

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

In the Matter of the Business Tenancies Act (Northern Ireland) 1964

And in the Matter of Business Premises at 27 Bridge Street, Banbridge

BT/109/1993

BETWEEN

STEWARTS SUPERMARKETS LIMITED - APPLICANT/TENANT

AND

JOSEPH DUNWOODY - RESPONDENT/LANDLORD

Lands Tribunal for Northern Ireland

Michael R Curry FRICS FSVA IRRV ACI Arb

Belfast - 15th March 1994

This is an application under Section 8 of the Business Tenancies Act (Northern Ireland) 1964 for a new tenancy of a holding which comprises the ground floor of premises at 27 Bridge Street, Banbridge. The premises, which are occupied as a shop, are part of an old three storey building with a two storey return and a single storey rear extension. Part of the upper floors is occupied by another tenant as a hairdressing salon.

The Tenant is overholding on a lease for a term of 5 years from 1st September 1981. The Landlord's Notice to Determine the tenancy was given on 16th September 1993. The Landlord opposed a new tenancy on grounds that "the Landlord has to carry out substantial works and renovations which cannot be completed whilst the premises are occupied". The Tenant's application for a new tenancy is dated 24th November 1993.

Miss Jacqueline Simpson BL instructed by Carson & McDowell, Solicitors, appeared for the Applicant/Tenant.

Mr John Kearney BL instructed by Arthur J Downey & Co, Solicitors, appeared for the Respondent/Landlord.

Mr Gary McDowell, an experienced Chartered Surveyor, gave expert evidence on behalf of the Respondent/Landlord.

By letter dated 30th November 1993 the Registrar directed that the matter would be dealt with in two parts.

Part One - the Landlord's objection to a new tenancy, and

Part Two - the terms of a new lease.

This Hearing dealt with Part One only.

By letter dated the 25th February 1994 the Registrar requested disclosure and exchange of documentary evidence. Mr McDowell helpfully prepared a proof of evidence which included the documentary evidence and this was exchanged prior to the hearing.

The following facts were either agreed or proved in evidence:

1. Estimates of costs for the proposed works had been prepared by Raymond Thompson BSc CEng MICE who had also prepared, submitted and obtained planning permission and building control approval. Planning permission for the works was dated 22nd August 1989 and was subject to a condition that the development must be begun within 5 years. Building control approval was dated 3rd February 1994.
2. The proposed works amounted to demolition and replacement of part of the holding, refurbishment of part and other works to the building, not being part of the holding. The rear extension, part of the holding, would be demolished and replaced and the remainder of the holding refurbished. The works would include rewiring of the holding.
3. The Ulster Bank in Banbridge confirmed that the Landlord would have sufficient funds to finance a refurbishment at an estimated cost of £25,500.
4. A Notice to Determine had been served on the other tenant in the building. The correspondence which was produced showed that the Tenant's Counter Notice was clearly out of time. That Tenant had made no application to the Lands Tribunal.

Mr McDowell gave evidence that he had been instructed by the Landlord to secure possession of the holding.

He produced a series of photographs illustrating the condition of the building and the holding. In his opinion the premises were in a very serious state of disrepair. He gave evidence that the works were extensive and structural in character. It would not be physically possible for the Tenant to remain in possession during the works.

After the works were completed it was intended that the premises would continue in retail use.

No contractor had yet been appointed to carry out the works but, if necessary, he considered it likely that a contractor could be appointed sufficiently quickly to comply with the time limit on the planning condition. In any event, no difficulty would arise if that time limit had to be extended.

It was put to Mr McDowell that there might be a cost overrun on the project. He said that his initial estimate for costs, on which the Bank had based their confirmation of available funds, was made in advance of more precise costing, which turned out to be somewhat lower. In any event, he had a knowledge of the financial circumstances of the Landlord and was satisfied that a cost overrun would not present a problem.

Mr Kearney on behalf of the Respondent/Landlord contended:

1. All the preparatory steps taken indicate that there is a clear intention.
2. The photographs show that there is a need to carry out the works.
3. The application for planning permission as long ago as 1989, coupled with the more recent building control approval, shows a long settled intention.
4. The obtaining of costings and the correspondence from the bank both support the intention to carry out the works and confirm the ability to fund those works.
5. As notice had been served on the upper floor tenant at the same date as on this tenant and as there had been no counter notice nor application to the Lands Tribunal, to the extent that it might be necessary to obtain possession of the remainder of the premises, there would be no great difficulty in achieving that possession.

6. The expert evidence is that the intended works are extensive and possession is required.

Miss Simpson did not oppose these contentions.

If the Tribunal were minded to refuse the application, the parties were agreed that a suitable effective date of termination would be the 1st September 1994 and would suggest that no order be made as to costs and no order be made as to compensation.

DECISION

No issue arises as to the validity of notices, the grounds of objection, the extent of the holding, the nature of the intended work or the need for possession of the holding.

The only point at issue is whether the Respondent/Landlord has a genuine intention to "carry out substantial works and renovations" as he had stated in his Notice to Determine.

For the following reasons I find that the Respondent/Landlord has a genuine intention and desire to carry out the proposed works:

1. I accept the unopposed contention of Mr Kearney that the preparatory steps, including the various applications for permission and the obtaining of costings, support a finding that there is a clear intention.
2. I accept Mr Kearney's contention that the preparation of plans in 1989 coupled with the more recent application for building control approval for the same scheme shows a settled intention.
3. I accept that the correspondence from the bank together with the uncontested evidence of Mr McDowell confirms the ability to fund the works.
4. I accept that the photographs and Mr McDowell's expert evidence as to disrepair show the works to be desirable.

5. I accept the expert opinion of Mr McDowell that the current occupation of the upper part of the building does not present an obstacle which is sufficient to thwart the stated intention.

It follows that I accept that the Respondent/Landlord has succeeded in his opposition to the application on ground 10(1)(f) of the Act.

Accordingly the Tribunal dismisses this application.

Under the provisions of Section 9 of the Act the Tribunal directs that the Notice to Determine served by the Respondent/Landlord shall have effect to terminate the current tenancy on 1st September 1994.

There will be no order as to costs.

There will be no order as to compensation.

ORDERS ACCORDINGLY

29th March 1994

**MICHAEL R CURRY FRICS FSVA IRRV ACIArb
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances

John Kearney of Counsel (instructed by Arthur J Downey & Co, Solicitors) for the Applicant.

Jacqueline Simpson (instructed by Carson & McDowell, Solicitors) for the Respondent.