

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976**  
**BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996**

**IN THE MATTER OF AN APPLICATION FOR COSTS**

**BT/30/2023**

**BETWEEN**

**ADRIAN McKIERNAN – APPLICANT/TENANT**

**AND**

**PAUL O'BRIEN – RESPONDENT/LANDLORD**

**Re: 202 Cavan Road, Newtownbutler, County Fermanagh**

**Lands Tribunal – Henry Spence MRICS Dip Rating IRRV (Hons)**

**Background**

1. On 21<sup>st</sup> March 2023 Mr Adrian McKiernan (“the applicant”) made a tenancy application to the Lands Tribunal relating to premises at 202 Cavan Road, Newtownbutler (“the reference property”).
2. Accompanying this application was a Notice to Determine on behalf of the landlord, Mr Paul O'Brien (“the respondent”), advising that the respondent would oppose the tenancy application on the grounds detailed in Articles 12(1)(g) and (12(1)(i) of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”) in that he intended to occupy the reference property himself for a reasonable period of time.
3. Following several mentions of the reference the Lands Tribunal issued directions for a hearing which included the submission of Expert Reports by both parties and that a hearing would be held on 8<sup>th</sup> March 2024. The respondent complied with the Tribunal directions, but the applicant failed to submit any evidence.

4. On 7<sup>th</sup> March 2024, the day before the hearing, the applicant advised the Tribunal that he would be proceeding without an expert report, and that he had appointed Mr Colin Henry BL to represent him.
5. Subsequently, at the request of the applicant, the hearing on 8<sup>th</sup> March was cancelled and a new date for hearing was set for 16<sup>th</sup> April 2024, which was subsequently changed to 24<sup>th</sup> April 2024 upon request.
6. Prior to the hearing on 24<sup>th</sup> April, however, the parties agreed terms but unfortunately those terms did not include any agreement on the amount of costs to be paid.
7. A copy of the signed, agreed terms was subsequently forwarded to the Tribunal on 17<sup>th</sup> September 2024 and the Tribunal issued an Order reflecting those terms. These terms included a stipulation that, “the respondent to be awarded its costs, to be assessed by the Tribunal in default of agreement. For the avoidance of doubt such costs to include the costs of the adjourned hearing scheduled for 8<sup>th</sup> March 2024”.
8. On 21<sup>st</sup> November the Tribunal received a submission from the respondent seeking his costs in the reference. The Tribunal issued directions for the receipt of formal costs submissions from both parties, culminating in a hearing on 5<sup>th</sup> February 2025.
9. The applicant did not make any formal submissions on costs and did not attend the costs hearing.

#### **Procedural Matters**

10. On the issue of costs, the applicant was represented by Mr Myles McManus of Murphy McManus Solicitors. The respondent was represented by Mr Chris Ross of McKees Solicitors.

### **Position of the Parties**

11. Mr McManus did not make any formal submissions on costs and advised that he would leave the matter in the hands of the Lands Tribunal.
12. Mr Ross submitted:
  - (i) By Order of the Court dated 17<sup>th</sup> October 2024, the respondent was awarded its costs, to be assessed by the Tribunal in default of agreement. For the strict avoidance of doubt, such costs to include the costs of the adjourned hearing scheduled for 8<sup>th</sup> March 2024.
  - (ii) By email dated 25<sup>th</sup> October 2024, the respondent's solicitor sought agreement of its costs and outlays from the applicant's solicitor.
  - (iii) As no response was received to this email the respondent's solicitor sent a further email dated 12<sup>th</sup> November 2024, advising that unless its costs were agreed by 12 noon on Wednesday 20<sup>th</sup> November 2024, they would have the matter listed before the Tribunal at the earliest opportunity to have its costs assessed in accordance with the terms of the Court Order.
  - (iv) The costs and outlays sought can be summarised:
    - a. McKees professional fees - £10,511.50 + VAT as per Time Schedule in Schedule 1.
    - b. Counsel's fees – Rob McCausland - £7,500 + VAT
    - c. Architect's fees – Clarman Partnership - £4,425 + VAT
    - d. Previous solicitor and counsel fees – McGale Kelly & Co and Martin McDonnell BL - £5,073 (inc VAT)
    - e. Rental interest payments schedule – Garry Torrance - £274
    - f. Miscellaneous outlays – uncertified copy maps/folios - £19

- (v) The respondent's current solicitors took over the case from the respondent's initial solicitors, McGale Kelly & Co in or about July 2023 and hence reasonable professional fees and counsel's fees are quite properly sought for the respondent's previous solicitor.
- (vi) Vouching fee notes and Time Schedule are detailed in Schedule 1.
- (vii) No offer has been made in respect of the respondent's costs and outlays.
- (viii) The respondent believes its costs and outlays are fair and reasonable and seeks to have its costs assessed and awarded by the Tribunal in the total sum of £32,289.80.

### **The Statute**

13. Article 33 of the Lands Tribunal Rules (Northern Ireland) 1976 ("the Rules") states:

"33.-(1) Except in so far as section 5(1), (2) or (3) of the Acquisition of Land (Assessment of Compensation) Act 1919(g) applies and subject to paragraph (3) the costs of and incidental to any proceedings shall be in the discretion of the Tribunal, or the President in matters within his jurisdiction as President.

(2) If the Tribunal orders that the costs of a party to the proceedings shall be paid by another party thereto, the Tribunal may settle the amount of the costs by fixing a lump sum or may direct that the costs shall be taxed by the registrar on a scale specified by the Tribunal, being a scale of costs for the time being prescribed by rules of court or by county court rules."

### **The Tribunal**

14. The substantive issues in this reference never came before the Tribunal as the hearing scheduled for 8<sup>th</sup> March was abandoned and the parties subsequently agreed terms, which included a term that the respondent would receive its costs in the reference.

15. Throughout the proceedings before the Tribunal the applicant almost entirely failed to comply with the directions of the Tribunal which increased the costs of the proceedings.
16. In addition, despite being given ample time to do so, the applicant did not take issue with any of the elements of the costs as submitted by the respondent.

### **Conclusion**

17. The Tribunal therefore fixes a lump sum of £32,289.80 as the costs payable to the respondent.

**7<sup>th</sup> March 2025**

**Henry Spence MRICS Dip.Rating IRRV (Hons)  
Lands Tribunal for Northern Ireland**