

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF THE BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996
BT/27/1998
BETWEEN
J L HARVEY LTD - APPLICANT
AND
SCHOFIELD & ANDERSON LTD - RESPONDENT

Lands Tribunal for Northern Ireland - Michael R Curry FRICS FSVA IRRV ACI.Arb

Belfast - 19th June 1998

A Tenancy Application, under the Business Tenancies (Northern Ireland) Order 1996, had been made to the Tribunal but it was out of time as it was about 12 days after the Date of Termination specified in the Landlord's Notice to Determine. The Landlord had not opposed the grant of a new tenancy but the parties had been unable to agree its terms.

This was an application under the new provision, in Article 10(5), that allows the Lands Tribunal to extend the time limit for making a Tenancy Application.

Mr David McBrien BL instructed by Messrs McMillan and Ervine, solicitors, appeared for the Applicant, the Tenant, Mr Michael Wilson of Elliott Duffy Garrett, solicitors, for the Respondent, the Landlord.

Affidavits were filed by Mr Gordon Jackson, Agent for the Landlord and Mr David James Smyth, Agent for the Tenant. Among other things, Mr Jackson had said that it was his impression that the discussions with Mr Smyth did not get to the heart of the matter, and by April 1998, it was clear to him that the discussions were going nowhere. The principal terms of any new lease that was to be negotiated were rent and terms and there was no meeting of minds on either of these issues. Mr Smyth had said that important material facts were clear to him. One was that the Landlord had indicated that it was willing to grant a new tenancy. Another was that the directors of the applicant and the respondent companies were on very good terms with each other and, in fact, shared a common office. He had made contact on a number of occasions between October and December 1997 by telephone with Mr Jackson, further "without prejudice" negotiations took place during December 1997, and February-March 1998, and on 22nd April 1998 further proposals were discussed between Mr Jackson and himself. Then suddenly, without prior warning, a letter dated 5th May 1998 came from the Respondent's Solicitors requiring vacant possession.

He said that at no time during the discussions with the Respondent's Agent did he receive the impression that the Respondent was going to seek vacant possession at the end of April 1998. Instead, he operated in good faith at all material times on the understanding that a new tenancy was going to be granted.

In coming to its conclusions in this case, the Tribunal makes clear that it has focussed only on the matters raised by the parties. Neither party relied on previous decisions in any other branch of the law. Although it would be surprising if there were no suitable guidance to be imported from experience in other spheres, it is perhaps appropriate to begin with something close to a clean sheet and for principles to evolve from decisions, case by case.

The Tribunal has had regard to the position under the previous legislation and its review in the Report of the Law Reform Advisory Committee (LRAC No 2, 1994) which led to the new Order. The Report concluded that the main substance of the Act should be retained and to the extent that there were amendments they were geared to stream line rather than alter the fundamental workings. The Report indicated two relevant mischiefs in the earlier Act, which the 1996 Order sought to redress by giving the Tribunal the power to extend time limits. The first was to give parties more time to conclude genuine negotiations without the need to refer the matter to the Tribunal. The second was to avoid the potential loss of substantial property rights on a technicality.

The Tribunal's discretion is not fettered in the sense that there are any matters defined in the Order as matters to be taken into account. Although the technicality point may be assumed to have been based on decided cases to some extent, the Committee took evidence from a wide range of sources and did not restrict itself to such cases which, by their nature may be expected to be confined to near miss situations. The Tribunal concludes that its discretion is not confined to situations in which somebody only a day or so out of time could lose all protection.

Negotiations had begun and, whether or not real progress had been made, were going on up to late April 1998. No indication of what was to follow was given and these factors may have lulled the Tenant into a false sense of security. Apparently concerned about lack of progress in negotiations, the Landlord, rather than attempt to bring the real matters in dispute to a head, by applying to the Tribunal to curtail the time limit for a Tenancy Application, continued to talk but let time run out.

It goes without saying that parties put their positions at risk if they do not adhere to time limits or take appropriate steps to extend time limits. The Tenant ought to have kept to the time limits and ought not to have been taken by surprise but did respond promptly to the solicitors' letter and within 12 days of the time limit.

The explanation for the failure to comply is weak but, on balance, having considered all the circumstances, and in particular, the degree of default in the context of the conduct of the parties, who were negotiating to some extent at least, and the complete loss of substantial property rights if the application were refused, the Tribunal is persuaded to exercise its discretion in favour of granting the extension of time. That will allow a hearing to determine the issues relating to the terms of the new tenancy.

It was not suggested that the Tenant was stalling with a view to commercial advantage by, in effect, extending the current lease, but, if that were the case, the 1996 Order would appear to have given the Tribunal greater power to address that.

To deal with matters with due despatch, the Registrar shall list the case for mention before the Tribunal within the next 10 days. Expert witnesses shall attend with the parties representatives.

ORDERS ACCORDINGLY

9th July 1998

**M R Curry FRICS FSVA IRRV ACI.Arb
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:

David McBrien of Counsel instructed by Messrs McMillar & Ervine, Solicitors for the Applicant.

Michael Wilson (Messrs Elliott Duffy Garrett, Solicitors) for the Respondent.