



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 33 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/23/0204

**Re: Property at Ballomill Cottage, Lawfield and Ballomill Farm, Ladybank, Fife,
KY15 7SJ (“the Property”)**

Parties:

**William Ainslie Martin Smith and Alex Christine Smith as Partners and Trustees
for the Firm A & A Sm, Ballomill Farmhouse, Ladybank, Cupar, KY15 7SJ (“the
Applicants”)**

**Mr Jonathan Drummond, Ballomill Cottage, Lawfield and Ballomill Farm,
Ladybank, Fife, KY15 7SJ (“the Respondents”)**

Tribunal Members:

Richard Mill (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an eviction order be granted against the respondent**

Introduction

1. This application is under rule 66 and section 33 of the Housing (Scotland) Act 1988. The application seeks an eviction order.
2. Intimation of the application and of the Case Management Discussion (‘CMD’) was effected upon the respondent by Sheriff officers on 22 March 2023.
3. The applicants were represented Mr Rory Mellis of Thorntons Solicitors. The respondent was represented by Ms Shona Morrison of Frontline Fife, Homelessness Service.

Findings and Reasons

4. The property is Ballomill Cottage, Lawfield and Ballomill Farm, Ladybank, Fife KY15 2SJ. The applicants are William Ainslie Martin Smith and Alex Christine Smith as partners and trustees for the firm A & A Smith. The firm of A & A Smith is the heritable proprietor of the property. The respondent is Mr Jonathan Drummond who is the tenant.
5. The parties entered into a short assured tenancy which commenced on 1 April 2016. The initial period of let was between 1 April 2016 and 2 October 2016 and has continued on a month to month basis since then. An AT5 Notice under section 32 of the 1988 Act was served on the respondent prior to the creation of the tenancy.
6. On 12 October 2022 the applicant served upon the respondent a Notice to Quit. In the terms of the said notice to quit, the applicant gave notice to the respondent that he would require to remove from the property on or before 2 January 2023 which was an ish date. Further, on 12 October 2022 the applicant served upon the respondent notice under section 33(1)(d) of the Housing (Scotland) 1988 stating that possession was required of the property as at 2 January 2023. Evidence from the post office track and trace system evidences that these documents were received by the respondent on 15 October 2022.
7. The short assured tenancy between the parties has reached its ish. Tacit relocation is not operating. No further contractual tenancy is in existence. The applicant has complied with the terms of section 33(1)(d) of the Housing (Scotland) Act 1988.
8. The tribunal also requires to consider the reasonableness of the eviction order being granted.
9. The applicants seek to evict the respondent because substantial repair works are required to be undertaken at the property to make it meet the repairing standard under the 2006 Act. These works cannot be reasonably undertaken with a sitting tenant in occupation.
10. The respondent has lived in the property now for 23 years. There were previous lease arrangements in place with the former heritable proprietors. He is willing to remove himself but cannot do that quickly. He is not opposed to the eviction application in principle. He is a single man with no dependents and no support structure in place. He has cancer and is currently undergoing chemotherapy. He is therefore vulnerable.
11. The respondent is in the process of securing a park home. It is unknown when the arrangements for him to move will be completed. A section 11 notice under the Homelessness etc (Scotland) Act 2003 has been issued. In the event of an eviction order being made the local authority is under a statutory duty to make

suitable alternative accommodation available. It was submitted that he would very much hope to vacate the property by the end of July 2023.

12. The current application is affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022. Any eviction granted cannot be implemented until the earlier of (a) the day following the end of a period of 6 months beginning with the day on which this order was granted as specified above, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the 2022 Act, which is currently 30 September 2023.
13. The tribunal concluded that in all of the circumstances it was reasonable to grant the eviction order.

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.

R. Mill

28 April 2023

Legal Member/Chair

Date