

**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/11/2020**

**BETWEEN**

**KEVIN LYNCH – APPLICANT**

**AND**

**PAUL McGILLOWAY – RESPONDENT**

**Re: 1B Westland Terrace, Londonderry**

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

**Background**

1. Mr Kevin Lynch (“the applicant”) has occupied the premises at 1B Westland Terrace, Londonderry (“the reference property”) continuously since 2008, having had a previous period of occupation prior to reoccupying in 2008. The reference property is currently occupied and used as a florist shop.
2. Mr Paul McGilloway (“the respondent”) purchased premises at 1 Westland Terrace, to include the reference property, in 2003. The structure at 1 Westland Terrace comprises a large 3 storey house with the ground floor being used a picture .framing business by the respondent, the remaining floors are let as living accommodation.
3. To the rere of and behind the main structure lies the reference property which was a former flat roof domestic garage converted for use as a shop. It has been used as a florists shop since 2002.

4. There is no written agreement between the parties as to the lease of the reference property, rather it has been let by way of a verbal agreement, on a monthly tenancy. The current monthly rent is £370 to include water and electricity. The reference property has been valued separately for rates purposes and these are paid by the applicant. At the date of the hearing the rental payments were up to date.
  
5. The parties had accepted that the subject tenancy arrangements were protected by the terms of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”) and on 13<sup>th</sup> January 2020 Kearney & Co solicitors lodged a tenancy application to the Lands Tribunal on behalf of the applicant. This tenancy application sought a 10 year tenancy at an initial rent of £370 per month.
  
6. In response the respondent served a Landlord’s Notice to Determine under Article 7 of the Order, advising that he was opposed to a new tenancy on two grounds mentioned in Article 12 of the Order and summarised:
  - (a) that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due; and
  - (b) that on termination of the current tenancy the landlord intends to carry out substantial works of construction on the holding or part of it and the landlord could not reasonably do so without obtaining possession of the holding.
  
7. At hearing the respondent confirmed that he no longer wished to pursue ground “(a)”. The issue to be decided by the Tribunal was, therefore, had the respondent proved his grounds of opposition to a new tenancy, as required under Article 12(1)(f) of the Order?

### **Procedural Matters**

8. At hearing the applicant appeared as a litigant in person despite having previously been legally represented and prior to the hearing he had made written submissions, as directed by the Tribunal.
9. The respondent was represented by Mr Rory McNamee BL, instructed by Clarendon Legal solicitors.
10. The Tribunal is grateful to the parties for their helpful submissions.

### **Position of the Parties**

11. The respondent advised the Tribunal that little or no works had been carried out to the reference property since 1998 and in order to protect his asset and prevent it falling in to disrepair he considered that the reference property was in need of urgent repair and modernisation.
12. The applicant's position was that he had carried out repairs to the interior of the reference property and no further works were required.

### **The Law**

13. Article 12(1)(f) of the Order lists the grounds on which the respondent seeks to oppose the grant of a new tenancy:-

"12.-(1) The grounds on which a landlord may make a tenancy application, or may oppose a tenancy application by the tenant, are such of the following grounds as may be stated in the landlord's notice to determine under Article 6, or as the case may be, in the landlord's notice under Article 7(6)(b), that is to say-

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) that on the termination of the current tenancy the landlord intends-

(i) to demolish a building or structure which comprises, or forms a substantial part of, the holding and to undertake a substantial development of the holding; or

(ii) to carry out substantial works of construction on the holding or part of it;

and that the landlord could not reasonably do so without obtaining possession of the holding.”

14. Article 23 of the Order allows for compensation to be paid where an “order for a new tenancy is opposed on certain grounds” and Article 28 deals with the situation of a landlord’s “failure to fulfil intentions”.

### **Authorities**

15. The Tribunal was referred to the following authorities:

(i) Cunliffe v Goodman [1950] 1 AER 470

(ii) Cox v Clancy BT/14/2010

These authorities were concerned with the “own use” grounds as cited in Article 12(1)(g) of the Order. The subject reference concerns the application of 12(1)(f), that is “redevelopment grounds”.

### **The Respondent’s Submissions**

16. On behalf of the respondent Mr McNamee BL advised the Tribunal that the respondent wished to carry out redevelopment works to the reference property in order to prevent any further deterioration to his asset, to improve health and safety and also to use it in conjunction with his substantive premises at No 1 Westland Terrace. Among other things he considered that it would improve the flow of customers through the entire premises in light of the current "Covid" restrictions. Mr McNamee BL also asked the Tribunal to note that as the proposed works were to the interior of the reference property they did not require planning permission. He also confirmed that the works could not be carried out with the applicant in situ.

17. In support of his grounds of opposition the respondent submitted the following documentation:

(i) A set of plans for the proposed works to No 1 Westland Terrace, which included the reference property.

(ii) A list of works which were required to be carried out to the reference property, as assessed by IMS Ltd, an industrial maintenance company:

- “• Strip existing ceilings/wall and electrics
- Remove existing access doors to side and front of building and replace with new fire rate doors. Main access door to front will be double PVC glass panel door.
- Supply and install new integrated roller shutter door at front of unit with automatic key lock switch. Re-work existing roof and guttering to incorporate new shutter door.
- Install new consumer board and full electrics including sockets/down-lighting for entire unit including smoke detection system.
- Install new stud walls and create single w/c with sink at rear of unit.
- Install all new vapour barrier insulated plasterboard and plaster throughout wall area of unit. All ceiling will be fully insulated using 200mm Rockwool insulation.

- Install all new internal doors architrave/skirting around unit.
- Supply and install new 12mm laminate flooring including 3mm ground insulation.
- Re-work existing fuel tank in yard to incorporate waste pipe from unit into existing manhole.
- All associated plumbing to provide water supply into unit for associated sinks/wc.
- Tarmac area at side of unit to allow rainwater flow away from building.
- Painting of interior/exterior unit to colour of client's choice.
- All associated labour and sub-contractor costs in relation to project.

TOTAL COST £14,870"

In the context of the reference property, a former domestic garage, the Tribunal considers these to be "substantial works of construction", required to prevent further deterioration and improve health and safety.

- (iii) An email dated 25<sup>th</sup> February 2020 from Ian Stone Business Advisor – Business Banking Growth, Bank of Ireland with regard to finance for the proposed works:

"I can confirm that our mutual client has conversed regarding this matter and I confirm that Bank of Ireland are keen to support this proposal in principle.

Mr McGilloway is a long standing and much valued Bank of Ireland customer."

The bank has since confirmed that the offer of finance still stands.

18. The respondent confirmed at hearing that IMS Ltd were ready to proceed with the proposed works immediately upon vacant possession being obtained.

### **The Applicant's Submissions**

19. The applicant's position was that the works, as proposed by the respondent, were not required as he had already carried out works to the reference property.
  
20. The respondent accepted that some decoration works had been carried out but when asked by Mr McNamee BL, the applicant was unable to produce any receipt for any other work carried out by him. In addition he had failed to submit to the Tribunal any surveyors/builders counter report confirming that the works, as proposed by the respondent, were not required.

### **Conclusion**

21. The Tribunal finds the following facts to be relevant:
  - (i) Planning permission was not required for the proposed works.
  - (ii) No works had been carried out to the reference property since 1998 and any works that were carried out were in the nature of a "sticking plaster"
  - (iii) The proposed works were required to protect the respondent's asset, to prevent it falling into disrepair and to improve health and safety. The applicant had submitted no evidence to the contrary.
  - (iv) The proposed works would make the reference property safer to occupy and would also provide toilet facilities, where none currently exist.
  - (v) The respondent had the finance available to carry out the proposed works.
  - (vi) The works could not be carried out with the applicant in situ.
  - (vii) In the context of the reference property, a former domestic garage, the works are "substantial", as stipulated under the Order.
  
22. The Tribunal refers to Margaret McCandless v Eugene Lynch BT/65/2000 in which it was noted:

"The Business Tenancies (Northern Ireland) Order 1996 ('the Order') gives protection to sitting tenants but does not prevent the landlord from recovering possession when the existing tenancy comes to an end ...".

The Tribunal is concerned not to prevent a landlord from gaining possession when he has a genuine intention.

23. The Tribunal finds that the respondent has proved his grounds of opposition to a new tenancy under Article 12(1)(f) of the Order and therefore directs that the applicant should vacate the reference property within 4 months from the date of this decision.
  
24. The Tribunal would also caution the respondent in respect of the penalties imposed under Article 28 of the Order, should he fail to fulfil his intentions.

**4<sup>th</sup> June 2021**

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