

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/150/2023

BETWEEN

ERIC KEARNS – APPLICANT/TENANT

AND

ANN O’HARE – RESPONDENT/LANDLORD

Re: 9 Newry Road, Camlough, Newry

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

Background

1. On 6th December 2023 Mr Eric Kearns (“the applicant”) made an application to the Lands Tribunal for an extension of time to lodge a tenancy application on the premises at 9 Newry Road, Camlough (“the reference property”). This was to facilitate the resolution of related High Court proceedings concerning the reference property.
2. The Lands Tribunal subsequently granted the applicant a six month extension on 12th January 2024.
3. Various mention dates and timetables for the submission of evidence were then issued by the Tribunal but on 21st October 2024, the solicitors representing the applicant, King & Gowdy, advised the Tribunal that their client wished to withdraw his application.
4. Following that withdrawal, Ms Ann O’Hare (“the respondent”), now seeks her costs in the reference.

Procedural Matters

5. Mr Alistair Fletcher BL, instructed by King & Gowdy solicitors represented the applicant. The respondent was represented by Mr Andrew Brownlie BL instructed by Tiernan solicitors.
6. The Tribunal received a written submission from Mr Brownlie BL on behalf of the respondent. The applicant, however, declined to make any submissions despite being given the opportunity to do so.

Mr Brownlie BL Submissions

On behalf of the respondent Mr Brownlie BL submitted:

7. Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 together with section 8(7) of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 (“the 1964 Act”) provide the Lands Tribunal with the power to award costs.
8. Rule 33 provides, inter alia, as follows:

“(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.”
9. Section 8(7) of the 1964 Act provides:

“(7) Subject to sections 9 and 10 and any other transfer provisions, the Lands Tribunal may order that the costs, or any part of the costs, of any proceedings before it incurred by any parties shall be paid by any other party and may tax or settle the amount of any costs to be paid under any such order or direct in what manner they are to be taxed or settled.”

10. In Oxfam v Earl [1997] 3 BNIL 71 (Lands Tribunal), the Tribunal set out broad guidelines for the exercise, by the Lands Tribunal, of its discretion to award costs. These guidelines include:
 - (i) the Lands Tribunal must exercise that discretion judicially;
 - (ii) the general “rule” is that costs follow the event; and
 - (iii) special circumstances are required to justify a departure from that “rule”.
11. In the current case the respondent served the Landlords Notice to Determine the tenancy on 4th June 2023. The applicant submitted his application for a new tenancy under Article 10 of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”) on 6th December 2023. The respondent’s solicitor lodged her report on facts on 8th October 2024. On 21st October 2024, the applicant’s solicitors wrote to the respondent’s solicitors advising that the applicant had instructed that he wished to withdraw his application. Notwithstanding the service of the Notice to Determine in June 2023 and the confirmation in October 2024 that the applicant wished to withdraw his application, he has to date failed to vacate the premises.
12. The applicant chose to commence proceedings. The respondent instructed solicitor and counsel. The respondent’s report on facts was served and thereafter the applicant chose to withdraw his application. In Sai K Cheung & Christine Cheung v Fernheath Developments Limited BT/55/2007 it was stated, at paragraph 6, that the starting point is the presumption, which follows from the application to withdraw, that the tenants have lost. It is respectfully submitted that there is nothing in the current case to displace that presumption, nor has there been any conduct on the part of the respondent that should be reflected in a reduction of costs.

13. It is therefore respectfully submitted that the Tribunal should exercise its discretion in favour of the respondent and award the respondent her costs and that any argument that the proceedings have been withdrawn at an early stage can be reflected in the amount of costs awarded.

The Tribunal

14. The Tribunal agrees with Mr Brownlie BL, the presumption which follows the applicant's withdrawal notice in that the applicant has lost and costs should be awarded to the respondent.
15. The Tribunal also agrees with Mr Brownlie BL there is nothing in the conduct of the respondent which would warrant a reduction in those costs.
16. The Tribunal awards the respondent its reasonable costs in the reference, such costs to be taxed by the Tribunal in default of agreement.
17. The respondent should submit its detailed and itemised claim for costs to the Tribunal within four weeks of this decision.

18th April 2025

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