent has no right to do so which she acknowledged throughout the proceedings.

149. On the facts the Respondent has breached the tenancy agreement. Ground 11 of schedule 3 of the 2016 Act is however a discretionary ground of eviction. As well as being satisfied the facts have been established to support the Ground, the Tribunal has to be satisfied that it is reasonable to evict.

150. The leading Scottish authority on reasonableness is the case of *Barclay v Hannah 1947 S.C. 245* at 249 per Lord Moncrieff ; the Tribunal must establish, consider and properly weigh the *"whole of the circumstances in which the application is made"* Anything that might dispose the Tribunal to grant or refuse the order is relevant. The Tribunal must *"objectively balance the rights and interests of both parties"* (*Manson and Downie v Turner (2023) UT 38 at paragraphs 41 and 42*).

151. The Tribunal must consider the whole of the circumstances in which the application is made. It has been said that a judge or in this case a Tribunal should "*give such weight as he thinks right to the various factors in that situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account*" (Lord Greene in *Cumming v Dawson [1942] 2 All ER 653 at 655*). The Tribunal has taken account of what has been said on behalf of both parties and given what it considers is appropriate weight to each set of the facts and circumstances in order to reach a determination.

152. Whilst the Tribunal accepts that it is not necessary for there to have been structural damage to the Property as a result of the flooring being installed for the breach of the tenancy agreement to have occurred that was a factor that the Tribunal took into account when determining whether it was

reasonable to evict. Had there been structural damage to the Property the balance of reasonableness would have weighed more favourably towards the Applicants. There is however no evidence of structural damage. Further the Tribunal took into account that the Respondent had removed the flooring when she found out she was being accused of damaging the Property. The Tribunal also took into account that the Respondent has offered to replace the hatch or pay for its replacement.

153. The Tribunal does not consider a refusal to grant access to be so serious a breach of the tenancy agreement as to merit eviction. It is certainly not reasonable to evict when the refusal to give access to Bastion did not prevent the Applicants from obtaining a valuation of the Property. As a matter of fact access was not persistently refused, even if in the Applicants' minds it felt like it was, and even taken with the failure to seek permission to lay the flooring and install the attic hatch, the Tribunal does not consider that the Respondent and her family should be deprived of being able to continue to live in the Property which they have made their home over the last six years or so.

154. It was clear to the Tribunal that the relationship between the parties had broken down. The Tribunal weighed that up in determining whether it was reasonable to evict. Whilst it was a factor the Tribunal weighed towards the Applicants, it was not a deciding factor as it appeared that parties had accepted they would have to conduct themselves going forward in a way that was appropriate for a landlord/tenant relationship in terms of the tenancy agreement.

155. The Tribunal took into account the fact that the Respondent and her husband have a teenage daughter who attends the local secondary school. The Tribunal gave some weight to this in determining whether it was reasonable to evict and appreciated that would be important for her to continue to be educated in the same school.

156. The Tribunal noted that Mrs Bennie was suffering from some health problems. No details were supplied to the Tribunal. Accordingly, the Tribunal could only give some weight to that and had no information before it as to how these issues impacted on the matter. On the other hand, the Tribunal gave considerable weight to the fact the Respondent's daughter was facing some serious and debilitating health problems. The Property provides the Respondent's daughter a degree of privacy and independence. The Tribunal considered it would be more difficult for the Respondent to rent a property to meet her daughter's needs even in the short term and even though the Respondent hoped to be in a position to buy a property.

157. Having carefully weighed up all the competing factors the Tribunal is satisfied in all the circumstances it is not reasonable to evict.

Decision

158. The Tribunal refuses to grant an order to evict, it not being reasonable in all the circumstances to do so.

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 Upon 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.

Shirley Evans

31 July 2025

Legal Member **Date**