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/26/0463**

**Re: Property at 23 Woodhead Court, Westfield, Cumbernauld, G68 9DB ("the Property")**

**Parties:**

**Mr Simon Patience, Mrs Jacqueline Patience, 6 Kirkwood Avenue, Stepps, Glasgow, G33 6GD ("the Applicant")**

**Miss Murran Mackay, Mr Jordan Sivewright Berry, 23 Woodhead Court, Westfield, Cumbernauld, G68 9DB ("the Respondent")**

**Tribunal Member:**

**Melanie Barbour (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 4 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016; but delays the enforcement of the order for four months.**

Background

1. An application was made under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017

Rules") seeking an order for recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The application contained: -
    a. the tenancy agreement,
    b. the notice to leave with evidence of service
    c. Section 11 Notice with evidence of service
    d. emails from landlord and letting agent that he wished to move into the property

3. A case management discussion took place on 7 August 2026. In attendance was the applicant's agent, Donna Cramb. The respondents were also in attendance. The parties were in dispute. The respondent considered it would not be reasonable to grant the order for eviction. The tribunal set a hearing in this matter to hear from both parties on why they should succeed. A direction was issued to regulate procedure.

4. The matter proceeded to a hearing on 28 October 2026. In attendance was the applicant's agent Donna Cramb. The respondents were also in attendance with their representative, Susan McStravick, Housing Network Advisor at Coatbridge Citizens Advice Bureau.

5. Prior to the hearing, the landlord submitted a letter advising that he required the property to live in as he and his wife were separating. The respondents' representative submitted a letter; it confirmed that the respondent was no longer opposed to the order for eviction; however, they sought a delay to the period of enforcement, to give the local authority time to find permanent property for the respondent.

Discussion

6. The applicant's agent advised that she was seeking an order for recovery of possession of the property under ground 4 (the landlord intends to live in the property).

7. The respondent's agent advised that the respondent was not opposed to the order being granted but asked that the order not be enforced for a period of six months. The agent advised that the local authority did not appear to have had a copy of the section 11, which was with the application. That had prejudiced the respondents. The respondents have currently got 20 points for their housing application. She has done some research and it seems the Section 11 notice was not with the council for some unknown reason; because of this, the local authority had not maximised their housing points, and their case had not been expedited. They will be given 150 points when the order is granted; however they are 10 months behind in the housing process, and they have not been given a housing officer to maximise their application. She was therefore asking the tribunal to impose a delay on enforcement of the order for 6 months.

8. The respondents have a 3-year-old daughter, and the council will prioritise their application now. The respondents want, if possible, to avoid two moves, i.e. one to homeless accommodation and then one to permanent. The council are restricted in what they can do due to the housing crisis. She advised that it is very difficult to put a time frame on it, but the longer they have, the better the chances are they will get something. They had been disadvantaged due to the fact that the council were not aware of the section 11 notice.

9. The respondent had told the council about the eviction proceedings, but this does not appear to have made any difference to how the council would deal with the application without a section11 notice. The respondent's representative advised that the council are stringent in following their process and they are in a housing crisis. They require specific paperwork before they will expedite an application.

10. The applicant's agent advised that she had taken instructions and the applicant would agree to a period before the order was enforced; however, she advised that he would not agree to six months. He would agree to a couple of months. She advised six months would cause complications for him. The landlord needs to secure accommodation quickly. The landlords are separated; they have been living in the same house, and it has been a stressful situation for them. There was proof of service of the section 11 report.

11. The tribunal asked the respondent's representative about family support for the resident, which had been raised at the last case management discussion. As the respondent was relying on family support in the area, does the council have temporary accommodation in that area? She advised that there was no guarantee that temporary accommodation would be given in a chosen area. For permanent accommodation, every effort will be made to offer accommodation in the preferred area of the tenancy, but not with temporary.

12. The respondent's daughter is in a local nursery, and it would be an enormous upheaval for them to leave the local area. They could end up anywhere in the council area.

13. She could not comment on the turnover of properties in Cumbernauld. It is difficult in all areas. They have one child and require a two-bed property. She advised that, in terms of medical issues, the respondent, Miss Mackay, currently only has 10 medical points. The representative is actively liaising with the housing department; she considered that the respondent should have 40 medical points. If these points are awarded, then a housing needs assessment will also take place. She advised it does not need to be a specific type of property.

Findings in Fact

14. The Tribunal found the following facts established: -

15. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 3 April 2024.
16. The tenants were Murran Mackay and Jordan Sivewright.
17. The landlords were Simon Patience and Jacqueline Patience.
18. The property is 23 Woodhead Court, Westfield, Cumbernauld.
19. A notice to leave was submitted for the tenant dated 25 September 2025, stating that an application would not be made until 21 December 2025. It sought eviction under ground 4, as your landlord intends to live in the property.
20. The notice to leave had been served by email. There was evidence of service.
21. A section 11 notice had been emailed to the local authority advising that the landlord was seeking possession of the property. There was evidence of the service of that notice.
22. There was a letter from the landlord explaining why he needed to live in the property.
23. The landlords were separating. The landlord needed to move into the property. It was a two-bedroom property. The landlords had one child. They needed the accommodation to live in.
24. The respondents had a three-year-old child. She was settled at the local nursery. The respondents received support from family who reside locally. They were seeking to be housed in permanent accommodation by the local authority. In this area.

Reasons for Decision

25. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in Schedule 3 of the Act applies.

26. The ground on which the Applicant seeks eviction under is ground 4. Ground 4 is in the following terms: -

**4 Landlord intends to live in property**

(1) It is an eviction ground that the landlord 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) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months,
(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
…
(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

27. The applicant's agent appeared. The respondents and their agent appeared. The letting agent advised that the applicant and his wife had separated. Mr Patience required to move to the property to live. He has one 10-year-old child. This is a 2-bedroom house and is big enough to accommodate him and his child on a shared care basis. The applicant rents out two other properties, but they are one-bedroom flats in Glasgow and are not suitable for his needs as they would not be large enough to accommodate him and his child. The tribunal consider that the first part of the test is met.

28. The tribunal was then required to consider whether it would be reasonable to grant the order. We consider it would be reasonable to grant the order for eviction because the respondent does not oppose the order being granted.

29. The respondent did not oppose the order being granted but asked that there be a delay before the order can be enforced. They asked for a 6-month delay. The landlord agreed to a delay but suggested two months. The tribunal will agree to delay the enforcement of the eviction order but we will order that the period is four months.

30. Both parties had reasonable competing arguments as to the period they were suggesting. The landlord served the notice to leave in 2025 and so has already waited for a year before the order could be enforced. Given his circumstances, it is not fair that he should have to wait a further six months before he can leave the former marital home. This does seem unreasonable.

31. The respondent's representative was a housing network advisor from the CAB. She provided details about what has happened to the respondent's application for housing with the local authority. For some unidentifiable reasons, the local authority has not noticed the section 11 notice sent to them for the respondents. This has caused a delay in prioritising the respondents' application for housing. The respondents have therefore been prejudiced. They live in an area where their child attends nursery and where they receive support from their extended family. They wish, if possible, to avoid two property moves, and also to avoid moving out of their local area. They wish to maximise the time the local authority has to find them suitable permanent accommodation. Their position is not unreasonable.

32. However, the tribunal considers that a wait of six months would not be fair to the applicant, and two months to find suitable permanent accommodation, particularly at this time of year, and when the respondent's housing application has not previously been prioritised, does not give the local authority much time to secure accommodation.

33. Given the competing arguments, we will order a period of four months. This will allow the respondent to remain settled over the Christmas period, and the council time to find something for them in the first two months of 2027. We consider that this is a reasonable period of time for the respondent, and for the landlord it will provide him with certainty about the eviction date, while it will prolong a bit further his wait before he can move into the property; he was prepared to allow a delay and this further period is not significant in all circumstances.

34. We consider that, in all the circumstances, it would be reasonable to grant an order for eviction and to delay the period for enforcement by four months.

Decision

35. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016, but delays the enforcement of the order for a period of four months.

**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.**



28 October 2026

**Legal Member/Chair** **Date**