

**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/107/2017**  
**BETWEEN**  
**AECOM LIMITED – APPLICANT/TENANT**  
**AND**  
**MILLAR ESTATES (BEECHILL HOUSE) NI LIMITED – RESPONDENT/LANDLORD**

**Re: Block A and Part of Block B, Beechill House, 42 Beechill Road, Belfast**

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

**Background**

1. The premises described as Block A and part Block B, Beechill House, 42 Beechill Road, Belfast (“the reference property”) was demised to AECOM Limited (“the applicant”) for a term of 15 years from 29<sup>th</sup> October 2002. Millar Estates (Beechill House) NI Limited (“the respondent”) is the landlord under the lease and the current annual rent payable is £249,250.
2. The contractual term of the lease expired on 28<sup>th</sup> October 2017. By notice issued under Article 6 of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”) and dated 22<sup>nd</sup> March 2017, the respondent gave notice terminating the lease on 29<sup>th</sup> October 2017. This notice also confirmed the respondent’s willingness to grant a new tenancy of the reference property to the applicant.
3. On 17<sup>th</sup> October 2017 the applicant served a tenancy application and reference was then made to the Lands Tribunal under Article 10 of the Order. The case was

mentioned before the Tribunal in November 2017 and directions for the exchange of reports on facts and expert reports were issued.

4. On 15<sup>th</sup> January 2018, however, the applicant's solicitors sent an email to the respondent's agent, Mr John Adgey, stating:

"I believe that David Wright has made you aware that my client will not be pursuing its tenancy application. I intend to make an application to the Tribunal to (i) withdraw our application; and (ii) request an Order from the Tribunal that the current tenancy will end on 30<sup>th</sup> April 2018."

5. Subsequently, on 17<sup>th</sup> January 2018, the applicant made a request to the Tribunal to withdraw its tenancy application. On 22<sup>nd</sup> January 2018 the respondent's solicitors advised the Tribunal that the respondent did not consent to withdrawal.

6. The tenancy application therefore remains extant and before the Tribunal. This is a preliminary hearing to adjudicate on:

- (i) the right of the applicant to withdraw its tenancy application.
- (ii) the termination date for the applicant's tenancy of the reference property.

### **Procedural Matters**

7. The applicant was represented by Mr Douglas Stevenson BL instructed by Carson McDowell, Solicitors. Mr Brian Speers, Solicitor of CMG Cunningham Dickey, appeared on behalf of the respondent. The Tribunal is grateful to the legal representatives for their helpful submissions.

### **Position of the Parties**

8. The applicant had originally requested the Tribunal to exercise its discretion under Article 11 of the Order to fix a termination date of 30<sup>th</sup> April to end the applicant's tenancy of the reference property. At hearing, however, the applicant altered its position to request a termination date of 31<sup>st</sup> May 2018.
9. The respondent's position was that the Tribunal should allow the applicant to withdraw its tenancy application and to dispose of the application under the terms of Article 11 of the Order, triggering the possibility of the applicant issuing a 3 months' notice bringing the tenancy to an end on 30<sup>th</sup> June 2018.

### **The Law**

10. The Tribunal considers the following sections of the Order to be relevant:

“5.-(1) A tenancy to which this Order applies shall not come to an end unless terminated in accordance with the provisions of this Order; and subject to the following provisions of this Order such a tenancy may be terminated by -

- a) a notice to determine served by the landlord in accordance with the provisions of Article 6; or
- b) a request for a new tenancy made by the tenant in accordance with the provisions of Article 7;

.....”.

And

“Application to the Lands Tribunal

Application to the Lands Tribunal for an order for the grant of a new tenancy or for a declaration that the tenant is not entitled to a new tenancy

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

- a) an application by the landlord for a declaration 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) Where a landlord has served a notice to determine, a tenancy application may be made to the Lands Tribunal at any time between the date of service of the notice and the date of termination.

...”.

And

“Interim continuation of tenancies pending determination by the Lands Tribunal

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 under Article 7;
- b) an application to the Lands Tribunal has been made under Article 10; 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 three months beginning with the date on which the 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 direct or at the expiration of the said period of 3 months and not at any other time.

(2) The reference in paragraph (1)(c) to the date on which an application is finally disposed of shall be construed as a reference to the earliest date by which the proceedings on the application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired, except that if the application is withdrawn or any appeal is abandoned the reference shall be construed as a reference to the date of the withdrawal or abandonment.

...”.

11. The Tribunal was also referred to Rule 34 of the Lands Tribunal Rules (Northern Ireland) 1976:

“(2) In the absence of consent to a proposed withdrawal by all the parties to the proceedings, a party wishing to withdraw his notice of reference or application, notice or counter notice under these rules shall apply in writing to the registrar under the provisions of rule 12 and the registrar, or the President on appeal from the registrar, may permit such withdrawal on such terms as to costs or otherwise as he may think fit.”

### **Discussion**

12. There was much discussion at hearing about the standing of the applicant’s email of 15<sup>th</sup> January 2018 and whether it constituted a proper termination notice under the terms of the Order. The Tribunal considers, however, that the main issue in this reference is the correct application of Article 11 of the Order.
13. Mr Stevenson BL submitted that Article 11 was clearly engaged in the subject reference:

- (i) A notice to determine had been served under Article 6, as required by Article 11(1)(a).
- (ii) A tenancy application had been made under Article 10, as required by Article 11(1)(b).
- (iii) The effect of the notice to determine, if Article 11 did not apply, would have been to terminate the tenancy in October 2017 i.e. “before the expiration of the period of 3 months beginning with the date on which the tenancy application is disposed of”, as stipulated by Article 11(1)(c).

He submitted therefore, in the circumstances of the subject reference, the Tribunal’s powers under Article 11 were engaged. The Tribunal agrees. Article 11 gives the Tribunal a discretion to fix a date for termination following disposal and Mr Stevenson BL suggested that the Tribunal should use its discretion to fix a termination date of 31<sup>st</sup> May 2018, as requested by the applicant.

- 14. Mr Stevenson BL also referred the Tribunal to Article 11(2) which clearly envisaged withdrawal as a means of finally disposing of a tenancy application.
- 15. Mr Speers agreed that Article 11 provided for circumstances where the Tribunal could direct when a lease was terminated. He considered, however, that 3 conjunctive elements needed to be in place before the Tribunal may order the date for termination of a tenancy. He agreed that the first elements, a request for a new tenancy under Article 7 and a tenancy application to the Lands Tribunal under Article 10, were in place.
- 16. He considered, however, that Article 11 was only engaged when the tenancy application was finally disposed of and in the subject reference that was when the

tenancy application was withdrawn. Mr Speers advised the Tribunal that the respondent was no longer objecting to the applicant's request to withdraw its tenancy application and once withdrawn, he suggested that the applicant could serve its 3 months' notice, giving a termination date of 30<sup>th</sup> June 2018.

### **The Tribunal**

17. Both parties were agreed, therefore, that Article 11(2) clearly envisaged withdrawal as a means of finally disposing of a tenancy application and the respondent was no longer objecting to withdrawal. When the subject reference is finally disposed of by withdrawal, however, Article 11(1) gives the Tribunal a discretion to set a date of termination of the tenancy "as the Lands Tribunal may direct."
18. In the subject reference the respondent was clearly advised on 15<sup>th</sup> January 2018 that the applicant would not be pursuing its tenancy application and that they would be seeking a termination date of 30<sup>th</sup> April 2018. On 17<sup>th</sup> January 2018 the applicant sought to withdraw its application but the respondent refused consent. The applicant is now seeking withdrawal and a termination date of 31<sup>st</sup> May 2018, so the respondent will have had some four and a half months to find a new tenant, which the Tribunal considers to be reasonable.

### **Conclusion**

19. The Tribunal permits the applicant to withdraw its tenancy application and in the circumstances of the subject reference, the Tribunal exercises its discretion under Article 11(1) of the Order to fix a termination date of 31<sup>st</sup> May 2018.
20. The Tribunal will accept submissions on compensation and costs, if required.

**ORDERS ACCORDINGLY**

**29<sup>th</sup> March 2018**

**Henry M Spence MRICS Dip.Rating IRRV (Hons)**

**Lands Tribunal for Northern Ireland**

**Appearances:**

**Applicant: Mr Douglas Stevenson BL, instructed by Carson McDowell, Solicitors.**

**Respondent: Mr Brian Speers, solicitor of CMG Cunningham Dickey, Solicitors.**