

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 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/25/5447

Re: Property at 101 Hamilton Street, Barnhill, Dundee, DD5 2NW (“the Property”)

Parties:

Mr Mark Hutton, 22 North Balmossie Street, Barnhill, Dundee, DD5 2TY (“the Applicant”)

Mr Ian McKenzie, Mrs Helen McKenzie, 101 Hamilton Street, Barnhill, Dundee, DD5 2NW (“the Respondents”)

Tribunal Members:

Robert MacDonald (Legal Member) and Angus Anderson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of paragraph 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) are met in this case. The Tribunal therefore made an eviction order under section 51 of the 2016 Act. In terms of section 54(1) of the 2016 Act, the Private Residential Tenancy between the parties will end on 5th November 2026.

Background

1. This is an application dated 17th December 2025 for an Eviction Order under Section 51 of the 2016 Act and Rule 109 of the First-Tier Tribunal for Scotland (Housing and Property Chamber) (Rules and Procedures) 2017, (“the Rules”). The Applicant relied upon Ground 4 of Schedule 3 to the 2016 Act as the ground for eviction, namely that the Applicant intended to occupy the let property as his only or principal home for at least three months.
2. The application was accepted by the Tribunal as valid and referred to a Tribunal for determination. A Case Management Discussion was set down to take place on 6th October 2026 by teleconference. The Tribunal gave notice of the Case Management Discussion to the parties in accordance with Rule 17 (2) of the

Rules. The Notice was served on the Respondent's by Sheriff Officers on 11th August 2026, by handing the paperwork to the Second Respondent.

3. The Tribunal invited the Respondents to make written representations to the application no later than 29th August 2026. No written representations were received by the Tribunal from the Respondents.

Case Management Discussion

4. The Case Management Discussion took place on 6th October 2026 at 2pm. The Applicant was personally present. There was no appearance on or behalf of the Respondents. The Tribunal were satisfied that they had been given proper notice of the Case Management Discussion. There was no explanation for their absence, and they did not attempt to log on to the teleconference during the Case Management Discussion. The Tribunal were satisfied that it was fair and reasonable to deal with the Case Management Discussion in the absence of the Respondents.
5. The Tribunal had the following documentation before it:-
 - a. Form E Application Form;
 - b. A Land Certificate confirming that the property was owned by the Applicant and his spouse;
 - c. Evidence that the Applicant was registered as a landlord;
 - d. A copy of a Private Residential Tenancy Agreement between the parties commencing 29th March 2023;
 - e. A copy of a Notice to Leave and proof of delivery of the Notice on the Respondents by email on 9th September 2025;
 - f. A copy Section 11 Notice in terms of the Homelessness etc. (Scotland) Act 2003 and proof of delivery to Dundee City Council on 17th December 2025;
 - g. A signed separation agreement between the Applicant and his spouse demonstrating that the parties had agreed that the property in question would be transferred to the Applicant.
6. The Tribunal heard submissions from the Applicant. Mr Hutton explained to the Tribunal that, as evidenced by the separation agreement, he and his wife had separated. There was a shared care arrangement in place in relation to their three children. The family home was to be sold, and it was agreed that Mr Hutton would have the let property transferred into his sole name. He needed somewhere to live and somewhere to accommodate the children during the time that they stayed with him. He was residing partly with friends and partly with his parents. He had no other permanent accommodation available to him. The property was a three bedroomed terraced property. He explained that he had served notice on the Respondents on 9th September 2025 and that when the notice had expired, they had intimated to him that they had been told by the Local Authority not to leave the property until an order was granted by the Tribunal. He did not have any up to date contact with them. He understood that the Respondents lived in the property with an adult child.

7. The Tribunal adjourned the Case Management Discussion to deliberate outwith the presence of the Applicant. After a brief adjourned, the Tribunal resumed the Case Management Discussion and confirmed the outcome.

Findings in Fact and Law

8. The Applicant and his wife are the owners of the property in terms of a Land Certificate registered in the Land Register for Scotland under title number ANG55901. The Applicant is the landlord, and the Respondents are the tenants of the property in terms of a Private Residential Tenancy Agreement entered into on 29th March 2023.
9. The Applicant sent the Respondents a Notice to Leave as defined by Section 62 of the 2016 Act by email on 9th September 2025. The terms of the Private Residential Tenancy Agreement provided for service of such Notices by email. In terms of the Notice, the Respondents were advised that an application might be submitted to the Tribunal for an Eviction Order after 9th December 2025.
10. A Notice in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003 was sent by the Applicant to Dundee City Council on 17th December 2025.
11. The Applicant and his wife have separated. There is a written agreement in place between the Applicant and his wife which deals with the division of property between them. In terms of the agreement, the property is to be transferred to the Applicant.
12. The Applicant and his wife have agreed that the care of their children should be shared between them.
13. The Applicant requires suitable accommodation for himself and his three children to reside in when they are in his care.
14. The property would provide suitable accommodation for the Applicant and his three children.
15. The Applicant intends to move into the property and to live there as his principal residence for at least three months.
16. The Applicant has no other property available to him to live in, in Scotland.
17. The Respondents reside in the property with an adult child.
18. There was no appearance by or on behalf of the Respondents, nor had any submissions been made to the Tribunal by them or on their behalf.
19. It is reasonable to make an Eviction Order.

Reasons for Decision

20. The Tribunal was satisfied having considered all the documentary evidence and the submissions from the Applicant at the Case Management Discussion, that it had sufficient information before it to make the relevant findings in fact and to enable it to reach a decision on the application. The Tribunal accepted the documentary evidence together with the submission from the Applicant. There was no contradictory evidence before the Tribunal.
21. The Tribunal was satisfied that the Applicant had complied with the statutory requirements in relation to service of a Notice to Leave on the Respondent, and that he had given appropriate notice to the Local Authority in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003.

22. The Tribunal was satisfied that the Applicant wished to move into the property following the breakdown of his marriage to live there and to look after his children during the time they spent with him. The property would provide adequate accommodation for him and his children. The Tribunal were satisfied that the Applicant had no other property available to him to live in.
23. The Tribunal considered the Respondent's circumstances insofar as they were known to the Tribunal. The information the Tribunal had was limited as the Respondent's had chosen not to lodge submissions or to appear in the Case Management Discussion. The Tribunal accepted that there was an adult child apparently residing with the Respondents and that they were at risk of eviction and potential homelessness but noted that the Respondents had not opposed the application.
24. The Tribunal considered whether it was reasonable to make an Eviction Order on account of the information available to it. The Tribunal required to identify the factors relevant to reasonableness and determine how much weight should be applied to them. The Tribunal attached considerable weight to the fact that the Applicant's marriage had broken down, that the family home was being sold and that the Applicant and his wife had agreed that the property could be transferred into his name. The Tribunal attached considerable weight to the fact that the Applicant wanted somewhere to live which provided adequate accommodation for himself and the children and that he had no other accommodation open to him. The Tribunal considered the fact that the Respondent's had not opposed the application.
25. The Tribunal were satisfied that the provisions of paragraph 4 of Schedule 3 of the 2016 Act have been met in this case.
26. Having considered the factors relevant to reasonableness, the Tribunal concluded that it was reasonable for an order for eviction to be granted.
27. The Tribunal decision was unanimous.

Decision

28. The Tribunal grants an order for eviction of the Respondents.

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.

Robert MacDonald

Robert MacDonald

6.10.2026

Legal Member/Chair

Date