

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976
BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

IN THE MATTER OF AN APPLICATION

BT/14/2021

BETWEEN

PHILIP RUSSELL LIMITED – APPLICANT

AND

GALGORM DEVELOPMENTS LIMITED – RESPONDENT

Re: Unit 8 Galgorm Court, 10/12 Fenaghy Road, Galgorm, Ballymena

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

Background

1. Philip Russell Limited (“the applicant”) is the tenant and occupier of premises known as Unit 8 Galgorm Court, Galgorm (“the reference property”).
2. The applicant occupied the reference property by way of a lease which commenced on 12th March 2001 for a term of 20 years. The lease has now expired and the applicant has lodged a tenancy application with the Lands Tribunal seeking a new tenancy and in compliance with Article 7 of the Business Tenancies (Northern Ireland) Order 1976 (“the Order”).
3. Galgorm Developments Limited (“the respondent”) has not objected to a new lease being granted but to date the parties have been unable to agree terms.
4. During the negotiations the applicant has lodged a discovery application with the Tribunal seeking additional comparative information. The additional information, if any, to be provided by the respondent is the preliminary issue to be decided by the Tribunal.

Procedural Matters

5. The Tribunal received written submissions from Ms Tracy Flannigan on behalf of the applicant and from Mr Michael Burke on behalf of the respondent. Ms Flannigan and Mr Burke are experienced chartered surveyors and the Tribunal is grateful to them for their helpful submissions.

6. In the circumstances the parties had agreed that the discovery application should be decided by way of written submissions.

The Law

7. Rule 9 of the Lands Tribunal Rules (Northern Ireland) 1976 (“the Rules”) provides:

“(1) ...

(2) ...

(3) ...

(4) Subject to paragraph (5) any party to proceedings shall, if so requested by the registrar, furnish to him any document which the Tribunal may require and which it is in that party’s power to furnish, and shall, if so directed by the registrar, afford to all other parties to the proceedings an opportunity to inspect any such document and to take a copy thereof.

(5) Nothing in this rule shall be deemed to require the delivery of a document or information or particulars which would be privileged in the proceedings or contrary to the public interest to disclose.”

The Applicant’s Discovery Request

8. The applicant seeks disclosure of the following information:

- “(i) A Tenancy Schedule in respect of Galgorm Court and the other parades of commercial property comprising ground floor retail units on Fenaghy Road, Galgorm which are owned by the landlord to include passing rent, lease term and commencement date, rent review pattern and basis, floor areas, details of rental incentives and any other pertinent information.
- (ii) Copy leases for the rental properties in the developments owned by the landlord.
- (iii) Copies of all/any side letters relating to any of the tenancies of properties held by the landlord.”

9. Ms Flannigan also sought the applicant’s costs in making the subject application. The Tribunal, however, will decide on costs when the substantive reference has been disposed of.

Discussion

10. In the subject reference the Tribunal would have preferred to have seen a spirit of co-operation and willingness to share information between the parties.

11. The Tribunal requires as much relevant information as possible in order to arrive at its decision and it is entirely up to the Tribunal to decide what weight, if any, to attach to any piece of information made available to it. That said, however, the Tribunal has no desire to consider realms of indiscriminate and irrelevant information, nor does it wish either party to bear the costs of providing such information.

12. The Tribunal will now consider the applicant’s request for discovery.

Re “(i) ... Tenancy Schedule ...”

13. Mr Burke advised the Tribunal that a full detailed tenancy schedule for Galgorm was not readily available to his company, O’Connor Kennedy Turtle, as they were not the managing agents for the properties. On reflection, however, he agreed to survey, analyse and compile the information on to a schedule.
14. With regard to the Fenaghy Road request he considered this to be a “fishing” exercise as Galgorm Court comprised of 11 Units, and his opinion was that this should provide sufficient evidence without burdening his client with the expense of providing additional information.
15. Ms Flannigan considered that it was entirely reasonable that the respondent should provide a Tenancy Schedule. She referred the Tribunal to the RICS Practice Statement “Surveyors Acting as Expert Witness” and the High Court Practice Direction No.1 2015.
16. Having considered the submissions the Tribunal directs that the respondent should submit a detailed Tenancy Schedule comprising all of the Galgorm Court units, providing as much information as possible, in order to allow meaningful and accurate analysis to be carried out. This information should be provided within four weeks of the date of this decision.
17. The Tribunal will not order disclosure of details of the Fenaghy Road properties at this time. However, if the applicant, having considered the Galgorm Court comparables, still considers this information to be necessary, the Tribunal will allow further submissions.

Re (ii) “Copy Leases ...”

18. Mr Burke submitted that the leases held sensitive information which the tenants did not want disclosed. He considered that in any case the Galgorm Court Schedule would contain all of the salient information.

19. The Tribunal agrees with Mr Burke, all of the relevant information should be contained in the Galgorm Court schedule. If this is not the case, the Tribunal will consider a further request from the applicant.

Re (iii) "Side Letters ..."

20. Mr Burke confirmed that no side letters existed and this had previously been confirmed to the applicant. Ms Flannigan advised the Tribunal that this was no longer an issue.

Conclusion

21. The provision of the information, as directed by the Tribunal, should be within four weeks of the date of this decision. Shortly thereafter the Tribunal will convene a mention and issue directions for a hearing on the substantive issues relating to lease renewal terms.

14th September 2021

Henry Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland