

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

IN THE MATTER OF AN APPLICATION

BT/4/2014

BETWEEN

THE DEPARTMENT OF FINANCE & PERSONNEL – APPLICANT

AND

COLUM McCLOSKEY – RESPONDENT

Re: 65-67 High Street, Bangor

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

Background

1. On 13th August 2013 the Department of Finance and Personnel (“the applicant”) served a Tenant’s Request for New Tenancy under Article 7 of the Business Tenancies (Northern Ireland) Order 1996 (“the 1996 Order”) seeking a new tenancy on premises at 65-67 High Street, Bangor. The request was accompanied by a confirmation that Mr Colum McCloskey (“the respondent”) was prepared to grant a new lease to the applicant under Article 7(6)(a) of the 1996 Order.
2. Sometime during the negotiations which followed the applicant decided to withdraw its tenancy request to the Tribunal and sought the respondent’s consent to do so. This was not forthcoming and the applicant submitted a formal request to withdraw on 18th February 2015.
3. On 9th April 2015 the Tribunal confirmed that the applicant’s tenancy request was being treated as withdrawn. On 20th April 2015 the Tribunal directed that the applicant should vacate the premises 3 months following the date of withdrawal that is 19th May 2015.
4. On 21st April the respondent objected to the vacation date proposed and sought a longer period of time. The issue before the Tribunal is therefore the termination date of the lease.

Procedural Matters

5. The applicant was represented by Mr David Dunlop BL. The respondent appeared as a litigant in person. Both parties agreed to deal with the matter by way of written submissions.

Legislation

6. Article 11(1) of the 1996 Order is of particular relevance to the subject reference:

“11(1) In any case where –

- (a) a notice to determine a tenancy has been served under Article 6 or a request for a new tenancy made under Article 7,
- (b) a tenancy application has been made, and
- (c) but for this Article the effect of that Notice or request would be to terminate the tenancy before the expiration of the period of 3 months beginning with the date on which the tenancy application is finally disposed of,

the effect of the notice or request shall be to terminate the tenancy either at such date as the Lands Tribunal may by order direct or at the expiration of the said period of 3 months and not at any other time.”

Position of the Parties

7. Mr Dunlop BL submitted that in accordance with Article 11 of the 1996 Order, the conventional period for the termination of the tenancy was 3 months. Properly interpreted he considered that the applicant would be entitled, save where the Tribunal ruled otherwise, to vacate the premises as from 19th May 2015. Subsequent, however, to the receipt of the respondent’s submission Mr Dunlop BL advised the Tribunal that the applicant was prepared to accept an extended termination date of 19th August 2015.
8. Mr Dunlop BL considered that the respondent had not set out any submissions as to why any date beyond the conventional 3 months period should be permitted, other than to refer to disputed and “without prejudice” negotiations. He asked the Tribunal to note that the applicant was prepared to accept a termination date of 19th August 2015, which was more than 6 months from the date the applicant communicated the withdrawal of its tenancy request.
9. On that basis Mr Dunlop BL requested the Tribunal to make an Order terminating the existing tenancy at 19th August 2015.

10. The respondent referred the Tribunal to details of the “without prejudice” negotiations between the parties. He considered that they had reached agreement on a lease renewal on 2 occasions which would have resulted on the last occasion in a termination date of 16th February 2016. He suggested, therefore, that a date closer to 16th February 2016 would serve as a more appropriate period of notice, to respect both parties financial constraints and allow them to move forward with goodwill.

Conclusion

11. In accordance with Article 11 of the 1996 Order the Tribunal has a discretion to allow a termination date 3 months from the date when the application is finally disposed of or fix some other date for termination of the tenancy. The respondent’s proposed date was founded on the negotiations between the parties and the Tribunal has not been, nor does it wish to be, a party to these “without prejudice” negotiations.

12. The Tribunal considers that the applicant has acted reasonably in all the circumstance in proposing a termination date some 6 months after its application to withdraw its tenancy request. The Tribunal therefore agrees with Mr Dunlop’s proposal that the tenancy should terminate on 19th August 2015 and orders accordingly.

ORDERS ACCORDINGLY

4th June 2015

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