

**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/10/2019**

**BETWEEN**

**SHOE ZONE RETAIL LIMITED – APPLICANT**

**AND**

**GLENBEIGH LIMITED – RESPONDENT**

**Re: Unit 2, 16-22 Ann Street, Belfast**

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

**Background**

1. Glenbeigh Limited (“the respondent”) is the owner of premises at Unit 2, 16-22 Ann Street, Belfast (“the reference property”) which is currently occupied by Shoe Zone Retail Limited (“the applicant”) by way of a lease dated 1<sup>st</sup> April 2004 for a term of 15 years, expiring on 22<sup>nd</sup> February 2019.
2. On 13<sup>th</sup> July 2018 the applicant served a “tenant’s request for a new tenancy” under Article 7 of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”), proposing a new tenancy to commence on 23<sup>rd</sup> February 2019 for a term of 5 years. The respondent failed to reply to the applicant’s request within the 2 month time limit, as required under Article 7(6) of the order and as stated on the applicant’s request form.
3. Subsequently, on 30<sup>th</sup> January 2019 the applicant submitted a “Tenancy Application” to the Lands Tribunal. The respondent replied on 27<sup>th</sup> February 2019 stating that it would not be willing to grant a new tenancy, relying on the grounds of “own use”, as detailed in Article 12(1)(g) of the Order.

4. Following the directions of the Tribunal the respondent submitted its statement of case dealing with the “own use” issue. The applicant responded but did not deal with the substantive issue, rather, for the first time, it took the position that the respondent could not oppose the Tenancy Application as it had not served a Landlord’s Notice within the statutory 2 month time limit. The respondent replied stating that if a Landlord’s Notice had not been served then the Tenancy Application was invalid.
5. Following these exchanges, on 13<sup>th</sup> June 2019, the applicant requested the Tribunal to exercise its discretion under Article 10(5)(b) of the Order to set an alternative time limit for the applicant to make its Tenancy Application.
6. There were therefore two issues to be decided by the Tribunal:
  - Was the Landlord’s Notice invalid as it was not served within the statutory 2 month time limit?
  - Should the Lands Tribunal exercise it’s statutory discretion under Article 10(5)(b) of the Order to set an alternative time limit for the Tenancy Application?

### **Procedural Matters**

7. Mr Keith Gibson BL instructed by Arthur Cox Solicitors represented the applicant. The respondent was represented by Mr Douglas Stevenson BL, instructed by Carson McDowell Solicitors. The Tribunal is grateful to counsel for their detailed legal submissions.

### **Position of the Parties**

8. The applicant requested the Tribunal to fix a new time limit which would permit a Tenancy Application on or after 30<sup>th</sup> January 2019.
9. The respondent’s position was that the 1996 Order should be construed so as to permit a Landlord’s Notice to be served out of time. If the Tribunal did not accept that a Landlord’s Notice could be served out of time then the respondent submitted:

- The Tenancy Application when made was invalid.
- The applicant's tenancy therefore determined on 23<sup>rd</sup> February 2019 as stipulated on the applicant's request for a new tenancy.
- The applicant sought to rely on Article 10(5)(b). That Article could not be applied retrospectively. The applicant's tenancy ended on 23<sup>rd</sup> February 2019 and it could not now be resurrected under that Article.
- In any event, the applicant could not make a valid Tenancy Application as it could not include a copy of a Landlord's Notice as required under the 1997 Rules.
- The applicant's position was not adversely affected by a finding that a valid Tenancy Application had not been made as it still then had rights under the 1996 Order.

### **The Statute**

10. Article 7 of the Order provides:

“Request by tenant for a new tenancy

7.-(1) A tenant may, subject to and in accordance with this Article, make a request for a new tenancy ... –

(a) ...

(b) ...

(c) ...

(d) ...

(2) ...

(3) ...

(4) ...

(5) Where the tenant makes a request for a new tenancy in accordance with this Article, the current tenancy shall, subject to Article 11 and to Article 20(2), terminate

immediately before the date specified in the request for the beginning of the new tenancy.

(6) Within 2 months of the making of a tenant's request for a new tenancy in accordance with this Article, the landlord shall serve notice on the tenant –

(a) that he is willing to grant a new tenancy on the tenant's terms (or on those terms as modified by an agreement reached between the landlord and the tenant); or

(b) that he will oppose a tenancy application by the tenant (and any such notice shall state on which of the grounds mentioned in Article 12 the landlord will oppose the application)."

11. Article 10 of the Order provides:

"Tenancy Application by landlord or tenant

10.-(1) In this Order 'tenancy application' means either –

(a) an application by the landlord for an order that the tenant is not entitled to a new tenancy; or

(b) an application by the tenant for an order for the grant of a new tenancy.

(2) ...

(3) Where a tenant has served a notice containing a request for a new tenancy, a tenancy application may be made to the Lands Tribunal at any time between the date of service of a notice served by the landlord under Article 7(6)(b) and the date specified in the tenant's request for the beginning of the new tenancy.

(4) ...

(5) The Lands Tribunal, on an application made by the landlord or the tenant in relation to a tenancy, may by order-

- (a) vary (by extension or reduction) the time limit mentioned in paragraph (2) or paragraph (3) (and any extension may be made after the expiration of the time limit);
- (b) set an alternative time limit for the purposes of paragraph (3) where the landlord has not served a notice under Article 7(6)(a) or (b)."

12. The Lands Tribunal (Amendment) Rules (Northern Ireland) 1997 ("the 1997 Rules") provide:

"SCHEDULE

Part I

Substituted Part VII of the Lands Tribunal Rules

'Part VII

Proceedings under the Business Tenancies (Northern Ireland) Order 1996 The Business Tenancies Rules

**Interpretation of this Part**

E1. ...

Notice of application under the Order

E2.-(1) A tenancy application may be made by serving on the registrar a written application in Form EA together with the following documents-

(a) ...

(b) where a tenancy application is an application made by a tenant for an order for the grant of a new tenancy-

(i) a copy of the notice to determine served by the landlord under Article 6; or

(ii) a copy of the notice served by him under Article 7(6)(b),

as the case may be;

and the landlord or, as the case may be, the tenant shall at the same time serve on the tenant or the landlord a copy of the tenancy application and copies of the documents accompanying the tenancy application.”

### **Authorities**

13. The Tribunal was referred to the following authorities:

- Samuel Johnston Limited v Andras House Limited & Cleaver Developments Limited  
BT/123-125/1991

14. The Tribunal was also referred to an article written by Rosemary Carson, Partner, Carson McDowell, Solicitors; and Norma Dawson, Professor of Law, Queens University, Belfast. The article was entitled “The Business Tenancies (NI) Order 1996 – To Agree or Not to Agree?”.

15. The Tribunal also derives assistance from its recent decision in Vixcroft (Londonderry) Limited v Argos Limited BT/59/2018. In that decision the Tribunal referred to the case of Harvey Limited v Schofield & Anderson Limited BT/27/1998:

“The Tribunal has had regard to the position under the previous legislation and its review in the Report of the Law Reform Advisory Committee (LRAC No 2, 1994) which led to the new Order.”

And

“The Report indicated two relevant mischiefs in the earlier Act, which the 1996 Order sought to redress by giving the Tribunal the power to extend time limits. The first was to give parties more time to conclude genuine negotiations without the need to refer the matter to the Tribunal. The second was to avoid the potential loss of substantial property rights on a technicality.”

And

“It goes without saying that parties put their positions at risk if they do not adhere to time limits or take appropriate steps to extend time limits.”

16. At paragraph 22 of its decision in Vixcroft v Argos the Tribunal also stated:

“In Harvey v Schofield the Tribunal accepted that it had an unfettered discretion with regard to granting an extension of time under Article 10(5) of the Order but that discretion must be exercised judicially and a party seeking an extension must show good reason.”

17. The Tribunal also refers to paragraph 4.3.3 of the Report of the Law Reform Advisory Committee (LRAC No2, 1994):

“Tenants request for a new tenancy

4.3.3 ... If a landlord wishes to oppose the grant of a new tenancy he must within two months of the making of the tenants request, serve a notice of opposition, which must set out the landlords grounds of opposition. Thus the parties know at an early stage where they stand. We consider that no change in this procedure is required [Draft Order, Article7].”

## **Discussion**

18. The Tribunal now turns to consider:

- (i) the Tenant’s Request for a New Tenancy
- (ii) the Tenancy Application to the Lands Tribunal
- (iii) the Landlord’s Notice to Determine

### **The Tenant’s Request for a New Tenancy**

19. The validity of the applicant's request for a new tenancy, which issued on 13<sup>th</sup> July 2018, was not disputed. It contained the applicant's proposed terms for a new tenancy to commence on 23<sup>rd</sup> February 2019.
20. The Tribunal agrees with Mr Stevenson BL, however, this brought the existing tenancy to an end on the determination date, 22<sup>nd</sup> February 2019. Article 5(5) of the Order stipulates:

“(5) Where the tenant makes a request for a new tenancy in accordance with this section, the current tenancy shall, subject to section (9) and to section 17(2), terminate immediately before the date specified in the request for the beginning of the new tenancy.”
21. This in effect meant that what now existed was a periodic tenancy but which still enjoyed the protection of the Order. This was accepted by the respondent.

*Validity of the Tenancy Application to the Lands Tribunal*

22. Article 10(3) of the Order states:

“(3) Where a tenant has served a notice containing a request for a new tenancy, a tenancy application may be made to the Lands Tribunal at any time between the date of service of a notice served by the landlord under Article 7(6)(b) and the date specified by in the tenant's request for the beginning of a new tenancy.”
23. It was therefore clearly specified in the Order that a tenancy application must be made between the date of the Landlord's Notice to Determine and the determination date specified in the Tenant's Request. In the subject reference the applicant had made its Tenancy Application on 30<sup>th</sup> January 2019, before the respondent had served its Landlord's Notice on 27<sup>th</sup> February 2019. For that reason the Tribunal therefore agrees with Mr Stevenson BL, the Tenancy Application was not valid.



24. That the Tenancy Application, when made, was invalid had been implicitly accepted by the applicant as it now sought a new time limit, to the effect that the Tribunal could permit a new time limit for the Tenancy Application under Article 10(5) of the Order, on or after 30<sup>th</sup> January 2019.
25. Article 10(5) of the Order provides:
- “10(5) The Lands Tribunal, on an application made by the landlord or the tenant in relation to a tenancy, may by order-
- (a) vary (by extension or reduction) the time limit mentioned in paragraph (2) or paragraph (3) (and any extension may be made after the expiration of the time limit);
- (b) set an alternative time limit for the purposes of paragraph (3) where the landlord has not served a notice under Article 7(6)(a) or (b).”
26. Mr Gibson BL submitted that the Tribunal had an “unfettered” discretion to extend the time limit, as referred to in paragraph 22 of Vixcroft v Argos.
27. Mr Stevenson BL submitted that Article 10(5)(b) applied to the situation in the subject reference, where the respondent had not served a Landlord’s Notice at the date of the Tenancy Application. The Tribunal agrees.
28. He submitted that Article 10(5)(b), in contrast to Article 10(5)(a), did not give the Tribunal the power to amend a time limit where the determination date had passed. The current tenancy ended on 22<sup>nd</sup> February 2019 and the applicant did not ask the Tribunal to exercise its authority under Article 10(5)(b), until 13<sup>th</sup> June 2019. Mr Stevenson BL submitted that the applicant was asking the Tribunal to operate Article 10(5)(b) retrospectively and to render valid that which was admittedly invalid.

29. The Tribunal agrees with Mr Stevenson BL, the Tribunal's discretion to extend time limits must be "exercised judicially and a party seeking to extend time limits must show good reason" (see paragraph 22 of Vixcroft v Argos). The current tenancy came to an end on 22<sup>nd</sup> February 2019, the respondent did not request an extension to the time limit until 13<sup>th</sup> June 2019 and the Tribunal therefore declines to use its discretion under Article 10(5) to resurrect a tenancy which had terminated.

#### Validity of the Landlord's Notice to Determine

30. The applicant served its Tenant's Request on 13<sup>th</sup> July 2018 and Article 7(6)(b) of the Order required the respondent to serve its Landlord's Notice within two months, on or before 13<sup>th</sup> September 2018. The respondent, however, did not serve a Landlord's Notice until 27<sup>th</sup> February 2019.

31. Article 10(5)(b) of the Order gives the Tribunal a discretion to regard a late served Landlord's Notice as valid. In the circumstances of the subject reference, however, the Tribunal declines to exercise its discretion to set an alternative time limit for a Landlord's Notice which was served more than five months out of date. Time limits with regard to notices must be strictly adhered to in order that parties know at an early stage exactly where they stand and only in exceptional circumstances will the Tribunal permit an extension of time. There were no exceptional circumstances in the subject reference.

#### Conclusion

32. In conclusion the Tribunal has decided that the Tenancy Application and the Landlord's Notice to Determine were invalid and the Tribunal declines to use its discretion under Article 10(5) of the Order to set alternative time limits for either. The current tenancy determined on 22<sup>nd</sup> February 2019 and the Tribunal therefore invites the applicant to make a fresh Tenancy Application or for the respondent to submit a new Notice to Determine.

17<sup>th</sup> July 2019

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

**Appearances:**

**Applicant – Mr Keith Gibson BL instructed by Arthur Cox solicitors.**

**Respondent – Mr Douglas Stevenson BL instructed by Carson McDowell solicitors.**