



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“The Act”)**

**Chamber Ref: FTS/HPC/EV/23/2812**

**Re: Property at 14 Lindsay Gardens, Bathgate, West Lothian, EH48 1DU (“the Property”)**

**Parties:**

**Mr Jonathan Barclay, 39 Alnwickhill Road, Edinburgh, EH16 6LP (“the Applicant”)**

**Mr Marco Antonia Dominguez Garcia, Mrs Aida Lorenzo Torreabliba, 14 Lindsay Gardens, Bathgate, West Lothian, EH48 1DU (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

**[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted the Application and made an Eviction Order which may not be enforced until 29 October 2024.**

**Background**

[2] The Applicant seeks an Eviction Order under ground 1 of Schedule 3 of the Act. The Application is accompanied by a copy of the tenancy agreement and the notice to leave with proof of service. The relevant notice under Section 11 of the Homelessness (etc) (Scotland) Act 2003 is also produced. The Application had previously called for a Case Management Discussion and a further Hearing which was also treated as a Case

Management Discussion. The Tribunal made certain case management orders in the form of Directions and continued the Application for evidence to be heard at a Hearing.

### **The Hearing**

[3] The Application called for a Hearing at 10 am on 29 July 2023. The Applicant was represented by Mr Calum McQueenie of Maver and Company. Mr Marco Antonia Dominguez Garcia was present in his own right and also to represent the interests of Mrs Aida Lorenzo Torreabliba, who is his wife. There was delay in the Hearing commencing due to the non-availability of a Spanish interpreter. The Tribunal eventually commenced at around 10.30 am with a Spanish interpreter participating on the phone for the benefit of Mr Garcia. Neither party had any preliminary matters to raise and both were content that the Tribunal get started.

### **The Evidence**

[4] Mr McQueenie explained that he had no witnesses to call, and intended simply to rest his case on the documentation submitted to the Tribunal. This included a statement on behalf of the Applicant. Thereafter the Tribunal heard evidence from Mr Garcia. After the conclusion of his evidence, Mr McQueenie was afforded the opportunity to cross-examine Mr Garcia. Both sides then had the opportunity to make detailed submissions prior to the Tribunal retiring to consider its decision.

### **The Applicant's evidence**

[5] The Applicant had submitted a relatively brief statement outlining his position. Even though this was given in the form of a signed statement (rather than by evidence given in person) the Tribunal concluded that this did not diminish the weight which ought to be attached to it. That is because the facts of the Application were really not disputed at all by the Respondents. There was no suggestion by the Respondents that the Applicant was not being credible or reliable. His statement explained that he was currently working in Columbia as a teacher and described his intentions to relocate to Spain in the relatively near future where he intended to buy a property. He also described how he had no intention of residing in the UK or of re-letting the Property. None of this evidence was disputed by the Respondents. He had moved to South America in 2022.

### **The Respondent's evidence**

[6] Mr Marco Antonia Dominguez Garcia similarly came across as entirely genuine and credible in his evidence. He described how he lived in the Property with his wife and 13 year old daughter who attended Bathagte Academy. Mr Garcia worked in a local Tesco depot. He described his efforts to find other suitable properties and had submitted evidence of his property searches and his status on the local authority housing list. His evidence was that he was anxious about an Eviction Order being granted as his family

would have no where else to go. The Tribunal did however note that the local authority did appear to have informed Mr Garcia that they would consider making an offer of alternate accommodation once the outcome of this Tribunal was known.

[7] It did appear to the Tribunal that Mr Garcia was doing his best to avoid being considered intentionally homeless in the eyes of the local authority. This was perfectly understandable. It was however clear in Mr Garcia's evidence, that the family would then receive assistance from the local authority if an Eviction Order was made. As a specialist Tribunal with knowledge of such matters, this seemed to mirror the Tribunal's own knowledge of the workings of local authority housing services.

[8] Having considered the documentary evidence before the Tribunal and having heard evidence and submissions, the Tribunal made the following finding in facts.

### **Findings in Fact**

- I. *The Applicant let the property to the Respondent by virtue of a Private Residential Tenancy Agreement within the meaning of the Act, which commenced on 22 February 2021;*
- II. *The Property was purchased by the Applicant in 2017. He intended to live there whilst studying at University. However, the Applicant then went to work in Argentina before accepting a teaching position in Columbia in 2022.*
- III. *The Applicant has no plans to return to the UK and is hoping to start working for in Spain where he intends to live.*
- IV. *The Applicant does not wish to have business interests in the Scottish private rental market. The Applicant wishes to use any funds realised in the sale of the Property to purchase a property in Spain to live in.*
- V. *The Respondents live in the Property with their 13 year old daughter who attends Bathgate Academy.*
- VI. *They have been looking for other properties and are not adverse to leaving the Property, but have not found anywhere else to go.*
- VII. *The Respondents are in good health. The Respondents are acting on the advice of the local authority housing service. The Respondents have been informed that the decision of this Tribunal will influence whether or not they are made an offer of alternate accommodation by the local authority.*
- VIII. *The Applicant has complied with Section 11 of the Homelessness (etc) (Scotland) Act 2003;*

## **Reasons for Decision**

[9] Having made the above findings in fact, the Tribunal considered that ground 1 of Schedule 3 of the Act was established. The Tribunal then went on to consider whether it was reasonable to make an Eviction Order.

[10] In considering the reasonableness or otherwise of making an Eviction Order, the Tribunal noted that the Respondents were in good health and that they were actively looking to leave the Property. They were concerned about not having alternate accommodation to go to. That was understandable. But it also seemed clear to the Tribunal that they were receiving advice and support from the local authority and based on their evidence, they would likely be reaccommodated by the local authority once an Eviction Order was made. It appeared to the Tribunal that making an Eviction Order would be more likely than not to assist the Respondents in being offered alternate accommodation.

[11] The Tribunal considered that it was reasonable that the Applicant no longer wished to operate as a landlord in the Scottish private rental market. He wished to end his association with the UK. The Tribunal concluded that it would be unreasonable to order that the tenancy should continue in these circumstances, when it appears both parties wish it to end.

[12] Having done so, the Tribunal concluded that it was reasonable to make an Eviction Order. The Tribunal granted the Application but considered that it was reasonable to do so on the provision that the order may not be enforced until 29 October 2024. That was with the aim of allowing the local authority more time to find alternate accommodation for the Respondents without having to use short term homeless accommodation. The extra time would allow the Respondent's more time to organise their affairs in the certainly that the tenancy would now officially be ended.

## **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.**



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Legal Member/Chair

29 July 2024  
Date