



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 24 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and Rule 109 of the Rules.

Reference number: FTS/HPC/EV/24/1374

Re: Property at 14 Courthill Street, Dalry, KA24 5AP (“the Property”)

The Parties:

Axelrod Capital Ltd., 63, Haskucks Gree Road, Shirley, Solihull, B90 2ED (“the Applicant”) per their representatives Hovepark Lettings Ltd, 56, Hamilton Street, Saltcoats, KA21 5DS (“the Applicant’s Representatives”)

Ms Fatou Ndiaye 14 Courthill Street, Dalry, KA24 5AP (“the Respondent”)

Tribunal Members:

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

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground for eviction had not been established and so refused the Application.

Background

1. By application received between 25 March 2024 and 30 May 2024 (“the Application”), the Applicant’s Representatives applied to the Tribunal for an

Order for eviction and possession of the Property based on Ground 11 of Schedule 3 to the Act, the tenant has breached the tenancy agreement.

2. The Application comprised the following: i) copy Tenancy Agreement between the Parties dated 23 May 2019; ii) copy Notice to Leave dated 13 February 2024 with execution of service by Sheriff Officers dated 16 February 2024; iii) Copy correspondence to the Respondent to evidence the Respondent's failure to allow access to the Applicant; iv) Section 11 Notice to North Ayrshire Council being the relevant local authority dated 21 March 2024 together with proof of receipt.

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 18 October 2024 at 14.00 by telephone conference. The CMD was intimated to the Parties, and, in particular, to the Respondent by Sheriff Officers on 17 September 2024.

4. Prior to the CMD, the Applicant's Representatives submitted a letter stating that access had been obtained via a Sheriff Court warrant. The letter stated that the Respondent was in a state of distress and that unauthorised alterations had been made to the Property. Also prior to the CMD, the tribunal chamber received notification that the Respondent had appointed representatives, CHAP, Michael Lynch Centre for Enterprise, 71, Princes Street, Ardrossan, KA22 8DG ("CHAP").

5. The CMD took place on 18 October 2024 at 14.00. The outcome of the CMD was that it was adjourned to 19 December 2024 for CHAP to lodge written representations in respect of the Respondent's opposition to the Application and for the Applicant's Representatives to respond further. The Tribunal issued a Direction in that respect. Following the CMD, the Respondent advised that Tribunal that CHAP no longer represented her. She submitted her own Note which set out her position that, although she accepted that Clause 1.49 of the tenancy agreement obliged her as tenant to allow access for inspections and works, it did not provide for routine inspections. She accepted that she had not allowed access.

6. The adjourned CMD took place on 19 December 2024 at 10.00 by telephone. The Applicant was not present and was represented by Ms. McDiarmid of the Applicant's Representatives. The Respondent was present and was not represented. The outcome of the adjourned CMD was that a Hearing of evidence was fixed.

7. The Tribunal issued the following Direction:

"The Respondent.

1. The Respondent, Ms. Ndiaye, is required to submit:

i) A new statement of her opposition to the Application. The statement should explain why she has come to the view that the Applicant as landlord has an ulterior motive and should set out what falsehoods are in the Application.

ii) Evidence in support of the above statement;

iii) A timeline of all interactions between her and the Applicant or Applicant's agents in respect of the Applicant's requests for access. This should detail all meetings, telephone calls, correspondence and messages and should include interactions with the Applicant's letting agents and representatives on their behalf;

iv) The personal circumstances of the Respondent and her family who reside with her, if any, with regard to the effect that an eviction order will have on her;

The Applicant

The Applicant, Axelrod Capital Ltd, is required to submit:

v) A timeline of all interactions between them, their agents and the Respondent in respect of the Applicant's requests for access. This should detail all meetings, telephone calls, correspondence and messages and should include interactions with the Applicant's letting agents and representatives on their behalf;

vi) Details of the Applicant's rental property portfolio, if any and

vii) Any other matters which the Applicant considers the Tribunal should have regard to in reaching a decision on reasonableness in respect of the eviction application."

8. Both Parties complied with the Direction.

Hearing

9. A Hearing of evidence was held on 10 October 2025 at the Glasgow Tribunal Centre at 10.00 am. The Applicant was not present and was represented by Ms. McDiarmid of the Applicant's Agents. The Respondent was not present and was not represented. The Tribunal was satisfied that she was aware of the Hearing and so proceeded in her absence.

10. Ms. McDiarmid confirmed that an eviction order was sought and explained that the Respondent did not allow access for routine annual inspections and for the regulatory health and safety certification and so was in breach of clause 1.49 of the tenancy agreement. She explained that routine inspections were required to ensure that the Property was being maintained and was in a good state of repair and that the lack of inspections, coupled with a lack of reports of repairs, was concerning.

11. The Tribunal explained to Ms. McDiarmid that it had to be satisfied on three points: the correct statutory procedure had been carried out, that the grounds that for the eviction are satisfied and that it is reasonable to grant the Order.

12. With regard to the ground for eviction, the Tribunal drew Ms. McDiarmid's attention to the wording of clause 1.49 in the tenancy agreement and noted that, whilst the clause obliged the Respondent to allow access for "authorised purposes", it did not oblige her to allow access for routine inspections. Ms. McDiarmid accepted the limitations of the wording of clause 1.49 but stated that, at the date of issue of the Notice to Leave being 13 February 2024, the Respondent had refused access for the Electrical Installation Condition Report (EICR) and stated that the Respondent continued to refuse access for Legionnaires lead water testing. The Tribunal pointed out that request for access for the EICR was the same date as the issue of the Notice to Leave and the date for the inspection postdated the date of the Notice to Leave and so, at the date of the Notice to Leave, access had not been refused.

13. In response to questions from the Tribunal with reference to the Respondent's Note and her replies to the Direction, Ms. McDiarmid accepted that the Respondent

had allowed access for the EICR and for annual gas safety certification. She accepted that the Respondent's refusal to grant access had been in respect of one of her colleagues insisting on a routine inspection at the same time as the EICR inspection and not in respect of the EICR inspection itself. Ms. McDiarmid accepted that the requests for access for Legionnaires lead water testing postdated the date of the Application.

Issue for the Tribunal

14. The first issue for the Tribunal was whether or not the correct statutory procedure had been carried out. The Tribunal was satisfied that this was so. The second issue for the Tribunal was whether or not there were and are grounds for the Eviction Order. Thereafter, the issue is reasonableness to grant an Order.

Findings in Fact

15. From all of the information before it, the Tribunal made the following findings in fact: -

- i) There is a private residential tenancy of the Property between the Parties;
- ii) A Notice to Leave was issued by the Applicant to the Respondent;
- iii) The Ground cited in the Notice to Leave is Ground 11, breach of a tenancy condition;
- iv) The alleged breach is refusal to allow access in terms of Clause 1.49 of the tenancy agreement;
- v) There is no evidence of a refusal to allow access in terms of Clause 1.49 of the tenancy agreement;
- vi) Accordingly, there is no breach of a tenancy condition.

Decision and Reasons for Decision

16. Having found that there is no evidence of a breach of the tenancy agreement and so no evidence that the ground for eviction is satisfied, the Tribunal refused the Application.

17. This Decision is unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Karen Moore

Legal Member/Chair

10 October 2025

Date