LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

IN THE MATTER OF AN APPLICATION

BT/62/1991

BETWEEN

SEAMUS MURPHY - APPLICANT

AND

DANIEL GREGORY - RESPONDENT

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Newry - 3rd September 1991

This was an application under Section 8(1) of the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act") for a grant of a new tenancy of a petrol filling station at Camlough Road, Newry, Co Down. The Applicant/Tenant held under a lease for five years from the 1st June 1985 subject to an annual rent of £250 per week for the first three years. No rent review took place after the first three years and at the end of the lease the tenant continued to overhold at the same weekly rent.

The contractual tenancy was brought to an end by the Applicant who made a Section 5 request dated 28th January 1991 for a new tenancy to the Respondent/Landlord. On 14th February 1991 the Respondent served a notice under Section 5(6) of the 1964 Act on the Applicant of his intention to oppose a tenant's request for a new tenancy.

He quoted the following grounds:-

"(a) The tenant has obligations in respect of repair and maintenance of the holding and in view of the state of repair of the holding the tenant has failed to comply with those obligations.

(b) In view of other substantial by him of his obligations under the current tenancy as for any other reason connected with the tenant's use or management of the holding.

(c) The Landlord requires possession in order to dispose of the property.

(d) The Landlord intends:-

(i) To demolish and rebuild the premises comprised in the holding or substantial part of those premises, or,

(ii) To carry out substantial works of reconstruction on the holding or part thereof and the Landlord could not reasonably do so without obtaining possession of the holding.

(e) The Landlord intends that the holding will be occupied for a reasonable period for all purposes or partly for the purposes of the business to be carried on by him."

Following a letter dated 19th February 1991 from the Applicant's Solicitors to the Respondent's Solicitors requesting detailed particulars of each objection and a reminder dated 3rd June 1991, the Respondent's Solicitors by letter of 7th June 1991, inter alia, confirmed "that the grounds of objection on which our client will rely on to oppose your client's application for a new tenancy are those specified in paragraph 1(a)(b)(c) of the Landlord's Notice of Intention to oppose your clients application dated 14th February 1991".

Mr Reginald Weir QC for the Respondent called the Respondent, Mr Daniel Joseph Gregory; Mr William George Quentin Boyce, BSc (Estate Man)(Hons) of Shooter Property Services; Mr Daniel Augustin Carville ARICS (Quantity Surveyor); Mr Gilbert Morris Gass (oil distributor for Millview Fuels); Mr James Gerard McLaughlin (Sales Representative with Cawoods Oil) and Mr Kieran Hill (Area retail manager for Shell (UK) Oil Ltd) to give evidence.

Mr Gregory testified that after working for some years with the previous owner of the petrol filling station he purchased it from him in 1968. He built up the petrol sales from approximately 2,000 gallons per week to approximately 6,000 gallons per week. There was a small shop about one-half the size of the shop now in existence. On an adjacent site Mr Gregory owned a public house and a snooker hall which kept him so busy that he leased the petrol filling station to the Applicant. At that time the petrol filling station was in good order although the old petrol pumps, while fairly good, shortly required replacement.

He testified that the premises were kept clean, the grass trimmed, the canopy over the pumps in good order and the premises presented to the public in a proper manner. He considered that physically it had gone downhill and he had complained generally to the Applicant from time to time. Sometime in June 1990 the Applicant was invited up to his house to be told firmly of the worries Mr Gregory had as to the way the Applicant was running the premises. Mr Gregory offered the premises for sale to the Applicant who wanted time to consider - in October 1990 the Applicant said he had not been well and in December 1990 said he did not wish to purchase.

Mr Boyce testified that he inspected the premises on 30th May 1991. He submitted a series of 20 photographs he took at that inspection. His general impression was one of dereliction and neglect. He delineated a number of matters requiring serious attention:-

1. Forecourt. A number of puddles throughout the Newry side of the forecourt. Litter on forecourt and on grass verges at the boundary.

2. Rear of shop. The passageway at the rear wall and the yard behind the shop (both of which are open to public view) appear to be a dump for surplus building materials and other rubbish.

3. Boundary fence. The post and wire boundary fence to the Green Road return frontage is in a broken down state.

4. Canopy. Letters are missing from the name fascia; the paintwork of the fascia is in a poor state; the perspex sheeting is broken and has been poorly patched in places and some of the fluorescent light fittings are missing or hanging down.

5. Pumps. Petrol pumps which are modern are beginning to rust and the glass covering for the digital display for one pump is missing.

6. Car Wash. Dirty, rusting badly and generally neglected. Outlet drain filled with rubbish, empty cans etc.

7. Buildings.

(i) Ladies WC. Waste outlet from wash hand basin leaking onto the floor. Toilet dirty.

(ii) Gents WC. Wash hand basin cracked and the tile effect wall finish requires replacing. Toilet dirty.

(iii) Pay booth. Generally dirty, untidy and in need of redecorating. Floor tiling worn.

(iv) Shop which was extended and modernised in 1989 was not fully completed. Radiators which were removed because of the extension were never re-hung. Shop heated by a super-ser gas heater.

He submitted the original plans which accompanied the planning application for the "Proposed extension to premises at 109 Camlough Road, Newry". He gave a long list of items on those plans which had <u>not</u> been carried out viz:-

1. Existing Derv pump to be repositioned.
2. 2 no. gulley traps to be formed.
3. New 1.8 metre high screen fence to be erected.
4. 2 new gates to be fitted.
5. New paviours to be laid on forecourt.
6. 2 no. new manholes to be formed.
7. New low wall to be built at boundary with Green Road.
8. Existing wall abutting toilets to be removed.
9. New doors and frames to existing toilets and petrol kiosk.

10. Existing canopy over petrol pumps to be cleaned down and repainted, one coat rust inhibitor, 2 No. undercoats and one coat full gloss. Existing perspex ceiling to be removed and new metal decking to be fixed to existing purlins. New galvanised steel gutter.

11. New aluminium door and frame to shop premises.

12. Ribbed metal fascia with illuminated panels.

13. New illuminated fascia on front and both ends of canopy.

Mr Carville testified that he had calculated the costs of the alterations from the plans (which included all the above omissions). That estimate was £20,150 excluding VAT. He inspected the shop on the morning of this hearing and noted there was a distinct bump in the floor (at the join of the extension with the original), the suspended ceiling was of a cheap standard, there were no rainwater drain pipes and the roof was of mineral felt finish not asphalt as per plans. In the light of what he saw his above estimate should be reduced by at least £1,000.

Mr Gass testified that he had done business with the Applicant and submitted the following figures of deliveries:-

3rd April 1991	4000 litres of Derv
24th April 1991	3000 litres of Derv
18th June 1991	2100 litres of Derv
27th June 1991	2250 litres of Derv
2nd July 1991	2250 litres of Derv
15th August 1991	(8300 litres of 4-star petrol
	(3200 litres of unleaded petrol
26th April 1991	9200 litres of 4-star petrol

Mr McLaughlin testified that he had supplied derv to Mr Murphy. His firm would deliver to any petrol filling station which is not contracted to other suppliers. It was understood that Mr Murphy's contract with Shell had been completed - otherwise they would not have delivered at all. They have since ceased to do business with Mr Murphy.

The deliveries made by his firm were:-

12th June 1990	4500 litres Derv
18th July 1990	4500 litres Derv
8th August 1990	4500 litres Derv
20th August 1990	4500 litres Derv
28th August 1990	4500 litres Derv
21st September 1990	4500 litres Derv
10th October 1990	4500 litres Derv
28th December 1990	4500 litres Derv
25th January 1991	4500 litres Derv
6th February 1991	4500 litres Derv
6th March 1991	4500 litres Derv

Mr Hill testified that the correct nomenclature was Shell (UK) Oil Ltd - they traded in business as Shell (Northern Ireland). There was no such firm as Shell Fuel Services (NI) Ltd - as stated in the lease from Mr Gregory to Mr Murphy.

His firm had made a five year agreement with Mr Murphy in 1985. That agreement reflected the sales history of the site together with a computer model forecasting future sales. The agreement is to ensure that the occupier of a petrol filling station sells only fuels supplied by Shell. In 1985 that agreement included two payments by Shell to Mr Murphy viz:-

£20,000 for new pumps and their installation.
£20,000 as "contribution towards operational costs".

In Shell accounts the first payment was treated as a capital payment and the second as a revenue payment.

From his firm's records he submitted the following yearly sales:-

		Motor Spirit ('000 litres)	**Diesel ('000 litres)**	**TOTAL**
Mr Gregory	1980	1164	56	1220
	1981	1498	41	1539
	1982	1757	35	1792
	1983	1723	28	1751

	1984	1424	132	1556
Mr Murphy	1985	1063	142	1205
	1986	1217	174	1391
	1987	877	155	1031
	1988	660	119	779
	1990	704	109	813
Estimated	1991	807	95	902

Mr Hill further testified that after that five years' agreement had run three years ie in 1988 the agreement was re-negotiated for a new five year term. Two payments to Mr Murphy were made viz:-

In 1988 £25,000
In 1989 £20,000

Both payments were said to be a "contribution towards operational costs".

Mr Tim Ferris QC for the Applicant called the Applicant, Mr Seamus Murphy to give evidence.

Mr Murphy testified that he leased the premises and in 1988 he extended the shop from an area of approximately 400 square feet to 1000 square feet approximately. He had agreed that extension with Mr Gregory and Mr Gregory had applied for and obtained planning permission. It was extended using direct labour and cost Mr Murphy roughly £20,000.

Mr Murphy further testified that new petrol pumps were fitted by arrangement with Shell who provided the pumps costing £9,000. That left £11,000 (from the £20,000 supplied by Shell under the first five years agreement) which was spent on installation of the pumps and a new car wash was purchased.

He considered that the post and wire fence along the Green Road boundary was the responsibility of the District Council for they erected it! He maintained that Mr Gregory had never mentioned any of the matters now complained of in particular but had merely spoken generally. He blamed litter on people using public house and snooker hall adjacent and Mr Smyth who rented the repair garage at the rear; although in answer to the Tribunal he agreed that children from a nearby school frequented the shop to purchase sweets, crisps, minerals etc. He further thought that the perspex, refrigerator etc in the alley at the rear could not be seen by the public.

He also testified that in 1985/1986 he painted the stanchions of the canopy and in 1988 replaced those broken perspex sheets on the roof of the canopy. The old shop was painted in 1986 and the new shop was painted when erected. In 1990 he offered to replace the canopy at the conversation with Mr Gregory but Mr Gregory said he would sell to him at £300,000. In December when he told Mr Gregory he was no longer interested, he was told to pack up and go.

He considered that the only grant he had received from Shell was £11,000 for the installation of the pumps - all other sums received were put into the business as operational costs.

He agreed that he had purchased fuels from various suppliers in contravention of his lease but he considered there was no prejudice to Mr Gregory if he kept up the turnover. If granted a new tenancy by the Lands Tribunal he was prepared to install a new canopy and to keep the premises in repair.

In cross-examination when asked about certain receipts previously requested he told the Lands Tribunal that there had been a burglary at home and two drawers full of receipts, credit cards etc had been removed. His accountant had trading accounts which would show moneys spent.

The Tribunal finds the following facts proved or admitted:-

1. The lease of 22nd March 1985 between Daniel Gregory and Seamus Murphy was for a term of five years from the first day of June 1985 subject to the weekly rent of £250 per week for the first three years ending 1st May 1988, "and for the final two years of the agreement such weekly rent as may be agreed between the Lessor and the Lessee not less than three months prior to the thirty first day of May one thousand nine hundred and eighty eight or in default of such agreement such weekly rent as may be fixed by a person to be nominated by the Chairman of the Royal Institution of Chartered Surveyors (Northern Ireland) and the decision of such person shall be final and binding on both parties". No such review of rent ever took place and the Lessee (overholding from the Lease) still pays £250 per week.

2. That Lease contained, inter alia, the following clauses (relevant to the instant case):-

Clause 2(4)

"a. To keep the exterior and interior of the premises together with the Lessors fixtures and fittings and equipment in good state of repair and condition and at his own expense when necessary to install to or replace equipment.

b. To paint with two coats of good paint in a workmanlike manner all interior and exterior parts of the demised premises for the three years.

c. Not to make or cause litter to be deposited on the demised premises."

Clause 2(6)

"Not to use the demised premises or part thereof otherwise than as a Filling Station and Car Wash and to use the Shop portion of the premises solely for the purpose of the sale of Newspapers Stationery and Groceries and not to lose or forfeit the sale of Newspapers.

The Lessee shall purchase all petrol oils and ancillary items from the Shell Fuel Services (NI) Limited and shall use all grants payable by the said Shell Fuel Services (NI) Limited solely for the purpose of improving or renewing the property and equipment thereon and shall on demand produce to the Lessor or his authorised agent receipts to show that the full amount of any such grant has been so expended."

Clause 2(7)

"Not to erect any new buildings on the demised premises or make any alterations to the layout of the demised premises without the previous consent in writing of the Lessor and if the Lessor gives his consent at his own expense to obtain all necessary Planning consents and Building Control Approval."

Clause 9

"In the event of the Lessee punctually paying the rent and reviewed rent and performing and observing the covenants and conditions contained in this Lease the Lessee shall have

the option to renew the said Lease for a further period of five years on the same terms and conditions as the present lease save the condition concerning rent which in the event of the Lessee exercising his option to renew the Lease shall at that stage be the subject matter of a review and the subject matter of a further review at the end of the first three years of the renewal that is the thirty-first day of May One thousand nine hundred and ninety five such reviewed rents to be agreed or fixed in the manner hereinbefore set out.

In the event of the Lessee wishing to exercise his right to renew the said Lease he shall not less than three months prior to the thirty-first day of May One thousand nine hundred and ninety serve notice in writing of his desire to do so on the Lessor".

3. As far as Clause 2(4) is concerned:-

Although the Applicant said he had repainted the stanchions of the canopy in 1988 and at the same time replaced any broken perspex sheets on the canopy roof, and said he painted the old shop in 1986 and the enlarged shop after enlargement, nevertheless the evidence of Mr Boyce was preferable to the Applicant's evidence for Mr Boyce's detailed evidence was borne out by the Lands Tribunal's inspections on 29th August 1991 (prior to the hearing) and on 5th September 1991 (after the hearing). The Tribunal finds as a matter of fact that the paintwork of the canopy fascia is in a poor state, broken perspex panels have been patched in an amateurish way, some fluorescent light fittings are missing, hanging down and rusting, petrol pumps are beginning to rust and one glass (for digital display) is missing, the wash hand basin in one of the toilets is cracked. Additionally on the Tribunal's first inspection the general overall appearance was as Mr Boyce testified - much litter, dirty and generally unappealing whereas on the Tribunal's second inspection a large effort had been made to remove rubbish and litter and generally to clear up.

4. As far as Clause 2(6) is concerned:-

The Applicant has been purchasing petrol and Derv (diesel) from the following suppliers:- Shell (UK) Oil Ltd (trading as Shell (NI)), Cawoods Oil, Millview Fuels (Emo Fuels) and Safe Fuels.

5. As far as Clause 2(7) is concerned:-

The proposed shop extension was agreed between the Respondent and the Applicant. The Respondent had the plans drawn up and obtained planning permission. The Applicant erected the extension using direct labour but much was omitted from the requirements of the plan. The Tribunal accepts Mr Boyce's evidence in this respect. The end result is not impressive and gives a rather cheap impression.

6. As far as Clause 9 is concerned the option for a further five years' lease was never exercised.

Mr Tim Ferris QC for the Applicant submitted -

1. The Respondent's stated objections in his Landlord's Notice of Intention to Oppose a Tenant's Request for a New Tenancy (under Section 5(6) of the 1964 Act) make no sense. At this hearing objections (d) and (e) (the equivalent of Section 10(1)(f) and (g) of the 1964 Act respectively) have been abandoned. Submits that his objection (c) is not a statutory ground of objection.

   Submits that ground (b) should be struck out as making no sense whichever way it is read.

   Refers to Marks v British Waterways Board [1963] 3 All ER 28.

2. The Respondent in the past has made no substantial objection to the breaches of the tenancy agreement. He raised no specific objection to the Applicant, to his solicitor - nor did he attempt to bring the tenancy to an end by a notice under Section 4(1) of the 1964 Act.

   The Applicant brought the tenancy to an end by a statutory notice under Section 5 of the 1964 Act. In the light of these matters the Tribunal should exercise the discretion given to it in favour of the Applicant.

3. It is normal law that if there are breaches of covenant by a tenant the tenant is invariably allowed to put right those breaches. It is most inequitable that the

Applicant should lose the opportunity of a new business tenancy because only at this hearing were complaints about the breaches made.

4. The question of breaches of covenant are a matter for the Lands Tribunal, but it is not in the interest of the Applicant to let the premises run down. In any event it is a matter of fact that fuel sales have increased.

   The Applicant says he has painted. Submits that the covenant to paint is not clearly stated. On the facts the Tribunal should find that there was no breach of the covenant to paint.

5. There is no such company as Shell Fuel Services (NI) Ltd and the covenant to purchase all fuel from that company could not be possible of performance. The fact that the Applicant purchased from suppliers other than Shell was no disadvantage or prejudice to the Respondent; and should not prevent the grant of a new tenancy.

   On the question of the failure to use all grants from Shell solely for the purpose of renewing and improving the property, submits that the word "grants" means capital grants for specific purposes. If for other purposes the payment is not a grant.

   Mr Hill (Shell's area retail manager) did not apply the word "grant" to other moneys - he termed those payments to be a contribution towards operational costs.

6. Finally, in so far that there has been breaches by the Applicant they have never troubled the Landlord nor have they prejudiced the Landlord. The Respondent did not give the Applicant any notice of the particular breaches complained of until these proceedings were well advanced. Refers to Lyons v Central Commercial Properties Ltd [1958] 2 All ER 767. See Morris LJ at p773 C and D.

   It cannot be argued properly that it was unfair to the Respondent to grant a new tenancy for the Respondent has not until now objected. The Applicant would lose his income and his staff their living.

Mr Reggie Weir QC for the Respondent submitted:-

1. Lyons v Central Commercial Properties Ltd [1958] 2 All ER 767 is the leading case regarding the discretion given to the Lands Tribunal because of the inclusion of the words "ought not to be granted a new tenancy" in Section 10(1)(a) and (c) of the 1964 Act.

   If the Tribunal exercised discretion in favour of the Applicant it would be foisting the tenant on the landlord.

2. In Eichner v Midland Bank Executor and Trustee Co Ltd [1970] 2 All ER 597 it was held that the Court "was entitled to consider all the circumstances in connection with the breaches of covenant and to consider the conduct of the tenant as a whole in regard to his obligations under the tenancy;".

3. It is entirely wrong for the Applicant to say that the Respondent said nothing by way of complaint to the Applicant. The Respondent's evidence was that he made general complaints from time to time.

4. Mr Boyce (the Chartered Surveyor) described the general air of dilapidation, litter and run down impression. The Applicant couldn't care whose fence (at the return frontage) it was or that he had not erected a wall that should have been put up according to the plans approved by the Planning Division. He just put his rubbish in the alley at the rear rather than filling a skip for taking away. The plans approved in 1988 and agreed between the parties required the canopy over the pumps to be renewed, a wall built, gates erected etc but the Applicant did nothing even though he received £20,000 from Shell and £25,000 the following year.

5. In 1985 he received a grant of £20,000 from Shell of which £9,000 was for new pumps, £3,000+ for installation of those pumps and £3,000+ for new car wash.

   That left approximately £4,000 capital not spent in accordance with the covenant in the lease. That covenant required him to spend all grants from Shell in improving and renewing the property.

The Oxford Concise Dictionary defines "grant" as including "a legal assignment of a thing including a sum of money". The dictionary makes no distinction between a grant for capital purposes and for revenue purposes.

The Applicant has received in total £65,000 from Shell and at the maximum calculation possible he has spent (including painting) a maximum of £20,000. He has profited by £45,000 and the Respondent has a run-down petrol filling station.

6. The Applicant on many occasions passed off petrol and derv which were not Shell products as if they were Shell. The Applicant admitted he had done this. That was in breach of Clause 2(6) of the Lease. Counsel for the Applicant says that in the witness box the Applicant was candid but the Respondent says that he could not do otherwise having heard the witnesses from various fuel suppliers.

7. The Respondent is prejudiced for he chose to impose conditions, the Applicant agreed with them and the bargain was made. The mere fact of the failure to comply with the covenants is prejudicial. It was highly prejudicial that these dishonest practices were carried on - the public saw openly at times that petrol and derv being sold was not Shell. The Applicant by his attitude in evidence showed no apology for his dishonest practices. About 50% of his purchases of derv were not Shell.

   There must be some injury to the reversioner after a short lease.

8. The Respondent was frank that he was not sure what he would do if he got possession of the premises. Put them in order and/or sell them.

DECISION

The authorities of Eichner v Midland Bank Executor and Trustee Co Ltd [1970] 2 All ER 597 and Lyons v Central Commercial Properties Ltd [1958] 2 All ER 767, while dealing with the Landlord and Tenant Act, 1954 are most useful in interpreting the 1964 Act where, as in this case, the wording of Section 10(1)(a)(b) and (c) do not differ in any material extent from the wording of Section 30(1)(a) of the Landlord and Tenant Act 1954.

Some preliminary matters were raised by Mr Ferris QC for the Applicant concerning firstly the wording of objection (b) of the Respondent's notice. The Tribunal agrees that typographical errors such as the missing out of the word "breaches" and the word "as" being used in place of "or" make it not altogether clear, but it otherwise follows the words of Section 10(1)(c) of the 1964 Act. The Applicant had deliberately and consistently breached other obligations under the lease by purchasing petrol and Derv from other suppliers than Shell. Even when the Lands Tribunal made a second inspection after this hearing a Safe Fuels tanker lorry was drawn up at the petrol filling station although the Tribunal did not see any fuel being discharged. The Tribunal does not accept that the typographical errors misled the Applicant to the extent that he could be prejudiced in any way.

Secondly Mr Ferris raised the two points in relation to the wording of conditions:-

2(4)(b) "To paint with two coats of good paint in a workmanlike manner all interior and exterior parts of the demised premises for three years."

Mr Ferris submitted that this made no sense. The Tribunal certainly considers that it is poorly drafted and capable of more than one interpretation but when read in conjunction with condition 2(4)(a) viz "To keep the exterior and interior of the premises together with the Lessor's fixtures and fittings and equipment in a good state of repair and condition and at his own expense to install or replace equipment" the Tribunal considers that it really does not matter which way the condition is read or if the conclusion is drawn that it is null and void.

Condition 2(6) Mr Ferris submitted that as there was no such firm as Shell Fuel Services Ltd the condition could not be fulfilled.

Once again the name error could not have misled the Applicant. This petrol filling station is the only Shell station on the road. It has all the marks of a Shell Station; all the pumps displaying the Shell logo instantly recognisable nationwide if not worldwide. Even at the hearing there appeared to be a misapprehension that the correct name of the firm was Shell Fuels (NI) Ltd until Mr Hill, the area retail manager informed the Tribunal that the correct name was Shell (UK) Oil Ltd but that the firm traded in Northern Ireland as Shell (NI).

The Tribunal finds that there were substantial breaches by the Applicant, of the obligations under the lease.

They are as follows:-

1. The premises and the fixtures and fittings are not in a good state of repair and condition viz

   (a) the perspex sheets on the canopy have not been properly repaired but merely patched in an amateurish manner;

   (b) the fluorescent lighting attached to the canopy roof are in a dangerous state - some missing, some hanging down, some starting to rust;

   (c) the stanchions supporting the canopy are beginning to rust;

   (d) the petrol pumps are beginning to rust and one glass (covering the digital display) is missing;

   (e) the derv pumps are rusting and sections of the trim are missing and the glass broken. The surrounds were in a dirty condition when Mr Boyce inspected and on the Tribunal's first inspection but efforts to clean had been made by the Tribunal's second inspection;

   (f) the canopy fascia is beginning to deteriorate. The paintwork is poor and some letters are missing from the fascia name;

   (g) the car wash is rusting and appears neglected, although the Applicant's evidence was that a new car wash was installed in 1985;

   (h) the waste outlet from the wash hand basin in the ladies toilet was missing at the end of May 1991 when Mr Boyce inspected. That has now been replaced;

   (i) the wash hand basin in the gents toilet is cracked;

   (j) the boundary post and wire fence at the return frontage at Green Road is broken down and four of the concrete posts are broken.

The Applicant said the Council put them up and it is the Council's responsibility to maintain the fence!

(k) On Mr Boyce's inspection and on the Lands Tribunal's first inspection there was much litter and rubbish - especially at the rear of the shop.

By the Lands Tribunal's second inspection a large effort had been made to clear the rubbish and litter and generally to clean the forecourt and toilets.

2. (a) Petrol, oils and ancillary items were purchased from other suppliers on a regular basis in direct contravention of the obligation in condition 2(6).

It would be a normal practice that if an urgent supply were needed and for some reason or other Shell could not deliver that supplies could be obtained from another supplier. That would be a rare occurrence.

Customers who call at a Shell petrol filling station expect that the fuel they purchase is supplied by Shell who regularly advertise the benefits of using their product.

(b) The Applicant in 1985 entered into an agreement with Shell (NI) to take all their products for a five year period. Shell paid two sums of money to the Applicant viz £20,000 and £20,000. Mr Hill, the area retail manager for Shell, told the Tribunal that the first payment was for new pumps and their installation and the second for a contribution towards operational costs. In Shell accounts the first was treated as a capital sum and the second as revenue.

Shell, after only three years of that agreement had run, entered into a new five year agreement. As a result Shell paid the Applicant two sums of money viz:- £25,000 in 1988 and £20,000 in 1989.

The Tribunal cannot treat any of those amounts other than as grants paid by Shell. Collins Twentieth Century Dictionary (1972 Edition) gives the meaning of the word "grant" as "a bestowing; something bestowed, an allowance; a gift". In direct contravention of the obligation to use grants solely for the purpose of improving and renewing the property, most of those grants were not so used. The Applicant could

not (or would not) indicate where the grants were used. He had been asked for receipts in accordance with the condition in the lease and when asked again at this hearing he told the Tribunal that in a recent burglary two drawers containing his papers (including cheque book and credit cards) had been removed from his house.

3. Condition 2(7) required the Applicant not to erect new buildings etc without the previous consent of the Respondent.

It was agreed between the parties that the Applicant could enlarge the shop. Plans were drawn up by and planning permission obtained by the Respondent. The Applicant proceeded to carry out the building using direct labour. But, contrary to the agreed plans, much was omitted from the building.

All of these matters taken together form substantial breaches of the tenancy. There remains the question of whether the discretion given to the Lands Tribunal, by the incorporation of the words "ought not to be granted a new tenancy ..." in Section 10(1)(a) and (c), ought to be exercised in favour of the Applicant.

The Respondent had not entered into any litigation with the Applicant, had not instructed his solicitor formally to complain but had merely contented himself with general complaints from time to time.

However the conduct of the Applicant as a whole in regard to his obligations under the lease militate against the grant of a new tenancy. His evidence to the Tribunal also left much to be desired. He was not a reliable witness and showed no apology for any breach of obligations but merely told the Tribunal that if granted a new tenancy he would replace the canopy in accordance with the plans agreed in 1988.

The Tribunal accepts the evidence of Mr Boyce that the effect of the breach of obligations by the Applicant seriously affects both the rental value and the capital value of the petrol filling station.

Taking all these matters into account it would be wrong for the Tribunal to exercise whatever discretion is given to the Tribunal in favour of the Applicant. The Applicant ought

not to be granted a new tenancy in view of the substantial breaches of his obligations under the lease. The Tribunal refuses the application for the grant of a new tenancy.

In accordance with Section 9(1) of the 1964 Act the Tribunal directs that the tenancy will terminate on 31st October 1991.

The Applicant will pay the reasonable costs of the Respondent, if not agreed to be taxed by the Registrar of the Tribunal on the County Court Scale.

ORDERS ACCORDINGLY

25th September 1991

Mr A L Jacobson FRICS
Lands Tribunal for Northern Ireland

Appearances:-

Mr Tim Ferris QC assisted by Miss Mary Higgins of Counsel (instructed by Messrs Tiernans, Solicitors) for the Applicant.

Mr Reginald Weir QC (instructed by Messrs S C Connolly & Co, Solicitors) for the Respondent.