

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

IN THE MATTER OF AN APPLICATION

BT/129/1991

BETWEEN

MARK WATSON - APPLICANT

AND

ROBERT ORFORD KING – RESPONDENT

No 39 HIGH STREET, HOLYWOOD, CO DOWN (GROUND FLOOR)

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Belfast - 12th February 1992

This was an application, dated 12th December 1991 to the Lands Tribunal, for a new tenancy of business premises at No 39 High Street, Holywood. It followed a Landlord's Notice to Determine Business Tenancy under Section 4 of the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act") served on the Tenant on 13th August 1991. That Notice opposed the grant of a new tenancy of the following grounds:-

- "(a) The Tenant has persistently delayed in paying rent.
- (b) The Landlord wishes to re-let the whole of the holding and the letting of part to the Tenant is detrimental to this intention.
- (c) The Tenant has kept the premises in a continual state of disrepair."

That Notice was followed by a letter from the Tenant and served on the Landlord on 7th October 1991 stating that he was unwilling to give up possession of the premises.

Mr David McBrien of Counsel for the Respondent called Mr Robert Orford King to give evidence.

Mr Stephen McBride of Counsel for the Applicant called Mr Mark Watson to give evidence.

The Tribunal finds the following facts either proved or accepted:-

1. By lease dated 21st October 1983 Robert Orford King to William Adam Harbinson No 39 High Street, Holywood was let for a term of seven years from 1st October 1983 subject to a yearly rent of £3,600.
2. Mr Harbinson assigned that lease to Maurice McKervey and at some time in 1987 Mr McKervey approached Mr King informally requesting permission to sublet part of the premises. By letter of 7th December 1987 Mr King gave permission for that subletting.
3. By a loosely-worded agreement dated 22nd December 1987 Mr McKervey sub-let to Mr Mark Watson part of No 39 High Street. That agreement read:-

"1. **IT IS AGREED** between the parties hereto that the Lessor shall grant unto the Lessee for a term of one year the premises at 39 High Street, Holywood, Co Down consisting of two rooms on the ground floor of that building at present in use for Caves Taxis and the cellar of the said building. The yearly rent shall be the sum of £440.

2. **IT IS FURTHER AGREED** between the parties that the Lessee shall have the right to extend the Lease for the duration of the period of the Lease held by the Lessor at the rent set out in Clause 1."

That agreement was signed sealed and delivered by both parties but the document is silent as to what date that was done.

4. Mr Watson paid the rent to Mr McKervey personally - generally at the beginning of each calendar month but on one occasion a full year's rent was paid.
5. When the term reserved in the lease dated 21st October 1983 ran out Mr McKervey surrendered the property to Mr King on 30th September 1990.

When Mr Watson next went to Mr McKervey to pay his rent he was informed of the change of Landlord.

6. No rent has been received to date by Mr King. The evidence of attempts to pay rent is contradictory. Mr King's evidence was that none was tendered to him for from 30th September 1990 he made it clear to Mr Watson that he wanted possession of the premises.

Mr Watson's evidence was that he telephoned Mr King a few times and offered to pay rent but was told that Mr King wanted him to vacate.

7. A Civil Bill for recovery of possession was issued on 1st February 1991. (Robert Orford King and Mark Watson Trading as Choice Taxis - ref EJ 27/91).

That action was wholly discontinued by a Notice of Discontinuance dated 28th August 1991.

No rent was tendered between 1st February 1991 and 28th August 1991.

No rent has been tendered since that discontinuance up to the date of this hearing.

8. Mr King has found it difficult to let vacant rooms in the building and, in some instances, to keep existing tenants. Mr Watson's taxi business is carried on seven days a week and 24 hours per day. This leads to security problems for other tenants in the building and there have been one or two break-ins.

In addition, Mr Watson has some "one-armed bandits" installed and as a result there were complaints to Mr King from District Councillors and the Police on a number of occasions.

9. Mr King inspected the basement and found a wall damp. That emanated from tea being emptied on the floor in Mr Walker's office for on Mr King's inspection some tea had dripped onto his head. Mr King redecorated the basement and provided a small kitchen in the basement after verbally complaining to Mr Walker.

Mr Watson's evidence was that he took the matter up with the drivers and one admitted that on two occasions one of the drivers had accidentally spilt his tea. That was at a time when the carpet in the office had been lifted in order to decorate the office.

The Tribunal prefers Mr King's evidence to that of Mr Watson's on this matter.

10. Other matters the Tribunal finds as a matter of fact are:-

(a) Outside window shutters have been removed by Mr Watson.

(b) At one time there was a single mattress in the holding.

(c) Mr King has locked the two basement rooms and has refused to return the keys to Mr Watson.

11. The holding consists of two rooms on the ground floor and two rooms, a wc and a small kitchen in the basement.

Mr Stephen McBride of Counsel for the Applicant submitted:-

It was accepted that no rent has been paid since 30th September 1990 but the Landlord has not issued a rent book nor has he ever demanded payment of rent. The Tenant has understood all along that the Landlord wanted possession.

In those circumstances the Tribunal should exercise the discretion given by Section 10(1)(a), (b) and (c) of the 1964 Act.

Mr David McBrien of Counsel for the Respondent submitted:-

1. The Landlord since the lease dated 21st October 1983 came to an end has always required possession from the Tenant and has made legal attempts to obtain such possession. There has been no waiver by the Landlord.
2. The loosely-worded agreement dated 22nd December 1987 between Maurice McKervey and Mark Watson only came to the Landlord's notice after he had issued the Civil Bill on 1st February 1991.
3. The facts of non-payment of rent are not disputed by the Tenant. He has made no effort to pay the rent but has just sat back rent free because the Landlord indicated that he wanted possession.

Mr McBrien referred to Tribunal decisions' BT/11/1982 and BT/1/1984; also Williams on Business Tenancies p 607 para 6-16 and Case 9.

DECISION OF THE LANDS TRIBUNAL

Although some of the facts are disputed there is no dispute that the Tenant has paid no rent from 1st October 1990 after Mr McKervey's lease had terminated until the date of this hearing. Even when the Civil Bill was issued no rent was tendered.

That evidence of non payment is well established and that default of payment has no reasonable excuse. By itself that would preclude the Lands Tribunal exercising the discretion, given by Section 10 of the 1964 Act, in favour of the Tenant.

When the other actions of the Tenant in installing "one-armed bandits" which produced complaints to the Landlord from District Councillors and the Police and the spillage of tea through floorboards into the basement are taken into account the Tribunal can find no way in which that discretion can be exercised in favour of the Tenant.

The Landlord has satisfied the Tribunal of the grounds of opposition contained in his Notice to Determine and therefore it follows that by virtue of Section 11(1) of the 1964 Act an order for the grant of a new tenancy cannot be made.

The application for a new tenancy is therefore dismissed and the Tribunal directs that the current tenancy shall determine on 31st May 1992.

No award as to costs.

ORDERS ACCORDINGLY

4th March 1992

**MR A L JACOBSON FRICS
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:-

Mr Stephen McBride of Counsel (instructed by Messrs McAteer & Co, Solicitors) for the Applicant.

Mr David McBrien of Counsel (instructed by Messrs Mackenzie and Dorman, Solicitors) for the Respondent.