

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

IN THE MATTER OF AN APPLICATION

BT/54/1990

BETWEEN

MICHAEL FEE - APPLICANT

AND

RAYMILL PROPERTY AND INVESTMENT COMPANY LIMITED - RESPONDENT

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Enniskillen - 18th June 1990

This was an application for the grant of a new tenancy of a ground floor butcher's shop situated at No 15 Townhall Street, Enniskillen made to the Lands Tribunal on 24th April 1990 under Section 8(1) of the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act"). The matter commenced with a Landlord's Notice to Determine Business Tenancy under Section 4 of the 1964 Act dated 29th December 1989. That notice to determine brought the existing tenancy to an end on 1st July 1990 and the Respondent/Landlord objected to the grant of a new tenancy on two grounds, viz:-

- "(1) the Tenant has persistently delayed in paying rent which has become due.
- (2) the Landlord intends to demolish and rebuild, or alternatively to carry out substantial works of construction on the premises comprised in the holding, or a part of the said premises and could not reasonably do so without obtaining possession of the premises."

On 20th February 1980 the Tenant's solicitors wrote the Landlord's solicitors "we refer to the Notice to Determine Business Tenancy served on our client and are instructed to advise you that our client will not be willing to give up possession of the premises herein on the date specified in the Notice to Determine".

At the outset, Miss Josephine Thompson LLB (for the Applicant) applied for an adjournment on the grounds that an application for an emergency certificate for Legal Aid had been refused and the full application for Legal Aid would be some time before the decision is

made. Mr Raymond Ferguson LLB (for the Respondent) opposed that application. After hearing both solicitors the Lands Tribunal refused to adjourn.

Mr Ferguson called Mrs Sarah Florence Finlay (who was responsible for collection of rents in E C Ferguson & Sons (Solicitors), Mr Patrick James Cassidy (an architect with William Neil Associates), and himself (in the capacity of director of the Respondent Company) to give evidence.

-405 Miss Thompson called the Applicant Mr Michael Gerald Francis Fee to give evidence.

The following facts were proved or admitted:-

1. The Applicant has been in occupation of the lock-up shop since June 1975. Originally a draft lease was prepared but for unstated reasons was never signed. Since that date due to good relations between landlord and tenant all matters concerning the tenancy have been verbally negotiated and agreed (as the tenant put it:- "man to man").
2. In June 1975 the rent was £35 per week. That rent had been increased from time to time. In or about 1984 the rent was increased to £80 per week until the end of September 1989 when it was increased to £150 per week.
3. In May 1989 the tenant put his goodwill, equipment and stock-in-trade on the market. Discussions between Mr Ferguson (for the landlord Company) and the tenant made it clear that a new tenant would be asked to pay a market rental - Mr Ferguson had obtained advice from a local Chartered Surveyor and Estate Agent that the rent should be £150 per week.

A number of people were interested in purchasing but the firm offer was from the charity Oxfam who were prepared to spend a large sum in refurbishing. Representatives of Oxfam were prepared to take a 20 years lease with an initial rent of £150 per week.

For reasons unstated Mr Fee refused the offer - changed his mind and was prepared to carry on trading on the premises.

At the time the offer was refused, Mr Ferguson was on vacation. On his return, following discussion with Mr Fee an increase of rent to £150 per week was agreed.

4. Rent payments had been erratic for some time. The Tribunal was told that the tenant had lost his rent book but photocopies (of parts of that rent book) taken by the tenant's solicitor showed that as far back as 7th October 1988 the rent owing up to 22nd September 1988 was paid by cheque of £400 (= 5 weeks rent) and on 17th November 1988 cash of £240 was paid for the 3 weeks up to 13th October 1988. On occasion Mr Ferguson's meat account was settled by being set off against rent owing. Up to the end of September 1989 the arrears of rent was £267.31, by the time rent was due on 23rd January 1990 the balance of rent owing was £1,008.47, the rent having been increased since the end of September to £150 per week. Since 23rd January 1990 the only payments by the tenant were £150 on 24th January 1990, £150 on 7th February 1990, and £200 on 15th March 1990. A cheque for £500 was paid on 20th April 1990 but that was returned by the bank marked "Refer to Drawer". On being presented a second time it was again marked "Refer to Drawer". By 12th June 1990 the rent arrears had become £3,658.47.

5. William Neil Associates (Architects) were consulted in September 1989 regarding refurbishing the whole building consisting of hairdressing salon on top floor, solicitors' offices on first floor and the shop on the ground floor. There have been 3 or 4 meetings with clients during which draft sketches were amended because of changed instructions. No planning permission is required for all changes are internal and no change of use is proposed. The working plans are in course of being prepared. As yet no plans have been submitted to Building Control for approval. A "broad-brush" estimate of cost has been made at £15,000/£20,000. The work proposed is:-
 - (a) an amended layout to solicitors' offices including electrical rewiring, repositioning of first floor toilets, replastering first floor walls.

 - (b) as far as the holding on the ground floor is concerned the floor of the rooms behind the existing retail shop is on two levels lower than the shop floor. Those levels will be brought up to the floor level in the shop and the retail area enlarged. Additionally in rewiring the first floor and remedying floor joists on the first floor (there is an unacceptable spring in some joists) the ceiling in the shop is to be removed and the fire resistance between the shop and the offices over will be upgraded. No plans or working drawings were submitted to the Lands Tribunal.

There were factual matters in dispute viz:-

- (a) Mr Ferguson's evidence was that Mr Fee had agreed that the rent should be raised to £150 per week but he rejected the suggestion put to him that a one year's tenancy had been agreed with Mr Fee. His evidence was that he realised Mr Fee was already in difficulties to pay the old rent of £80 per week and that he could not afford to pay £150 per week unless radical changes were made and hence he was definite that the tenancy was from week to week.
- (b) On the other hand Mr Fee's evidence that when Mr Ferguson came to speak to him Mr Ferguson appeared to be not in good humour because the offer of purchase of goodwill etc made by Oxfam had been rejected. He accepted he had agreed to pay the increased rent of £150 per week but his recollection was that Mr Ferguson said the tenancy was for 12 months.

He also testified that he did not recall signing any tenancy agreement since he went into occupation. He thought that most agreements were for 5 years with a rent review after 2½ years.

Miss Josephine Thompson LLB for the Application submitted:-

The agreement between the landlord and tenant to pay £150 per week came into effect at the beginning of October 1989 - the Applicant says for one year. If such an agreement was made verbally the Notice to Determine served by the landlord on 29th December 1989 was invalid for it purported to terminate the tenancy on 1st July 1990 which was before the expiration of the tenancy for one year.

Mr Raymond Ferguson LLB for the Respondent submitted:-

1. Miss Thompson's submission was the first time the question of validity of the Notice to Determine Business Tenancy had been raised. If such an agreement for a tenancy for one year had existed it would have been referred to by the letter of 20th February 1990 in which the tenant's solicitor had indicated the tenant's unwillingness to give up possession.
2. An agreement for one year is highly unlikely in view of the state of rent arrears at that time. It is also unlikely that any landlord would have granted such a tenancy when it was most likely that the tenant would fall farther into arrears.

3. The tenants own evidence was far from positive. He used the words "I was under the impression that" and "it was my understanding that".
4. Submits that the height of the tenant's case was that he had an understanding: But that understanding was not ad idem with the landlord/company's director - he had good valid reasons not to agree.

DECISION

Dealing with the second objection first. The intention to demolish and rebuild does not exist according to the evidence. The intention to "carry out substantial works of construction" had not moved "out of the sphere of the tentative, the provisional and the exploratory - into the valley of decision" (Asquith L J in *Cunliffe v Goodman* [1950] 2KB 237, [1950] 1 All ER 720).

0No evidence was submitted as to:-

- (a) drawings of the proposals;
- (b) how the works were to be financed;
- (c) when Building Control permission would be applied for;
- (d) as to what investigations had been made into condition of the first floor joists;
- (e) who was to carry out the work or if tenders were to be submitted.

The Tribunal considers that objection not sustained to the Tribunal's satisfaction at this hearing for the evidence submitted falls short of a final decision.

When the Tribunal comes to consider the first objection, the Tribunal rejects Miss Thompson's submission that a tenancy of 12 months certain had been agreed. Mr Fee's recollections of his discussions with Mr Ferguson were couched in rather vague language whereas Mr Ferguson's evidence was certain that he had not mentioned a 12 months tenancy for he was sure that Mr Fee could not afford to pay £150 per week agreed as a market rental.

On the balance of probabilities the Tribunal accepts that with the history of rent arrears a landlord would not agree to a 12 months tenancy but merely a week to week tenancy to enable the tenant to make a go of his business and reduce his arrears in the short term

Undoubtedly the Tribunal is satisfied that there is "persistent delay in paying rent which has become due" (Section 10(1)(b) of the 1964 Act) and certainly this is not a suitable case for the Tribunal to exercise any discretion in favour of the tenant.

The Tribunal dismisses the application for a new tenancy. The tenancy will expire on 31st August 1990.

Having heard the parties the Tribunal makes no order as to costs.

ORDERS ACCORDINGLY

31st July 1990

**Mr A L Jacobson FRICS
Lands Tribunal for Northern Ireland**

Appearances:-

Miss Josephine Thompson LLB (of P J Flanagan & Co, Solicitors) for the Applicant.

Mr Raymond Ferguson LLB (of E C Ferguson & Sons, Solicitors) for the Respondent.