

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF AN APPLICATION
BT/111/1990
SEAMUS CONNOLLY AND KIERAN CONNOLLY T/A JOHN HAUGHEY & CO -
APPLICANTS
AND
THE CROSSMAGLEN CREDIT UNION LIMITED - RESPONDENT

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Newry - 11th December 1990

This concerned business premises consisting of one office on the ground floor of premises at No 2 The Square, Crossmaglen, Co Armagh. That office was approached through the front office. The Applicants used the office ("the private office") each Friday afternoon and the firm's clients on occasions had to sit in the front office ("the public office") until the solicitor was free of interviewing a client. The Respondent served on 23rd July 1990 a Landlord's Notice to Determine Business Tenancy under Section 4 of the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act") terminating the current tenancy on 1st February 1991. The Respondent objected to the grant of a new tenancy on the following grounds:-

- "1. That we, the Landlord's have offered and are willing to provide or secure the provision of alternative accommodation and
- (i) that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy to all other relevant circumstances and
 - (ii) that the accommodation and the times at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of their business and to its situation and extent of, and facilities afforded by, the holding; and further

2. That on the termination of the current term the Landlord intends that the holding will be occupied for a reasonable period for the purposes, or partly for the purposes, of a business to be carried on by it or by a Company in which it has a controlling interest or as his residence.
3. That the Tenant ought not to be granted a new tenancy in view of their persistent delay in paying rent which has become due."

The Applicants, by letter of 30th August 1990 gave notice of unwillingness to give up possession and on 18th October 1990 made an application for a new tenancy to the Lands Tribunal.

Mr John Orr of Counsel, for the Respondent, called Mr Thomas Anthony McKenna (Secretary of Crossmaglen Credit Union Limited) to give evidence.

Mr Kieran Connolly, Solicitor (partner in S C Connolly & Company, trading in Crossmaglen as John Haughey & Company) gave evidence himself.

The following facts were either proved or admitted:-

1. The premises consist of a two-storeyed building situated in the busier portion of The Square, Crossmaglen.

That building was owned at one time by Mr John Haughey, Solicitor who also carried on a farming business in the general area.

2. Mr Haughey sold the entire building to the Crossmaglen Credit Union Limited sometime in 1978. He used the private office together with access via the public office on Friday afternoon paying a rent of £10 per week. At the time of the sale Mr Haughey deposited a sum with the Credit Union.

When Mr Haughey retired he withdrew that sum.

3. Mr Haughey's partner, Mr Patrick Murphy carried on John Haughey & Company's business and continued to be responsible for rent payments. When Mr Murphy died in March 1987 his widow sold the practice to the Applicants in June 1987.

4. Payments of rent by Mr Haughey and Mr Murphy were generally periodical not weekly. From the Northern Bank Account for the Credit Union (produced to the Lands Tribunal) into which all payments of rent were lodged the following payments were noted:-

5 th January 1987	£519
8 th May 1987	£230
10 th December 1987	£310
30 th September 1988	£380

No payment since that date - a period of approximately 26½ months.

5. The Credit Union's business has expanded through the years. Originally it opened 9.00 am to 1.00 pm each weekday Monday through Friday and from 2.00 pm to 4.00 pm on Tuesday and Thursday and from 4.00 pm to 8.00 pm on Friday. The Directors decided that because of increased business it was necessary to open longer on Friday evening and resolved to open from 2.00 pm to 8.00 pm. Friday is the Credit Union's busiest day. Because Friday is the only day that members may obtain personal loans or may withdraw shares, the private office is essential for the personal privacy of members. Members requiring loans may obtain the necessary form for a loan from the public office on any day of the week. When that form is handed in the Committee of the Credit Union sits each Tuesday night to discuss loan applications. If the application is approved the loan is paid out on a Friday (the only day allowed by the rules of the Credit Union).

Repayments of loans are made on any day in the Public Office.

6. In meetings between Mr McKenna and Mr Connolly an alternative office was mentioned in The Square, Crossmaglen. That was in the Crossmaglen Community Centre and although Mr McKenna had approached Mr Gerry Murray, Warden of the Community Centre, no question of cost was raised. On headed note paper (Newry and Mourne District Council) Mr Murray had handwritten a note saying "The rooms discussed (with Mr McKenna) are reasonably free during the day and while rates for commercial concerns are higher than for voluntary organisations I believe you will find them reasonable".

In these discussions another office was mentioned in passing only. That office was in the Crossmaglen Community Association Offices and had been occupied by a solicitor, but it was only available for letting for about 3 weeks.

Mr Connolly considered the Crossmaglen Community Centre Office was unsatisfactory for it was not in a good business position in the Square and various other groups used the Centre. If he had realised from the conversations with Mr McKenna that an office in the Community Association building was available he certainly would have pursued the matter but it was not seriously put forward but was merely mentioned in passing.

7. In practice the Applicants (and their predecessors in John Haughey & Company) had the reasonable use of the telephone in the private office. That telephone was removed in recent times without notification. A letter dated 3rd October 1989 sent by the Applicants to the Secretary of the Credit Union proposed an increase in rent to £15 per week (payable quarterly) and offered a contribution of 20% of the average quarterly account for the telephone.

Permission was sought by the Applicants to affix a brass name plate to the front of the building. Permission was refused.

Mr John Orr of Counsel, for the Applicant submitted:-

1. As far as the tenancy/licence is concerned:-
 - (a) It is accepted that there is a business tenancy of the private office.
 - (b) It is submitted that any casual use of the general office by Applicants' clients awaiting their turn is in the nature of a licence ie apart from its necessary use as access to the private office behind.
2. As to the three grounds of objection:-
 - (a) The objection under Section 10(1)(d) of the 1964 Act that alternative accommodation has been provided or secured is not being pursued other than makeweight.

- (b) The objection under Section 10(1)(b) of the 1964 Act that there has been persistent delay in rent payments has been established by the evidence in front of the Lands Tribunal

Mr Connolly accepted there has been persistent delay although he said there were periodic payments. Submits that a period of 26½ months without payment is not periodic. The Respondent accepts that the outstanding amount was not pursued but Mr McKenna indicated that "higher circles" did not wish to pursue.

- (c) The objection under Section 10(1)(g) of the 1964 Act that the Applicant wishes to occupy for the purposes of its own business has been established by the evidence which showed that the business of the Credit Union is still expanding year by year and especially giving loans and shares withdrawal which by Credit Union rules takes place only on Friday. The evidence also shows that it is not desirable in any way that members of the Credit Union wishing to lodge money, repay loans, get loans etc should be overlooked by the solicitor's clients awaiting their turn. Submits the analogy with a bank manager's office is genuine for private financial matters are important within a rural community.

Mr Kieran Connolly, Solicitor on behalf of the Applicants submitted:-

1. As far as a tenancy or licence is concerned:-

There is no dispute about the private office. But the public office has been used in conjunction with the private office since the improvements to the public office were carried out in 1978. That was exclusive use of the public office and for about 10 years the Applicants had enjoyed the same use of the public office as the private office. The built-in bench in the public office was used by any client waiting for the solicitor being free.

This exclusive use of the public office was being now called into question by the arbitrary and unilateral decision in 1989 of the Committee of the Credit Union. The following correspondence from the Applicants to the Respondent was without reply.

2. As far as alternative premises are concerned, there appears to be no issue before the Lands Tribunal following Mr Orr's submissions.

3. As far as rental payments are concerned it is accepted that due to oversight rent is outstanding but there has been no refusal of any demand for rent. Submits formally that the Lands Tribunal should apply its discretion in favour of the Applicants in the particular circumstances of the tenancy. The Applicants on direction will give any undertakings regarding payment of rent.
4. As far as the Respondent's objection under Section 10(1)(g) of the 1964 Act is concerned tradition has ruled that loans have been given and share withdrawals made on Friday in the Credit Union. From 1978 the Credit Union had the morning session and the evening session. Submits that the reason for extending the hours to Friday 2.00 pm to 8.00 pm is not because of extra business but merely to get vacant possession. The evidence given by Mr McKenna confirmed that the Irish Credit Union's Headquarters in Dublin did not approve of another tenancy in the building.
5. The only reason for obtaining vacant possession of the office was to convenience private individuals in their private business transactions with the Credit Union.

Submits that could be done at other times in Friday am or pm.

6. (a) Submits if Lands Tribunal finds in Applicants' favour a new tenancy should be granted for either one or two offices for Friday 2.00 pm to 5.00 pm. Rent and other terms to be agreed or decided by the Lands Tribunal.
- (b) If the Lands Tribunal decides against the Applicants the Lands Tribunal should exercise its discretion to bring the tenancy to end at a later date than that stated in the Landlord's notice because of the difficulties of finding suitable offices in Crossmaglen to enable the solicitors' practice to continue each Friday afternoon.

Mr John Orr of Counsel in reply:-

- (a) If the Tribunal finds in the Respondent's favour an additional three months could be added to the termination date of the tenancy.
- (b) If in the Applicants' favour the Tribunal should grant a tenancy of the private room only together with access through the public room.

DECISION

There are three objections by the Respondent/Landlord to the grant by the Lands Tribunal of a new tenancy to the Applicants.

Taking them in turn:-

1. Under Section 10(1)(d) of the 1964 Act:-

"that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, and -

- (i) that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances; and
- (ii) that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding;"

The Respondent approached the Warden of the Crossmaglen Community Centre regarding an office to let - he replied by letter that rooms were reasonably free and terms are believed to be reasonable. No approach was made to Newry and Mourne District Council who employed that Warden.

That is far from "the landlord has offered and is willing to provide or secure the provision of alternative accommodation ...". Mr John Orr quite properly conceded that the Respondent was not pursuing this objection. The Applicants rejected these offices as not being in the business side of The Square and the Tribunal accepts his decision. The Tribunal rejects this ground of objection.

2. Under Section 10(1)(g) of the 1964 Act:-

"subject to subsection (3), that on the termination of the current tenancy the landlord intends that the holding will be occupied for a reasonable period for the purposes, or partly for the purposes, of a business to be carried on by him or by a company in which he has a controlling interest, or as his residence."

The Credit Union has been constantly expanding its business over the past years. By its very nature in providing a way of saving for its shareholders and in providing loans at reasonable interest, its business is most private, even more so in a comparatively small rural community. The Tribunal is satisfied that the Credit Union Management Board's decision to occupy the premises themselves for longer hours on a Friday afternoon was necessary for their expanded business and that the rule of the Credit Union allowed for loans to be made and/or shares to be withdrawn only on the Friday in each week. The submission by Mr Connolly that extending the Credit Union's hours of business is merely to obtain vacant possession is not accepted by the Tribunal following the clear factual evidence of Mr McKenna (Secretary of the Credit Union).

The Respondent has satisfied the Tribunal as to its ground of objection in this matter.

3. Under Section 10(1)(b) of the 1964 Act.

The facts show that the rent has never been paid at regular periods. The rent payable in this verbal tenancy for many years has been £10 per week, but it seems no regular periodic payments have been made. It may have been understandable when Mr Haughey sold the entire building to the Credit Union and there was an agreement for Mr Haughey to rent the private office that a special relationship occurred. Mr Haughey had invested a capital sum with the Credit Union. When Mr Haughey retired, his partner Mr Murphy continued the same pattern of lump sum payments of rent. Neither of these gave any reason for the partnership, trading as John Haughey and Son not to pay rent at regular intervals, weekly, monthly or quarterly. The facts of payments tell their own story. Even at the date of this hearing 26½ months' payments were outstanding. True there had been no legal proceedings instituted by the Respondent nor any written demand. The rent was substantially in arrear and the arrears had lasted for a long time. This cannot be a situation where the Lands Tribunal properly could exercise the discretion given in the 1964 Act in favour of the Applicants as was requested.

The Tribunal is satisfied that the Respondent has established this ground of objection.

The Respondent properly submitted that if successful in establishing the grounds of objection the Tribunal should consider giving the Applicants more time to enable them to obtain suitable accommodation in the vicinity. This the Tribunal willingly accedes to - the

date of termination of the tenancy will be the 1st May 1991 (instead of the 1st February 1991).

The Applicant will pay the costs of the Respondent, if not agreed to be taxed by the Registrar of the Lands Tribunal on the County Court Scale.

ORDERS ACCORDINGLY

9th January 1991

**Mr A L Jacobson FRICS
Lands Tribunal for Northern Ireland**

Appearances:-

Mr John Orr of Counsel (instructed by Messrs Elliott Trainor & Co, Solicitors) for the Respondent.

Mr Kieran Connolly, Solicitor for the Applicants.