

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

IN THE MATTER OF AN APPLICATION

BT/48/2021

BETWEEN

FRESCO BON LIMITED – APPLICANT

AND

MICHAEL GALLAGHER – RESPONDENT

Re: The Laurel Glen, 208 Stewartstown Road, Belfast

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

Background

1. Mr Michael Gallagher (“the respondent”) is the tenant of the public house known as The Laurel Glen, 208 Stewartstown Road, Belfast (“the reference property”) by way of a lease which commenced on 1st January 2016, for a term of five years and which has now expired.
2. Fresco Bon Limited (“the applicant”) is the landlord of the reference property and on 16th February the applicant served a Landlord’s Notice to Determine the respondent’s tenancy with effect from 20th August 2021.
3. This notice was served under Article 6 of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”). No response was forthcoming from the respondent and, on 21st May 2021, the applicant submitted a Tenancy Application to the Lands Tribunal, seeking an order that the respondent was not entitled to the grant of a new tenancy.
4. The grounds relied upon by the applicant are contained in Article 12 of the Order and are summarised:

(i) 12(1)(b) “persistent delay in paying rent”

(ii) 12(1)(c) “other substantial breaches”

(iii) 12(1)(g) “own use grounds”

5. Following a series of mentions and discussions, the Tribunal issued directions for a hearing. The applicant’s Statement of Case was received by 13th October 2021, as directed. The respondent’s Statement of Case was to be filed on or before 29th November 2021 but to date, none has been received and the respondent has failed to comply with any further directions of the Tribunal.

Procedural Matters

6. The applicant was represented by Mr William Sinton BL, instructed by DWF (Northern Ireland) LLP. Mr Sinton BL provided written submissions for the benefit of the Tribunal. The Tribunal is grateful to counsel for his helpful submissions.
7. Despite being given an absolute deadline of 6th April 2022, the respondent failed to provide any submissions. The reference has been delayed for some considerable time and in order to avoid any further delay the respondent has been advised that the Tribunal will proceed to issue a decision based on the written submissions provided by the applicant.

Position of the Applicant

8. The applicant’s position was that in all or any of the grounds contained in Articles 12(1)(b), 12(1)(c) and 12(1)(g) of the Order, the respondent should not be granted a new tenancy.

Discussion

9. The Tribunal will now consider the grounds relied upon by the applicant.

10. **Article 12(1)(b) – That the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent**

Mr Sinton BL submitted:

- (i) As at the date of the affidavit of Mr Diamond, director of the applicant company, sworn on 13th October 2021, the arrears on the part of the tenant amounted to £203,954.20.
- (ii) The tenant had been consistently underpaying the rent and interest also accrued under the lease. The applicant had supplied an updated schedule of arrears for the benefit of the Tribunal.
- (iii) In Horowitz v Ferrand [1956] CLY 4843 the evidence in that case showed that the tenant always paid its rent but usually did so late and in these lesser circumstances the Court refused to grant a new tenancy.
- (iv) Since March 2020 the respondent has been underpaying by some £2,400 per week and the respondent has failed to give any account whatsoever for its failure to pay the rent on time and in full.

11. In conclusion Mr Sinton BL submitted that, given the high level of arrears, it would be unreasonable for the Tribunal to countenance granting the respondent a new tenancy.

12. The Tribunal suspects that a substantial portion of the arrears may be down to the effect on the respondent's business of the "Covid pandemic", however no evidence has been submitted to confirm this and the Tribunal would have expected the respondent to have at least discussed the issue with the applicant. Due to the lack of evidence to the contrary, the Tribunal agrees with Mr Sinton BL, it would be unreasonable to grant a new tenancy in light of these very substantial rent arrears.

13. **Article 12(1)(c) – That the tenant ought not to be granted a new tenancy in view of other substantial breaches by him or his obligations under the tenancy or any other reason connected to the tenant’s use and management of the holding**

Mr Sinton BL submitted:

- (i) The applicant relied upon the following provisions of the lease:
- a) Clause 5.1 – that the respondent has failed to pay the insurance in accordance with clauses 4 and 7.
 - b) Clause 5.4 – the respondent has failed to comply with his obligation to keep the premises in repair, in good decorative order and in clean condition.
 - c) Clause 5.7.2 – that, to date, the respondent has failed to carry out any of the remedial works prescribed by the “Schedule of Condition”.
 - d) Clause 5.23.7 – that the respondent has failed to maintain the standard and character of the premises.
- (ii) The applicant referred to a report detailing the condition of the reference property, carried out by JCP Consulting Ltd, Chartered Building Surveyors and dated January 2021. The summary of the report advises:
- cladding should be provided to fascia and barges and rainwater goods should be replaced
 - fence covers should be provided on right gable
 - due to the lack of maintenance, all external painted surfaces are in aesthetically poor condition and should be redecorated
 - all internal painted surfaces should be redecorated
 - localised repairs are required to floors
 - vented pots should be provided to chimney pots not in use

- localised repairs should be carried out to door frames and lever handles
- ramp at rear door (for disabled access) should be repaired
- electrical and mechanical installations, including fire-fighting equipment, require specialised testing

(iii) The applicant did not consider these breaches to be trivial and it was very unlikely that, if the respondent was granted a new tenancy, he would carry out the necessary repairs.

14. The Tribunal agrees with Mr Sinton BL, if the respondent were to be granted a new tenancy it is highly unlikely that he would carry out any of the repairs needed to maintain the property. Failure to maintain the property would result in a reduction in its value. The applicant needs to protect the value of its asset and it therefore requires possession to carry out the necessary repairs.

15. **Article 12(1)(g) – That on the termination of the current tenancy the landlord intends the holding will be occupied for a reasonable period**

(i) **For the purpose, 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**

Mr Sinton BL submitted:

- (i) The applicant intends to trade the reference property as a public house and restaurant in the event that it gains possession.
- (ii) Mr Diamond, in his Statement of Case, had set out the applicant's history and involvement in operating public houses over many years.
- (iii) Article 12(1)(g) involved three considerations:
 - a) that the landlord will occupy the premises
 - b) the extent of the occupation

c) the purpose of a business

- (iv) The applicant company intends to occupy all of the reference property on termination of the current tenancy.
- (v) This was a case in which the reference property was already trading as a public house and the applicant would be in a position to commence trading promptly, particularly as the applicant had extensive experience in the hospitality industry. In addition there was no issue about planning permission being needed for any change of use.
- (vi) The applicant has set out in its evidence that there will be a transfer of undertakings in respect of employees of the current business and the applicant intends to retain the current staff.

16. In conclusion Mr Sinton BL submitted that the applicant had established an intention to occupy the reference property for the purpose of its own business and as such the respondent should not be granted a new lease.

17. In the circumstances of the subject reference the Tribunal is satisfied that the applicant “intends to occupy” the reference property for a “business to be carried on by him”. The Tribunal, however, by way of caution, refers the applicant to Article 27 of the Order:

“Compensation for misrepresentation etc., or landlords failure to fulfil intentions

27.-(1) Where the Lands Tribunal –

- (a) makes an order that the tenant is not entitled to a new tenancy; and
- (b) is substantially satisfied that it was evidenced to make the order by misrepresentation or by the concealment of material facts or that the intentions of the landlord as represented by him to the Lands Tribunal regarding any of the matters specified in Article 12(1)(e), (f), (g) or (h) have not without reasonable excuse been fulfilled,

the Lands Tribunal may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the refusal.

(2) Where –

(a) the tenant quit the holding –

(i) after making but withdrawing a tenancy application, or

(ii) without making such an application; and

(b) the Lands Tribunal is satisfied that he did so by reason of misrepresentation or the concealment of material facts,

the Lands Tribunal may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of quitting the holding.”

Conclusions

18. Mr Sinton BL asked the Tribunal to note that this was an application in which the respondent has played no part whatsoever, nor sought to defend the application on any basis and this was indicative of the respondent’s history in respect of and in relation to the reference property, where there had been egregious arrears of rent, together with issues over maintenance.
19. He submitted that on all or any one of the grounds relied upon by the applicant, the tenant should not be granted a new tenancy. In light of no evidence to the contrary, the Tribunal agrees with Mr Sinton BL, the respondent should not be granted a new tenancy on all of any of the grounds provided in Articles 12(i)(b), (c) and (g) of the Order.
20. Subsequent to issuing a draft decision the Tribunal sought submissions on (i) a reasonable time period to vacate the premises (ii) compensation if any (iii) costs. The Tribunal received a

submission from Mr Sinton BL, on behalf of the applicant. The respondent failed to make any submissions.

21. Due to the amount of arrears of rent, which are still accruing, the Tribunal directs, therefore, that the respondent should give up possession of the reference property to the applicant within one month of the date of this decision.
22. Under Article 23 of the Order the Tribunal has the discretion to make an award of compensation if a tenant is to be removed. Due to the circumstances in the subject reference, where the tenant is in substantial arrears and has failed in its repairing obligations, the Tribunal declines to make such an award.
23. With regard to costs, the applicant has “won” on all of its grounds of opposition to a new tenancy and as such, the Tribunal awards the applicant its costs in the reference, such costs to be taxed in default of agreement.

10th June 2022

Henry Spence MRICS Dip.Rating IRRV (Hons)
Lands Tribunal for Northern Ireland