

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 FOR COSTS

BT/71 & 72/2022

BETWEEN

MAGELL LIMITED – APPLICANT

AND

FERHAT EKICI – RESPONDENT 1

ALI NASSAR - RESPONDENT 2

Re: 46 & 48 Upper Queen Street, Belfast

PART 2 – COSTS

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

Background

1. Mr Ferhat Ekici (“respondent 1”) is the tenant of 46 Upper Queen Street, Belfast and Mr Ali Nassar (“respondent 2”) is the tenant of No. 48. Magell Limited (“the applicant”) is the owner and landlord of both premises.
2. Following service of Notices to Determine on 11th March 2022, the applicant made tenancy applications to the Lands Tribunal on 7th July 2022, seeking Orders that the respondents were not entitled to new tenancies. This was based on “redevelopment grounds” contained in Article 12(1)(f) of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”).

3. In a decision dated 16th February 2023 the Tribunal found that the applicant had succeeded in making out its grounds of opposition under Article 12(1)(f) of the Order and the respondents were not entitled to the grant of new tenancies.
4. The Tribunal has now invited the parties to make submissions on costs. This application is about the allocation of costs and whether the applicant should be awarded its costs in the reference.

Position of the Parties

5. The Tribunal has received a written submission on costs from Shoosmiths solicitors on behalf of the applicant. The applicant, as the successful party is seeking an order for its costs in the reference.
6. The respondents provided a written submission on costs outlining their position that the applicant added significantly to the costs of the reference and in these circumstances each party should bear its own costs.

The Law

7. Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 (“the Rules”) provides:

“(1) Except in so far as section 5(1), (2) or (3) of the Acquisition of Land (Assessment of Compensation) Act 1919 applies and subject to paragraph (3) the costs of and incidental to any proceedings shall be in the discretion of the Tribunal, or the President in matters within his jurisdiction as President.

(2) If the Tribunal orders that the costs of a party to the proceedings shall be paid by another party thereto, the Tribunal may settle the amount of the costs by fixing a lump sum or may direct that the costs shall be taxed by the Registrar on a scale specified by the Tribunal, being a scale of costs for the time being prescribed by rules of court or by county court rules.”

8. In Oxfam v Earl & Ors [1995] BT/3/1995 the Tribunal clarified how it should exercise its discretion (at page 8):

“The Tribunal must exercise that discretion judicially and the starting point on the question of costs is the general presumption that, unless there were special circumstances, costs follow the event, i.e. that in the ordinary way the successful party should receive its costs.”

The Respondents’ Submissions

9. The respondents submitted that the Tribunal should have regard to the following as summarised by the Tribunal:
- (i) The applicant failed to follow the correct process and began building works without the permissions of the respondents.
 - (ii) Costs were always going to be incurred by the applicant as it was their conduct that necessitated the proceedings.
 - (iii) The applicant bought the land folio in full knowledge of both the existence of the tenancies and the impugned issues relating to breach of covenant and interference in the peaceful use of the land.
 - (iv) The applicant is not entitled to costs for those matters outside of the narrow Notice for Determination application before the Tribunal.
 - (v) The applicant in relying on Article 12(1)(f) is required to prove its intention with regards to substantial development. The applicant did not demonstrate or otherwise prove to the respondent the bona fides of the applicant’s intentions.
 - (vi) The applicant did not provide the respondents with the new planning application, plans of the redeveloped premises, evidence of ample funds or board minutes until the hearing in February.
 - (vii) The respondents did not challenge the applicant’s bona fides at hearing as this was the first time they had seen them.

- (viii) The respondents were disadvantaged at hearing in terms of their effective legal participation and equality of arms through the legal ambush of a bundle service moments before the hearing.
- (ix) The applicant avers to generous offers for a commercial settlement in March and May 2022. The applicant withdrew their offers stating they were “off the table” before hearing.
- (x) The offers made on a “without prejudice save as to costs basis” did not adequately demonstrate the applicant’s fixed intention and means to redevelop at all.
- (xi) The applicant in failing to reasonably agree to end the business tenancies and compensate the respondents for criminal damage, loss and relocation should not be rewarded.

10. For these reasons the respondents concluded that the subject reference was “exceptional” which rebutted the assumption that costs follow the event.

The Tribunal

11. In Oxfam v Earl at page 8 the Tribunal noted:

“The next question for a Tribunal is whether there were special circumstances which would warrant a departure from that general rule. But these must be circumstances connected with the proceedings, for example, to reflect an unsuccessful outcome on a major issue.”

12. In the subject reference the Tribunal refers to the proceedings before it and in particular to paragraph 21 of its original decision:

“21. Despite being given the opportunity to do so, the respondents failed to submit any challenges as to the bona fides of the applicant’s intentions.”

13. None of the issues now raised by the respondents were put before the Tribunal during the substantive hearing of the reference.

14. The Tribunal therefore agrees with the applicant, there are no special circumstances in the subject reference whereby the applicant should not be awarded its costs.

Decision

15. The Tribunal awards the applicant its costs in the reference, such costs to be taxed by the Tribunal in default of agreement.

5th May 2023

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