

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

BT/14/2007

BETWEEN

YUK CHEUN WONG (KNOWN AS KATIE WONG) – APPLICANT

AND

MRS HER JUING JAN – RESPONDENT

Premises: 15d Glen Road, Belfast

PART 2 - COSTS

Lands Tribunal – Michael R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI

Background

1. On 23rd January 2007 Mrs Jan served a Notice to Determine opposing the grant of a new tenancy under Article 12 of the 1996 Order. The grounds of opposition were:
 - that the tenant ought not to be granted a new tenancy in view of her persistent delay in paying rent, which has become due (Art. 12(1)(b));
 - the tenant ought not to be granted a new tenancy in view of other substantial breaches (Art. 12(1)(c));
 - the landlord intends to carry out substantial works of construction (Art. 12(1)(f)(ii)); and
 - the landlord intends that the holding will be occupied for a reasonable period for the purposes of a business to be carried on by her (Art. 12(1)(g)(i)).
2. Opposition on grounds of substantial works of construction was abandoned in October 2008.
3. The matter proceeded to a hearing and the Tribunal gave its decision on 24th February 2010. Mrs Jan succeeded in her opposition but not on the grounds of other substantial breaches.
4. Mrs Jan now seeks an order for costs.

Procedure

5. The Tribunal received written submissions from Leeanne McCurry, solicitor, Mark McEwen BL and A J S Maxwell BL.

Positions of the Parties

6. Mr Maxwell suggested that the respondent should receive her costs.
7. Mr McEwen suggested that the respondent won on two grounds, lost on one ground and withdrew another ground. And in those circumstances each side should bear their own costs.
8. In the alternative Mr McEwen invited the Tribunal to reduce any costs by the amount which it considers related to the issue of other substantial breaches.

Discussion

9. Mr McEwen accepted that the practice in this jurisdiction is that the starting point in the question of costs is the general presumption that, unless there were special circumstances, costs follow the event, that is, in the ordinary way the successful party should receive its costs.
10. The opposition on grounds of substantial works of construction was abandoned at an early stage and the Tribunal concludes that the respondent did not add measurably to the costs of the proceedings by raising that objection.
11. Mr Maxwell suggested that, having regard to the respondent's success on the principle of the issue of whether or not there should be a renewal of the tenancy, it would be unfair to penalise her because some of the time was spent on an issue which she did not succeed.
12. The Tribunal accepts that the ultimate issue was the opposition to the grant of a new tenancy but also accepts that the distinct grounds of opposition should be treated as discreet subsidiary issues for the purpose of awarding costs. The Tribunal agrees with Mr McEwen that Mrs Jan should not receive her costs in regard to the opposition on grounds of other substantial breaches, an issue on which she did not succeed. It also agrees that a substantial amount of time was taken up with that issue.
13. A robust approach is appropriate. Of the three issues pursued at the hearing, the respondent won two and lost one. The Tribunal concludes that the costs should be reduced about one third.
14. The amount of costs claimed was £13,439.64 including VAT.

15. The Tribunal awards costs of £7,500 plus VAT.

ORDERS ACCORDINGLY

3rd August 2010

Michael R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI

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