



**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/24/4184

Re: Property at Dower Cottage, Tillyrie, Milnathort, KY13 0RW (“the Property”)

Parties:

**Mr Mark John Thomson (Power of Attorney for Kathleen Stewart), Tillyrie Farm,
Tillyrie, Milnathort, KY13 0RW (“the Applicant”)**

**Mr Dominic Jelinek, Ms Eliska Finsterle, Dower, Cottage, Tillyrie, Milnathort,
KY13 0RW; Dower Cottage, Tillyrie, Milnathort, KY13 0RW (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

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

Background

1. The background to the case is laid out in the Case Management Discussion Note dated and the Hearing Note dated. The documents relied upon are also summarised in those Notes.
2. Subsequent to the Hearing set for 10th October 2025 being postponed the Respondents sent an email to the Tribunal dated 18th October 2025 seeking to make amendments to the said Hearing Note.

Hearing

3. The Hearing took place by videoconference on 28th October 2025. The Applicant was present and was represented by Mr Deane of Bannatyne,

Kirkwood and France, Solicitors. The Respondents were present and represented themselves. An interpreter translated for the Respondents.

4. The Tribunal confirmed to the Respondents that it had considered their email of 18th October 2025. The Tribunal explained that there was no procedure or Rule allowing the proposal of amendments to a Note by the Tribunal, and, given that the postponement had been granted there was no merit in spending time allocated for the Hearing in discussing it.

5. The Tribunal confirmed with the parties that the issues in dispute, as per the CMD Note were:

- Whether the Notice to Leave was served by email
- Whether the Applicant's daughter intends to move in to the property
- Is it reasonable to grant an order for eviction

Evidence

6. Miss Sandra Wooley, Solicitor at Bannatyne, Kirkwood and France, gave evidence for the Applicant. She said that she was instructed by CKD Galbraith, on behalf of the Applicant, to serve a Notice to Leave on the Respondents. She said that she prepared the Notice to Leave and identified the document as number 2/1 in the Applicant's Inventory of Productions. She said that she was instructed that Ground 5 of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the Act") was to be used. She said that she used the lease to find the details of the tenants. She identified the lease she had used as document number 1 in the Applicant's Inventory. She identified the Communication Method agreed in the lease, and shown on page 3, as email to the email address given in the lease, which was domelfin@gmail.com.
7. Miss Wooley identified document 2/2 in the Applicant's Inventory as the email she sent to the Respondents at domelfin@gmail.com, attaching the Notice to Leave. She said that she sent it on 2nd February 2024. She said that she programmed the sending of the email to provide a delivery receipt. She said that she received the delivery receipt shortly after sending the email and identified it as document 2/3 of the Applicant's Inventory. She said that she did not receive anything to suggest that the email had not been delivered. She did not receive a bounceback email, on the contrary she received a delivery receipt.
8. The First Named Respondent asked Miss Wooley how she could confirm that the email was properly received by the Respondents. She answered that she followed the usual process and received a delivery receipt. She had no reason to believe that it had not been delivered. The First Named Respondent asked Miss Wooley about the servers that the email was sent from and to. Miss Wooley said again that she had followed normal procedure. The First Named Respondent asked Miss Wooley if she had any other evidence to suggest that the email had been received. She said that the delivery receipt was her evidence, She said that it was her understanding of the legislation that what she had done was sufficient to establish that the Notice had been sent.

9. The Applicant gave evidence. He said that his wife, Kathleen Thomson, owns the property, and he is acting in terms of a Power of Attorney by her in his favour. He said that he lives at his home address with his wife and his daughter, Rebecca. He described Dower Cottage, the subject property, as a stone building extending to a story and three quarters high, with two but possibly three, bedrooms. His wife purchased it from the farm, and they then built the property they live in, in 2014. When they moved in to the new property they made a decision to let out Dower Cottage rather than sell it. It has been let out since 2015. He said that he managed the property along with the letting agent, CKD Galbraith. Mrs Thomson had managed it until she suffered a stroke three years ago. Mr Thomson said that he instructed the letting agents that a Notice to leave should be served in terms of the lease.
10. Mr Thomson was referred to the hospital discharge note , which is number 5 in the Applicant's Inventory. He said that care was out in place following his wife's discharge. He said that carers provided by the NHS come in four times per day and the district nurse comes in every morning to administer medication. He attends to his wife's medication in the evening. He said that his mother, and his daughter, Rebecca, have both had training to administer the medication.
11. Mr Thomson was referred to the Affidavit of his daughter, dated 3rd September 2024, number 4 in the Pursuer's Inventory. He said that his wife struggles with her mobility. She has a plastic brace to keep support in her leg. She needs assistance with walking. She has no use of her right arm. The stroke also affected her speech so communicating can be problematic. He said that the Notice to Leave was served as Rebecca would like to have her own place to live and to make it her home.
12. The First Named Respondent asked Mr Thomson why, when they were discussing repairs that needed to be done, he had not mentioned to the Respondents that he wanted the property back. Mr Thomson said that he had left it in the care of the professionals and was under the impression that they were in contact. The First Named Respondent asked Mr Thomson if, given the length of time between giving notice and getting a date for the Tribunal he did not think it strange that nothing seemed to be happening regarding them leaving. Mr Thomson said that he had not given it any thought as he did not know what the timescales were. He left it to the professionals. The First Named Respondent asked why CKD Galbraith did not serve the Notice. Mr Thomson said that it was a legal process and they had brought in solicitors to deal with it. The First Named Respondent said that if the email had come from CKD Galbraith they would have received it.
13. The First Named Respondent asked Mr Thomson how it would improve his wife's care if his daughter was living in the cottage rather than where she was living at the moment. He said that he would not see any difference.
14. Rebecca Thomson gave evidence. She adopted her Affidavit, dated 3rd September 2024, as her evidence. She expanded on the Affidavit. She said that her mother has lost use of the right hand side of her body, which is her

dominant side. There are many basic tasks which she is now having to do with the left side. She has lost a lot of confidence. She needs a hand to stand and to have someone to make sure that she doesn't fall over when she tries to walk. She has to have things passed to the correct side, and things have to be opened for her to use. Miss Thomson said that she wants to move in to the cottage as her mother is now a bit more able and needs a bit more space. Miss Thomson said that if she moves out it will give both her mother and herself a bit more space. She said that the cottage is suitable for her. She works on the farm and she needs to be nearby both for caring for her mother and for her work and Dower Cottage is just up the road. Miss Thomson said that she wishes to live at Dower Cottage long term. If the order is granted she will move in as soon as she can.

15. The First Named Respondent asked Miss Thomson about the size of her current accommodation. She said that she has her own room, but with the farm work and everything else she does she needs more space, and so does her mother. She said that if she was living at Dower Cottage her mum's care would improve as she will have more space for herself and should get more confident. She said that if the Order is refused, she will need to try to find somewhere else to live nearby. She said that she does not own any property, and wishes to live at Dower Cottage long term.
16. The Second Named Respondent gave evidence. She said that they moved in to the property in 2022. They signed the lease with the agent, CKD Galbraith. The lady from the agency confirmed when asked that it would be a long term lease. This was important to them as they have four children and moving is difficult. She spoke of issues with the water supply and being without tap water for six months, and their willingness to put up with this, to support the fact that they enjoyed living in the property and that it was the right tenancy for the family. She also spoke of difficulty with communication with Mr Thomson regarding repairs. She said that they did communicate with him often.
17. The Second Named Respondent said that they were surprised that Mr Thomson did not mention that the Notice to Leave had been served and were shocked when the bailiffs came to serve them with the Tribunal papers. They contacted the Council to see if any accommodation could be provided. They were told that there was nothing appropriate for the size of their family in Perth or Fife. She said that they wish to stay in the property as it suits the family, the children have friends and are involved in after school activities. They do not want to have to move to Aberdeen even although it might be cheaper. She said that they understand that Miss Thomson wishes to move in to the property to be close by but it is more difficult for them, with four children, to find something else.
18. The Second Named Respondent highlighted that Mr Thomson had said that the care of his wife wouldn't change whether his daughter lives at Dower Cottage or not. She said that for them the situation would not be the same.

19. Mr Deane asked the Second Named Respondent about the Notice to Leave. He confirmed with her that the email address given in the lease was domelfin@gmail.com and that both Respondents have access to it. He confirmed with her that they both had access to it in February 2024 and he confirmed with her that the Communication Method laid out in the lease was email to domelfin@gmail.com. She reiterated that the Respondents had not received the email of 2nd February 2024 serving the Notice. She said that while she accepted that Miss Wooley had sent the email they had no evidence that the Respondents had received it.
20. The First Named Respondent gave evidence. He said that he accepted that the landlord's circumstances could change, but he felt that there had not been proper communication. Any issues in relation to the tenancy had always been dealt with by the agent, CKD Galbraith. They always made sure that the Respondents had received any messages they sent. His issue was that the notice to leave wasn't served in any other way, for example by letter. He would have expected this as it was an important document.
21. The First Named Respondent said that it would be difficult for them to just pick up and go, financially, physically and in every way. The children are aged 8, 6, 4 and 2. The First Named Respondent is a software developer working from home, and the Second Named Respondent is a full time mum to the children.

Submissions

22. Mr Deane invited the Tribunal to grant the Order as sought. He said that the witnesses for the Applicant were all credible and reliable. He asked that their evidence be accepted. He said that the Applicant had complied with all legal and procedural requirements. He said that the Respondents have had ample time to find alternative accommodation. He said that the Applicant's position and Miss Thomson's desire to occupy the property should take precedence over the Respondents' occupation of the property.
23. The Second Named Respondent said that they would like to remain living in the property as they have been there for a long time, a move would be difficult and the house is a good size for them. At the beginning there were a lot of issues, but they remained because the property was suitable for them. The children have friends and clubs and are settled. It would be difficult for them to find something else in the area.

Expenses

24. Mr Deane made a motion for the expenses of preparing for and attending the Hearing scheduled for 10th October 2025. He said that proceedings had been delayed on two occasions due to the Respondent being absent from the UK. He said that the Respondents chose to leave the country knowing that the Hearing had been scheduled for 10th October.

25. The Respondent opposed the motion based on what they had put forward in the emails seeking a postponement.

Findings In Fact

- i. The Applicant is the owner of the let property;
- ii. The parties entered in to a Private Residential Tenancy Agreement ("PRT") commencing on 13th September 2022;
- iii. The Communication Method included in the PRT was by way of email to domelfin@gmail.com;
- iv. Notice to Leave dated 2nd February 2024 was prepared and served by Sandra Wooley, Solicitor;
- v. Miss Wooley served the Notice to leave by attaching it to an email which she sent to domelfin@gmail.com on 2nd February 2024;
- vi. Miss Wooley received a delivery receipt for the email;
- vii. Section 11 Notice was served on the local authority;
- viii. Rebecca Thomson is the daughter of the Applicant/ landlord;
- ix. Rebecca Thomson intends to occupy the property as her only or principal home for at least three months;
- x. The landlord suffered a stroke in 2022;
- xi. Rebecca Thomson assists the Applicant with care and medical treatment;
- xii. The Respondents live in the property with their four children, ages 8, 6, 4 and 2
- xiii. The First Named Respondent is a software developer and works from home;
- xiv. The Second Named Respondent is a full time homemaker;
- xv. The Respondents' children attend school and nursery locally and are also involved in other activities locally;
- xvi. The Respondents have not been able to secure local authority accommodation.

Reasons For Decision

26. The Tribunal is satisfied that the Notice to Leave was properly served on 2nd February 2024 by Miss Woolley sending it by email to domelfin@gmail.com. This is the Communication Method in the lease, the lease having been signed by the parties. The Respondent may be of the view that some proof of receipt should be required, and that a document of such importance should be sent by post, but this is not the law, nor is it what was agreed in the contract.

27. The Tribunal heard from a number of witnesses and found them all to be credible and reliable. This is not a case where material facts are in dispute.

28. Ground 5 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 is as follows:

(1) It is an eviction ground that a member of the landlord's family intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—

(a) the family member is incapable of having, or expressing, that intention, and

(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

(a) in a qualifying relationship with the landlord,

(b) a qualifying relative of the landlord,

(c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or

(d) in a qualifying relationship with a qualifying relative of the landlord.

(5) For the purposes of sub-paragraph (4)—

(a) two people are in a qualifying relationship with one another if they are—

(i) married to each other,

(ii) in a civil partnership with each other, or

(iii) living together as though they were married,

(b) "a qualifying relative" means a parent, grandparent, child, grandchild, brother or sister,

(c) a relationship of the half blood is to be regarded as a relationship of the whole blood,

(d) a person's stepchild is to be regarded as the person's child,

(e) a person ("A") is to be regarded as the child of another person ("B"), if A is being or has been treated by B as B's child.

(6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.

(7) Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.

29. The Tribunal is satisfied from the evidence that Rebecca Thomson intends to live in the let property in terms of paragraph 1 of Ground 5, and that she intends to occupy it as her only or principal home for three months in terms of paragraph 2 of the Ground. She is the daughter of the Applicant, who is the landlord, and therefore she is a member of the landlord's family in terms of paragraph 3 of the Ground.

30. In terms of paragraph 2(b) the Tribunal now has to determine if it is reasonable to grant the order on account of the fact that Rebecca Thomson intends to occupy the let property as her only or principal home for at least three months.

31. The Tribunal considered all the evidence before it.

32. The Applicant is the owner of the property. The tenancy agreement is a standard Private Residential Tenancy agreement and is entered in to with no limit of time, either short term or long term. The Applicant's daughter wishes to occupy the property. Miss Thomson works on the farm and living in the property would allow her to be near her work and also be near to the Applicant, who still needs assistance after her stroke. The Tribunal did note that Mr Thomson did not think that Miss Thomson living in the cottage would make much difference to the Applicant's care. However, from the evidence Miss Thomson gave she feels that her mother needs some space to allow her to do more things for herself. She also wishes to have more space for herself. She is 29 years of age, and it is not unreasonable for her to wish to have her own accommodation. She said that if the Order is refused she will need to rent somewhere locally.

33. The Respondents have occupied the property for a number of years with their four children. They like the property, despite its condition, and consider it suitable for their needs. Their children are settled in the local area. They are finding it difficult to secure alternative accommodation as two local authorities have told them that they have nothing suitable for a family of their size. They do not wish to move out of the area, although they appreciate that it might be cheaper elsewhere. The Tribunal noted that the First Named Respondent works from home, and the Second Named Respondent is a full time homemaker.

34. The Tribunal considers that each party has valid arguments in relation to reasonableness, but the balance is tipped in favour of the Applicant.
35. By its nature a Private Residential Tenancy agreement is opened ended, it is not granted for a fixed period. Circumstances can change. The position here is that the Applicant's daughter wishes to live in the property as her only or principal home. She works on the farm, and it is convenient for her. That is a reasonable position, whether or not she is also providing care for the Applicant.
36. The Respondents are settled in the property with their children. They say that it will not be easy to just pick up and go. They are finding it difficult to obtain other suitable accommodation in the area at an affordable price. However, the Second Named Respondent is not tied to that particular area due to work, he works from home. Families in rented accommodation often require to move for a variety of reasons. Families of all types, in all types of accommodation, often require to move for a variety of reasons.
37. The Tribunal has decided, given the time of year to suspend extract of the order until 28th January 2026. It would not be reasonable to expect the Respondents and their children to move out of the property prior to Christmas. Agencies who they may require to contact for assistance tend to shut down over the festive period. Suspending extract should allow some time for alternative accommodation to be secured.
38. On the matter of expenses, the Tribunal notes that Rule 40 of the Tribunal's Rules states:
- The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.*
39. The Tribunal is not satisfied that it has been demonstrated that the Respondents have behaved unreasonably. Leaving the country shortly before the original Hearing date was inconvenient, but the Tribunal is not prepared to accept that it was done with the intention of thwarting the process. Establishing unreasonable behaviour leading to an award of expenses is a high bar to get over.

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.

Alison Kelly

Legal Member/Chair

Date

28 October 2025