

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

BT/72/2001

BETWEEN

STANLEY SKELTON – APPLICANT/TENANT

AND

JAMES McEVOY – RESPONDENT/LANDLORD

Premises: 569 Antrim Road, Belfast

PART II

Lands Tribunal – Michael R Curry FRICS IRRV MCI.Arb Hon.FIAVI

Belfast – 25th September 2003

1. By a Landlord's Notice to Determine dated 24th April 2001 the respondent/landlord had proposed a rent of £10,500 per annum. In his tenancy application the applicant/tenant proposed a rent of £9,620. In June 2002 the Tribunal was informed that, subject to approval, all matters including rent had been agreed. However, in July 2002 the Tribunal was informed that the applicant/tenant had instructed a new expert and that one issue remained; the matter of rent. It is immediately apparent that the difference between the parties was small but there were issues of expert interpretation of valuation evidence involved.
2. On 31st July 2002, the replacement expert, Mr Cassidy, wrote what is accepted to be a Calderbank letter on behalf of the applicant/tenant offering to settle at a rent of £9,750. At the Hearing the respondent/landlord sought a rent of £10,240; the applicant/tenant sought a rent of £9,700. By a decision dated 2nd April 2003 the Tribunal determined that the amount of the rent under a new tenancy in accordance with Article 18 of the Business Tenancies (Northern Ireland) Order 1996 shall be £9,750 a year. The rent fixed by the Tribunal exactly matched the Calderbank offer and so it can immediately be said that the respondents/landlords achieved nothing by going on. The

applicant/tenant applied for his costs of £8,827 plus VAT (where applicable) of £1,268.75, a total of £10,095.75.

3. Mr Hamilton referred the Tribunal to one of its earlier Decisions:

“If a Calderbank offer is not accepted and the Tribunal awards no more than the sum offered, the initial presumption would be that the Offeree should pay the Offeror’s costs. But, if a Calderbank is brought to its attention, the Tribunal will also consider whether it was reasonable for the Offeree not to accept, bearing in mind all the terms of the offer, the information then available to the Offeree, the conduct of the parties in putting their 'cards face up on the table' and the then likely costs of going on. The refusal of the offer may not necessarily be the critical factor.”

Oxfam v Earl [1996] BT/3/1995

4. There is nothing before the Tribunal to suggest that the parties were not aware at the time of the Calderbank that costs of something like this order might reasonably be expected to be incurred.
5. Mr Doran criticised some aspects of the costs on grounds that part related to matters which would be necessary in any business lease renewal and were not relevant to the dispute before the Tribunal. The Tribunal accepts that there is merit in that argument and notes that although Mr Lundy’s bill was not itemised, it does expressly state that it includes advising his client in relation to the Notice to Determine and settling terms of the draft lease with the respondent’s solicitors.
6. There was no detailed breakdown in regard to the outlay on expert evidence, but as Mr Cassidy was not appointed until shortly before he wrote the Calderbank letter (another agent had been dealing with the matter) the Tribunal does not accept that any significant proportion of Mr Cassidy’s time was unconnected with the dispute in the Tribunal.
7. Although, in its Decision, the Tribunal did not accept some of the opinions advanced by the expert for the applicant it would go too far to say that they unnecessarily added to the costs of the proceedings. However, the Tribunal did criticise a lack of open mindedness in the approach of both experts. In the view of the Tribunal this added

unnecessarily to the costs of the proceedings and should be reflected in the recoverable costs.

8. In the absence of detail the approach must be robust and the Tribunal awards a lump sum of £5877.00 plus VAT where applicable, made up as follows:

Lundy & Co professional charges	£2,500.00
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Outlay

Lands Tribunal Application	£2.00
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Patrick O’Kane BL	£1,575.00
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Ardmore Commercials (Mr Cassidy)	<u>£1,800.00</u>
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	£5877.00
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Plus VAT where applicable.

9. The Tribunal further notes that the account of Lundy & Co, Solicitors included their work in relation to the issue of costs and so it is unnecessary for the Tribunal to make an further award as to costs on the issue of costs.

ORDERS ACCORDINGLY

6th October 2003

**Michael R Curry FRICS IRRV MCI.Arb Hon.FIAVI
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:

Patrick O’Kane BL instructed by Lundy & Co appeared for the Applicant.

Rory Hamilton, Solicitor of James Doran & Co appeared for the Respondent.