

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

BT/102/2018

BETWEEN

BOOTS UK LIMITED – APPLICANT

AND

ROCKSPRING UK VALUE 2 BALLYMENA (JERSEY) LIMITED – RESPONDENT

Re: Units 28 & 29 Fairhill Shopping Centre, Ballymena

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

Background

1. Rockspring UK Value 2 Ballymena (Jersey) Limited (“the respondent”) had agreed with Boots UK Limited (“the applicant”) for a lease of Units 28-29 Fairhill Shopping Centre, Ballymena (“the reference property”) for a period of five years from 15th October 2013.
2. On 17th May 2018, the applicant made a request, pursuant to Article 7 of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”), for a new tenancy, specifying a proposed rent of £37,000 per annum. The respondent did not object to a new tenancy being granted and subsequently, on 15th November 2018, a tenancy application was made to the Lands Tribunal specifying that the proposals were as set out in the request for a new tenancy.
3. The applicant, however, has since sought to amend the amount of rent specified in the tenancy application downwards and the respondent has taken no objection, primarily because the respondent considers that the rent will ultimately be determined by the Lands Tribunal. The Tribunal agrees, the rent, if not agreed, will be determined by the Tribunal in accordance with Article 18 of the Order.

4. The present dispute between the parties is in respect of the disclosure of certain comparables. The applicant seeks an order that the respondent discloses letting details of the following properties within the Fairhill Shopping Centre:

- Units 11 and 12 (“Superdry”)
- Units 61 and 62 (“Burtons/Dorothy Perkins”)
- Unit 65 (“Wallis”)

This is the issue to be decided by the Tribunal.

Procedural Matters

5. The parties had agreed to deal with the issue by way of written representations. Mr Keith Gibson BL provided a submission on behalf of the applicant and a submission on behalf of the respondent was provided by Carson McDowell Solicitors. The Tribunal is grateful to the legal representatives for their submissions.

Position of the Parties

6. The respondent has objected to disclosing lettings details of the three units. The applicant considers the units to be directly comparable to the reference property and their letting details are required in order to assess the correct rent for the reference property.

The Law

7. Rule 9 of the Lands Tribunal Rules (Northern Ireland) 1976 (“the Rules”) provides:

“(4) Subject to paragraph (5) any party to proceedings shall, if so requested by the registrar, furnish to him any document which the Tribunal may require and which it is in that party’s power to furnish, and shall, if so directed by the registrar, afford to all other parties to the proceedings an opportunity to inspect any such document and to take a copy thereof.

(5) Nothing in this rule shall be deemed to require the delivery of a document or information or particulars which would be privileged in the proceedings or contrary to the public interest to disclose.”

Authorities

8. The applicant referred the Tribunal to the following authorities:

- Reid (Samuel) v Newtownabbey Borough Council [2007] NIQB 106
- Party E v Party C (BT/109/2016)
- John Minnis Estate Agents v James (BT/15/2018)

Discussion

Units 11-12 (“Superdry”)

9. The respondent considered itself bound by an obligation of confidentiality with regard to the lease on this unit and was not prepared to release the information requested without a court order being made compelling it to do so.

10. The applicant considered this unit to be a “perfect” comparable for the reference property as it was located directly opposite and was of a similar size and configuration. The Tribunal agrees.

11. Whilst Mr Gibson BL accepted that the respondent had a valid contractual reason for not disclosing the requested information he considered that this did not subvert the statutory jurisdiction of the Tribunal. He referred the Tribunal to the following extract from the decision in Reid v Newtownabbey Borough Council [2007] NIQB 106, at para 13:

“[13] Issues in relation to the disclosure of confidential information generally require careful consideration by the court. It is clear that confidentiality alone cannot be a basis

for objection to the discovery of otherwise discoverable documentation. Relevance alone, however, will not lead to inspection or production without an examination of the necessity for disclosure and a consideration of the mechanisms that may be available to properly respect confidentiality (see *Science Research Council v Nasse* [1980] AC 1028). I am satisfied that similar principles should underpin the approach to the exercise of discretion by the court in the issue of a Khanna subpoena.”

12. Mr Gibson BL considered the parties to the Lands Tribunal to be bound by an undertaking in respect of confidentiality of documents in any event. The Tribunal agrees. In conclusion he submitted that any contractual obligation in respect of confidentiality could be set aside in favour of an Order of the Court.
13. The Tribunal considers Units 11-12 to be a very relevant comparable with regard to the assessment of the correct rental for the reference property, in accordance with Article 18 of the Order. The Tribunal directs, under Rule 9(4) of the Rules, that the respondent provides the letting details of Units 11-12, regardless of any confidentiality agreement.

Units 61-62 (“Burtons/Dorothy Perkins”) and Unit 65 (“Wallis”)

14. The renewal leases for Units 61-62 both run from 1st February 2019. The proposed commencement date for the lease renewal on the reference property was 23rd November 2018 (“the valuation date”), this being the date recorded in the applicant’s Tenancy Application. The respondent, therefore, did not consider these lease to be relevant to the determination of the rent for the reference property, as they occurred after the valuation date.
15. Mr Gibson BL did not consider the fact that these lettings happened after the valuation date to be a barrier to their disclosure in terms of relevance. He submitted that it only had an effect in respect of the weight to be attached.

16. The Tribunal agrees with Mr Gibson BL. The fact that these renewals occurred post the valuation date did not prevent their disclosure. They occurred less than four months from the valuation date and it was a matter of the weight to be attached to these comparables by the Tribunal. This would be subject to consideration at hearing.
17. The respondent's agent was also of the opinion that these units were not directly comparable to the reference property, given their different configurations and locations within the shopping centre.
18. The applicant's agent considered these units to be valid comparables. Mr Gibson BL submitted that these were relevant comparables as they were located within the same shopping centre and he considered the internal configurations to be irrelevant.
19. The Tribunal agrees with Mr Gibson BL. Despite the fact that Units 61-62 and Unit 65 have different configurations and locations within the same shopping centre the Tribunal does not consider this to be a bar on their disclosure. The Tribunal considers these to be relevant as they are single units within the same shopping centre and again, it will be a matter of weight to be attached to them. This will also be considered at hearing.

Conclusion

20. Exercising its statutory power granted under Rule 9(4) of the Rules the Tribunal orders the respondent to disclose details of the lettings of Units 11-12, 61-62 and 65, as requested by the applicant.

5th March 2020

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