



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/23/3730

Re: Property at 17/3 St. Triduanas Rest, Edinburgh, Scotland, EH7 6NF ("the Property")

Parties:

Mr Kwadwo Asare, Mr Dominika Starzynska-Asare, 10 Cite Au Bois, Scheidgen, L-6250, Luxembourg ("the Applicant")

Mr Skye Klass Fuller, Ms Vanesa Alejandra Farina, 17/3 St. Triduanas Rest, Edinburgh, Scotland, EH7 6NF ("the Respondent")

Tribunal Members:

Mark Thorley (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order of eviction of the Respondent from the property at 17/3 St. Triduanas Rest, Edinburgh, Scotland, EH7 6NF be granted.

- **Background**

The Applicant sent an application to The First-Tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") dated 19 October 2023. The application was based on ground 5 of the Private Housing (Tenancies) (Scotland) Act 2016, namely that the Applicant, Mrs Dominika Starzynska-Asare, wished that her father from Poland be able to live in the Property.

The Application was accepted for determination on 9 February 2024.

- **The Case Management Discussion**

A case management discussion took place on 7 June 2024.

Paperwork had been lodged in advance of that application, including affidavits on behalf of the Applicant.

The application was opposed. The conclusion of the case management discussion was that the Tribunal was not satisfied that the Applicants had shown why the second Applicant's father required to move to Edinburgh rather than somewhere else, particularly as the Applicants no longer lived in Edinburgh and had no intention to return to the UK. The reasonableness test had not been met.

Accordingly, a hearing was assigned.

Prior to the hearing, both parties submitted further evidence.

At the hearing, both Applicants were present. Mr Fuller represented the Respondent. There was a Polish interpreter for the second Applicant's father. He was giving evidence from Poland.

Both Applicants gave evidence. Thereafter, Mr Roman Starzynska, the second Applicant's father, gave evidence with the benefit of an interpreter.

Further witnesses were then led for the Applicant, namely Monika Struzik, Lukasz Larwa, and Alicja Dyrak.

The Respondent, Mr Fuller, also gave evidence.

Both the Applicant and the Respondent thereafter made submissions.

The evidence of the Applicant was to the extent that they owned the Property in Edinburgh. It was a second-floor property. They lived in Luxembourg. They have two children aged 12 and 9. They have a two-bedroom property in Luxembourg. They both have permanent work contracts there. The property that they own is valued at about £180,000. There is a £3,000 mortgage left on it at present. The rental income they receive of £900 per month pays the mortgage of £600 per month. The mortgage will shortly end.

They want the second Applicant's father to live there. He is currently living in accommodation in Poland which is up for sale. The person who owns the property has had a stroke and is looking to be moved into a care home. That can happen at any time.

They are not in a position to assist Mr Starzynska in buying a property in Poland. It is difficult to buy a property in Poland.

There are people that Mrs Starzynska knows in the UK, and in particular in Edinburgh. The witnesses beyond Mr Starzynska all indicated that they live in Edinburgh, know him and would be able to assist him.

His health is okay. He would not be entitled to any benefits in the UK, nor entitled to NHS treatment. However, the Applicant would obtain private

insurance for Mr Starzynska. That would cover emergency treatment. If he required any other treatment, he could fly back to Poland. He would still be able to receive his Polish pension.

He had visited the property before. It was their property. They felt they were entitled to allow the father to live there.

Mr Starzynska confirmed all of this information. He wants to move to Scotland. His current position is precarious at present. If the property that he is living in were sold, he would have nowhere else to go. His own mother died some years ago. He has nothing else in Poland to move to.

The position of the Respondent as set out by Mr Fuller was to the extent that he and his partner had lived in the Property for some time. It is on the second floor. It was convenient for their work. Mr Fuller works in the travel industry and his partner is a receptionist in a hotel in Edinburgh. The rent currently paid is a competitive rent. If they were to have to look to alternative accommodation, then the rent is likely to be significantly higher. They also want to buy a property. They would prefer not to have to make a further move before them buying a property.

There are no children in the Property.

- Findings in Fact

1. The parties entered into a rental agreement such that the Respondent rented from the landlord the second floor property at 17/3 17/3 St. Triduana Rest, Edinburgh, EH7 6NF with commencement from 16 October 2021.
2. The rent for the property is £900 per month. The Applicant lives with their children aged 12 and 9 in Luxembourg. Both of them work there.
3. The second Applicant's father lives in Poland in accommodation which is currently subject to being on the market. Subsequent to the sale of that property, the second Applicant's father will have no accommodation in Poland.
4. Mr Starzynska would have support if he were to live in Edinburgh.
5. The Respondents live as a couple in the Property. It is convenient for their employment. The rent paid is a competitive rent.

- Reasons for Decision

The Tribunal were satisfied with the evidence that was provided in respect of Mr Starzynska wishing to come to Edinburgh to live in the Property. Mr Starzynska gave evidence. Mr Starzynska was cross-examined and, in addition to that, the Tribunal asked their own questions. This is in conjunction with the documentary evidence that had been lodged.

The Tribunal were satisfied that Mr Starzynska's current accommodation is precarious. He has nowhere else to go in Poland. The Applicants are settled in Luxembourg. They have a property in Edinburgh. There are a group of friends who can support Mr Starzynska in Edinburgh. His health is acceptable at the moment. They have looked into issues surrounding his right to stay in the United Kingdom and into health supports.

The Tribunal were satisfied that he intended to live there and that the Applicant wished a family member to reside within the Property.

Thereafter, in terms of reasonableness of the order, the Respondents' arguments regarding reasonableness were that:

- a) The rent they currently paid was competitive and that if they were to move, they may have to pay more in rent.
- b) That the property was convenient for them for work etc.
- c) That they were trying to buy a property and that it would necessitate then a further move if they ended up having to rent in the interim.

The Tribunal also considered that there were no other factors that weighed in terms of reasonableness, i.e. children or health issues. The Tribunal did not come, in these circumstances, consider that it was unreasonable to evict.

- Decision

To grant an order of eviction

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.

Mark Thorley

Legal Member/Chair

19th November 2024

Date