

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

IN THE MATTER OF APPLICATIONS

BT/3/2025 AND BT/28/2025

BETWEEN

SEDAR LIMITED – APPLICANT

AND

REPETEK LIMITED – RESPONDENT

**Re: (i) Larkhill Service Station, Coleraine Road, Portstewart
(ii) Service Station, 40 Hillhead Road, Stewartstown**

PART 2 - COSTS

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

Background

1. Sedar Limited (“the applicant”) had submitted applications to the Lands Tribunal for the renewal of business tenancies on two Service Stations at Coleraine Road, Portstewart and Hillhead Road, Stewartstown (“the reference properties”).
2. The landlord, Repetek Limited (“the respondent”), opposed the grant of new tenancies on “own use” grounds, as detailed in Article 12(1)(g) of the Business Tenancies (Northern Ireland) Order 1996 (“the 1996 Order”),
3. By a decision dated 15th October 2025 the Tribunal dismissed the applicant’s tenancy applications.

4. The reference has now been referred back to the Tribunal to adjudicate on the allocation of costs.

Procedural Matters

5. The applicant was represented by Mr Keith Gibson KC, instructed by Simmons McLaughlin & Orr, solicitors. Mr Douglas Stevenson BL, instructed by Millar McCall Wylie, solicitors, represented the respondent.
6. The Tribunal also received an affidavit from Mr Desmond Morgan, the sole director of the applicant company. The Tribunal is grateful to the parties for their helpful submissions.
7. Rule 33(1) of the Lands Tribunal Rules (Northern Ireland) 1976 ("the Rules") provides:

"33.-(1) Except in so far as section 5(1), (2) or (3) of the Acquisition of Land (Assessment of Compensation) Act 1919 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."
8. In Oxfam v Earl & Ors BT/3/1995 the Tribunal detailed how it's discretion in allocating costs should be exercised, at pages 8 and 18 of the decision:

"The Tribunal must exercise that discretion judicially and the starting point on the question of costs is the general presumption that, unless there were special circumstances, costs follow the event, i.e. that in the ordinary way the successful party should receive its costs."

And

"... Unless there are good reasons for a special award, such as extravagant or unsatisfactory conduct of the proceedings (including the role of expert witnesses) or failure on an important issue, costs will follow the event so 'the loser pays all'."

Authorities

9. The Tribunal was referred to the following authorities:

- NI Policing Board v Gortalowry BT/2 & 3/2024
- Beaverbrooks v Portland BT/65/2012
- Rolf v De Guerin [2011] EWCA Civ 78
- Car Park Services Ltd v Conway Estates Ltd BT/66/2001
- Oxfam v Earl & Ors BT/3/1995

Texts

10. And to the following text:

- Reynolds and Clark “Renewal of Business Tenancies” 5th edition, at paragraphs 10 to 18.

The Applicant’s Submissions on Costs

On behalf of the Applicant Mr Gibson KC submitted:

11. The starting point is Rule 33 of the Lands Tribunal Rules which provides that the costs of and incidental to any proceedings shall be at the discretion of the Tribunal. The Tribunal is also aware of the longstanding decision in Oxfam v Earl & Ors in which it is clear that, unless there are special circumstances, costs follow the event i.e. that in the ordinary way, the successful party should receive its costs.
12. The matter is elaborated upon by Reynolds and Clark “Renewal of Business Tenancies”, 5th edition, at paragraphs 10 to 18. What is made clear in that section of the textbook is that the Court should have regard to all circumstances including the conduct of the parties. As per Reynolds and Clark the conduct of the parties includes:

- a) Conduct before as well as during the proceedings, in particular the extent to which the parties followed any relevant pre-action protocol.
- b) Whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue.
- c) The manner in which a party has pursued or defended his case.
- d) Whether there has been any exaggeration of a party's case, even though he has been successful.

13. Here the applicant maintains that whilst the presumption must be, that given that the tenant has not succeeded in securing a new tenancy, costs follow, such an order does not reflect the nuanced circumstances of this case. The applicant therefore points to the following as mitigation of the costs follow the event rule:

- a) First and foremost, the applicant received correspondence from the executors of the late estate of John Morgan (as director and shareholder at the time his estate had authority) to the effect that the landlord respondent was willing to provide a new tenancy. The correspondence dated 3rd May 2024 made clear that the offer was made with the express authority of Ms Morgan. The applicant tenant in these particular circumstances was entitled therefore to question the apparent volte-face in or about the landlord's decision to serve a Notice to Determine some nine weeks later on 21st July 2024.
- b) After service of the Notice to Determine there was no further evidence supplied in respect of the landlord's intention and it is obvious from an analysis of the Statement of Case prepared by the landlord that in the period subsequent the landlord was setting about obtaining its proofs.
- c) Following the service of the Notice to Determine the landlord exerted pressure on the applicant tenant.
 - (i) The obtaining of an interim dilapidation schedule, when none had ever been obtained previously.

- (ii) The retention of architects to carry out an invasive examination of the premises.
- (iii) The retention of estate agents in order to further the claim for dilapidations.
- (iv) Threats of insolvency against the tenant.
- (v) Attempts to unilaterally vary the contract as between Repetek and Sedar in respect of fuel supply arrangements. During her evidence, Ms Morgan repeatedly became confused about the existence of a contract as between Repetek and Valero and the existence of a contract as between Sedar and Repetek. Ms Morgan's position was that there was no written contract with Sedar for the supply of fuel and so it naturally followed that no contract existed. She contrasted with Repetek's relations with Valero which were defined by a written contract. Ms Morgan, by virtue of her correspondence of 19th June 2025, sought to unilaterally impose new terms and conditions upon the tenant, all of which were designed to impact the financial viability of the tenant.
- (vi) The levying of invoices for which there was no justification and further compounding the acts of intimidation was the correspondence in which she addressed Mr D Morgan as "TENANT at LARKHILL Service Station".

14. The Lands Tribunal should make clear that placing a tenant under pressure in the context of a Notice to Determine is conduct which is unbecoming. The landlord and tenant should litigate matters before the Lands Tribunal and not behave in an intimidating fashion to attempt to subvert the jurisdiction of the Tribunal.

15. Again, as set out in Reynolds and Clark at 10-18, the Orders which a Court may make include:

- a) An Order that a party must pay a proportion of the other parties' costs.
- b) A stated amount in respect of the other parties' costs.
- c) Costs from or until a certain date only.
- d) Costs incurred before proceedings had begun.
- e) Costs in relation to particular steps taken in the proceedings.
- f) Costs relating to only a distinct part of the proceedings.

16. Supplementing the Tribunal's decision should be the fact that the respondent refused mediation. In Rolf v De Guerin the learned trial Judge stated as follows as per paragraph 44:

"[44] In *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576, [2004] 4 All ER 920, [2004] 1 WLR 2002, this court gave detailed consideration to the circumstances in which it might be said that a party had acted unreasonably in refusing ADR; such as the nature of the case, its merits, the extent to which other settlement methods had been attempted, its costs and delay, and whether it had reasonable prospects of success. This court there held that an unusual order on the ground of a refusal to mediate always had to be justified with the burden on the party seeking such an order to show that the refusal was unreasonable. It seems to me, for the reasons stated above, that such considerations strongly militated in this case in favour of attempts at settlement, even mediation. In particular, as I will develop below, the nature of the case, namely a small building dispute between a householder and a small builder, is well recognised as one in which trial should be regarded as a solution of last resort, and one which is likely to give an unsatisfactory outcome to the parties at disproportionate cost, to which should be added the cost of disproportionate anxiety."

17. The explanation proffered up by the landlord respondent does not bear scrutiny in the applicant's respectful submission for the following reasons:

- a) The reply was presented as a binary choice; either to grant a new tenancy or not to grant a new tenancy.
- b) This was not the only option available. The parties could have chosen to resolve their differences in a number of ways including:
 - (i) A short term lease.
 - (ii) A short term lease on different lease terms.
 - (iii) A longer lease with a greater rent.
 - (iv) A lease of one of the properties, either on a short term basis with surrender up of the other.

18. Without taking the step of mediation it is impossible to know what might have been agreed and this is not a “vindication of rights case”, i.e. where the litigation was commenced in the public sphere to seek declaratory relief as to the correctness of some decision.

Mr Gibson KC concluded:

19. In the context of two tenancies where the tenant has been in occupation for over 25 years, with considerable capital investment over that time and the retention of significant numbers of staff, it is axiomatic that the tenant would wish to be satisfied as to the landlord’s proofs and intention.

20. In the words of the Tribunal itself in Car Park Services Ltd v Conway Estates Ltd, at paragraph 18 of said decision, the Tribunal made clear that a tenant should not be expected to give up its tenancy until it has been fully appraised as to the landlord’s intention and supplied with detailed proofs on which those intentions rely.

21. Here the tenant was entitled to question the landlord’s intention in context where the landlord had adopted a complete volte-face in respect of its intention, one day

providing an open offer for two new tenancies and the next day withdrawing same. That intention could only ever have been ascertained upon Ms Morgan giving evidence.

The Respondent's Submissions on Costs

Mr Stevenson BL

22. In NI Policing Board v Gortalowry the Tribunal quoted its own decision in Oxfam v Earl & Ors, as previously stated.

23. The respondent is the successful party in these proceedings and thus it is entitled to its costs from the applicant, unless the applicant can show there are special circumstances to depart from that rule.

24. The applicant's submissions raise three points which, it argues, means the Tribunal should depart from the normal rule: (i) that it was entitled to test the respondent's case up to a full hearing; (ii) the alleged conduct of the respondent; and (iii) the respondent declining the invitation to mediate.

25. On the first point, the Tribunal has held in previous cases where a landlord has not provided sufficient evidence of its intention to redevelop or to use the premises for its own use, that a tenant is only obliged to pay costs after those proofs have been provided – see for example Beaverbrooks v Portland BT/65/2012. The applicant's contention seems to be that it could not be satisfied that the respondent had made out its intention until it had cross-examined Ms Morgan. Of course, at that stage the applicant was still not satisfied that the respondent had the requisite intention – it did not, following the evidence being heard, concede that the respondent had the requisite intention. Thus, this is not a case, which is sometimes seen, where a landlord provides only partial proofs to start with, and a tenant admits the landlord's intention on further proofs being provided, and where the tenant then says it is only liable for

costs after the further proofs were provided. It is instead a case where the applicant was intent on opposing the respondent's case regardless of the proofs provided. It is thus, it is submitted, not a case where the approach set out in Beaverbrooks should be applied.

26. Further, and in any event, the Beaverbrooks point does not assist the applicant in this case. The respondent's Statement of Case contained: (i) accounts showing the respondent's financial standing; (ii) offers for fuel supply from Valero; (iii) offers for the supply of stock from Musgrave; (iv) offers of significant financial contributions to be made by Musgrave; (v) detailed financial analysis and projections for both stores; (vi) correspondence from accountants confirming the respondent had the financial reserves to use the premises for its own use; (vii) condition surveys of the properties; (viii) evidence of Ms Morgan's enrolment in Musgrave's Learning and Development programme; (ix) offers from Ulster Bank in relation to debit/credit card machines; and (x) a board minute.

27. The applicant cannot seriously contend that these proofs did not demonstrate the respondent's intention to use the premises for its own use. The proofs are, it is submitted, as comprehensive a set of proofs within a Statement of Case in an "own use" case as one is likely to see, but the applicant refused to recognise that which was patently obvious from the Statement of Case, namely that the respondent did intend to use the premises for its own use. Instead, it forced the case on to what was, it is submitted, a needless hearing given the proofs. At the hearing, the applicant was reduced to making extremely tenuous arguments such as that the respondent's opposition to the grant of a new tenancy was on the basis of some alleged disagreement between Ms Morgan's brother and Mr Morgan of some 26 years ago, when those gentlemen had not spoken in that period of time.

28. As to the second point, namely the respondent's correspondence relating to dilapidations and the supply of fuel, the applicant tried to make much of this at the hearing of the application. At the hearing, Ms Morgan disputed the applicant's

attempted categorisation of this correspondence saying it was nothing more than the correspondence of a prudent landlord. The respondent submitted that these points were not relevant to the question of whether the respondent intended to use the premises for its own use. The Tribunal's decision in the case, understandably, does not make any mention of these issues, presumably because the Tribunal too was of the view that these issues were not relevant. How could they be? How could a landlord seeking to address a dilapidations point have anything at all to do with whether the landlord wanted to use premises for its own use? The applicant's attempts to make something out of this irrelevant issue was of a piece with its efforts to say that the disagreement between Mr Stewart and Ms Morgan from 26 years ago was the driving factor behind the respondent's opposition to the grant of a new tenancy; a desperate argument that was not worth advancing.

29. Given these alleged issues were not relevant to the opposition to the grant of a tenancy, and given the Tribunal did not make any finding about the issues, they cannot have any relevance to the question of costs.

30. As to the third point, the Rolf v De Guerin case quoted by the applicant recognises that a refusal to order costs to a successful party for a failure to mediate would be an unusual "order". In the Rolf case there was a dispute between a householder and a builder over (in the scheme of things) a relatively small sum. In that type of case, there would be good sense in having a mediation to see if some resolution might be reached, and one can see why a Court might disallow some or all of the costs of a successful party who had refused to mediate.

31. A business tenancies case is not that type of case. It is quite the opposite. Despite what the applicant contends in its submissions, the outcome of a business tenancies case where a landlord is intent on recovering possession is essentially binary – either the tenancy is renewed or it is not. There is no realistic mediated middle ground that might be found. The applicant contends that a new short-term lease or a longer-term lease might have been agreed, but that was never going to happen. The respondent

wanted to use the premises for its own use, and it cannot be criticised for that. It was not going to grant a new lease even on a short-term basis, both as it wants to use the premises now, and as a short-term lease would have simply meant another business tenancies case in a couple of years. It is neither parties' fault that a negotiated settlement could not be achieved, it is just a consequence of the fact that they both wanted to use the properties and only one of them could. Where fault does however lie is in the applicant's insistence on taking the case to a contested hearing, whenever it was apparent from the Statement of Case that the respondent's case was unanswerable. Thus, the fact the respondent declined to mediate is no basis for departing from the normal costs rules.

32. Further, if the applicant's submissions on mediation were accepted, it would mean that in every business tenancies case parties would be forced to mediate to ensure they could ultimately recover costs, as otherwise the unsuccessful party could contend that the winning party refused to mediate and was not entitled to its costs. The mediation would cost the parties a considerable amount of money (mediators typically charge £5K plus VAT per day and there will then be both parties solicitors' and counsel's costs on top of that) and the mediation is going to be a waste of time. That is, the applicant's submission, if accepted in principle, would add to the costs of future business tenancies cases.
33. Further still, the respondent was more the reasonable in the lead up to this case. For the reasons explained previously, its case was unanswerable. It was therefore always going to succeed and to be entitled to its costs. However, in an effort to avoid the need for a hearing, on 9th July 2025, it made an offer that it would bear its own costs if the applicant would accept that it (the applicant) was not entitled to the grant of a new tenancy. A copy of the offer is enclosed with these submissions. The applicant did not accept that offer.
34. The respondent therefore says that there are no special circumstances in this case which would mean that it is not entitled to its costs. Indeed, the circumstances point

the other way – the applicant was intent on taking to a full hearing a case which it was obvious it would lose. It should be obliged to pay the respondent's costs in full.

The Tribunal

35. The parties were agreed that “costs follow the event” and the general presumption is, therefore, that the respondent should be awarded its costs as it had successfully opposed the applicant's tenancy applications.

36. In these types of cases “redevelopment” or “own use”, the Tribunal has consistently stated that a tenant is only obliged to pay costs after sufficient proofs of the landlord's intentions have been provided; see for example Beaverbrooks v Portland.

37. The respondent's Statement of Case had been submitted to the Tribunal on 16th May 2025. The Tribunal agrees with Mr Stevenson BL that the respondent's Statement of Case was comprehensive and contained:
 - (i) financial accounts
 - (ii) offers for fuel supply
 - (iii) offers for the supply of stock
 - (iv) offers of financial contributions to be made by Musgrave
 - (v) detailed financial analysis and projections
 - (vi) accountant's confirmation of available finance
 - (vii) condition surveys of the reference properties
 - (viii) Ms Morgan's enrolment with Musgrave Learning and Development course
 - (ix) offers from Ulster Bank for the supply of card machines
 - (x) a board minute

38. The Tribunal finds that this Statement of Case provided sufficient proofs of the respondent's intentions. Giving the applicant one month to digest and discuss with its legal team, the Tribunal considers that the respondent's intention should have been clear to the applicant by 16th June 2025.
39. Were there any other circumstances, however, which ought to be taken into consideration by the Tribunal in allocating costs?
40. Mr Gibson KC referred to an offer from the executors of the late John Morgan's estate to grant the applicant new tenancies on the reference properties. This offer was made on 3rd May 2025 and it was not disputed that Ms Morgan was aware of the offer.
41. The respondent's Statement of Case was, however, submitted on 16th May 2025. As previously stated this Statement of Case provided clear proof of the applicant's intentions to occupy the reference properties. Mr Gibson KC submitted that, due to this "volte-face" by the respondent, the applicant was entitled to test the respondent's proofs at hearing.
42. The respondent had changed its mind but its intentions were entirely clear in its Statement of Case that it intended to occupy the reference properties. The applicant had, of course, the legal right to challenge those intentions at hearing, but it ran the risk of having to pay costs if unsuccessful.
43. Mr Gibson KC also referred to pressure being exerted on the applicant by the respondent, following the service of a Notice of Determine. The Tribunal agrees with Mr Stevenson BL, however, these issues had nothing to do with the respondent's intention which was the clear focus of the hearing.

44. Finally, Mr Gibson KC referred to the respondent's refusal to mediate. The Tribunal agrees with Mr Stevenson BL, there was no middle ground on which to mediate. The respondent wanted to gain possession of the reference properties for its own use. It was not prepared to grant any term for a new lease.
45. The Tribunal also agrees with Mr Stevenson BL, if the Tribunal accepted the applicant's submissions with regard to mediation, all parties to Business Tenancies cases would be forced to mediate to ensure they receive their costs. This may incur additional costs and this position is not warranted or sustainable.
46. Mr Stevenson BL asked the Tribunal to note that on 9th July 2025 the respondent made an offer to the applicant to bear its own costs if the applicant would accept that it was not entitled to a new tenancy. This offer was declined.

Conclusion

47. For the reasons stated previously the Tribunal awards the respondent its costs in the reference as and from 16th June 2025. Such costs to be taxed by the Tribunal if not agreed.

5th February 2026

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