

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/79/2018

BETWEEN

PETER McBRIDE – APPLICANT

AND

BROOMHILL VENTURES LIMITED – RESPONDENT

Re: 99 Irvinestown Road, Enniskillen

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

Background

1. Peter McBride (“the applicant”) occupied premises at 99 Irvinestown Road, Enniskillen (“the reference property”) on foot of a lease dated 1st March 2014 between BIG Contracts Limited and the applicant (“the lease”). The lease demised the premises for a term of 5 years. Broomhill Ventures Limited (“the respondent”) subsequently acquired the interests of BIG Contracts Limited in the lease.
2. On 17th August 2018 the applicant made a request for a new tenancy to commence on 1st August 2019 for a term of 20 years. The respondent issued its response on 7th September 2018 opposing the grant of a new tenancy on two grounds: (i) “redevelopment”; and (ii) “breaches”. The “breaches” ground concerned an alleged sub-letting without consent of a car wash area within the demised premises. The redevelopment ground concerned the respondent’s proposals for development of a new filling station with an upgraded retail unit and a hot food café, on the reference property.
3. On 17th September 2018 the applicant made a Tenancy Application to the Lands Tribunal. Following directions issued by the Tribunal the respondent provided its Statement of Case on

13th March 2019, to which the applicant provided his response on 7th April 2019. The applicant considered at that stage that the landlord had completely failed to provide evidence of an intention to redevelop the reference property. In particular the respondent did not have planning permission which was a statutory requirement if the respondent was to succeed on the “redevelopment” ground.

4. Subsequently, however, on 11th September 2019 planning permission for the proposed development was granted by Fermanagh and Omagh District Council. In light of the fact that the respondent had obtained the key statutory proof, the applicant accepted that the respondent could substantiate the “redevelopment” ground of opposition to a new tenancy.
5. On 10th October 2019 the applicant’s solicitor emailed the respondent’s solicitor stating that the applicant would agree to the termination of the tenancy and suggested a determination date of 25th October 2019. The applicant’s solicitor pressed the respondent’s solicitor for a response but no substantive response was forthcoming. Subsequently, on 31st October the applicant’s solicitors emailed the respondent’s solicitor suggesting a revised termination date of 22nd November 2019, being the date up to which the tenant had paid rent.
6. By letter dated 13th November 2019 the respondent’s solicitor advised the applicant’s solicitor that the proposed termination date of 22nd November 2019 was not agreed and noted that the applicant had vacated the reference property in the absence of agreement.
7. The parties have therefore asked the Tribunal to fix the termination date of the tenancy.

Procedural Matters

8. The applicant was represented by Mr Douglas Stevenson BL instructed by Carson McDowell, solicitors. Mr Simon Russell of John McKee solicitors represented the respondent. The Tribunal is grateful to the legal representatives for their helpful submissions.

Position of the Parties

9. The applicant sought a termination date of 22nd November 2019. The respondent requested the Tribunal to set a termination date of 31st March 2020.

The Statute

10. It was not disputed that Article 11 of the Business Tenancies (Northern Ireland) Order 1996 ("the Order") gave the Tribunal a statutory discretion to fix the termination date of any tenancy:-

"11.-(1) In any case where –

- (a) a notice to determine a tenancy has been served under Article 6 of a request for a new tenancy made under Article 7;
- (b) a tenancy application has been made; and
- (c) but for this Article the effect of that notice or request would be to terminate the tenancy before the expiration of the period of 3 months beginning with the date on which the tenancy application is finally disposed of,

the effect of the notice or request shall be to terminate the tenancy either at such date as the Lands Tribunal may by order direct or at the expiration of the said period of 3 months and not at any other time."

11. Article 12(1) lists the grounds on which a landlord may oppose the grant of a new tenancy. Articles 12(1)(c) and 12(1)(f) are of relevance in the subject reference:

"12(1)(c) That the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reasons connected with the tenant's use or management of the holding;"

And

"12(1)(f) That on the termination of the current tenancy the landlord intends-

- (i) to demolish a building or structure which comprises or forms a substantial part of the holding and to undertake a substantial development of the holding; or
- (ii) to carry out substantial works of construction on the holding or part of it;”

12. Article 13(1) of the Order stipulates that the landlord must have been granted planning permission:

“13.-(1) Where the landlord relies on the ground specified in Article 12(1)(f), the Lands Tribunal shall require the landlord to furnish evidence that any permission required under any statutory provision has been granted to him in respect of the demolition and development, of the works of construction, which he intends to undertake.”

Discussion

13. Article 11 of the Order gives the Tribunal the statutory authority to fix the termination date of any tenancy “at such date as the lands Tribunal may by order direct”. This was not disputed.

14. Mr Stevenson BL submitted that there was no reason in cases where the landlord had opposed the grant of a new tenancy that the termination date should be fixed at some date in the future in order to suit the landlord – a landlord could not on the one hand insist on removing a tenant, but on the other hand say it wanted to keep the tenant for longer than the tenant wished to stay in order that the landlord could get a rent.

15. Mr Stevenson BL also asked the Tribunal to note that the applicant had suggested two termination dates but the respondent failed to substantially engage and did not suggest any alternative termination date in its communications. He submitted, therefore, that the Tribunal should exercise its discretion under Article 11 to fix the termination date of the tenancy at 22nd November 2019.

16. Mr Russell requested that the Tribunal use its discretion under Article 11 to fix a termination date of 31st March 2020, as the proposed redevelopment of the reference property had been put out to tender and a decision about which tender to accept would be made around the middle of January 2020. The respondent believed, therefore, that the earliest date contractors could be on site would be 1st April 2020.

17. Mr Russell asked the Tribunal to note that the applicant had already vacated the premises, notwithstanding that the Tribunal had yet to make an order in respect of the date of termination. He submitted that having received no notice or warning from the applicant that consideration was being given to withdrawing his tenancy application the respondent had suffered prejudice, as it was only notified of the withdrawal on 10th October 2019. In particular, the respondent had not been given reasonable time to agree building contracts and should the Tribunal fix the termination date at 22nd November 2019, the respondent, through no fault of its own, would find that the site remained vacant for the period prior to the commencement of the building works.

18. In conclusion he submitted that the applicant's proposed date of termination effectively denied the respondent the opportunity for rental income during the period preceding the building works, as it would be impossible to find a new tenant in such a short space of time. He therefore requested that the Tribunal use its discretion under Article 11 to fix a termination date of 31st March 2020.

Conclusion

19. When the applicant was satisfied that the respondent had the proofs of its intention to redevelop the reference property, including the statutory requirement under Article 13 to have planning permission, it withdrew its tenancy application and agreed to vacate.

20. The Tribunal agrees with Mr Stevenson BL, the respondent could not ask the applicant to vacate the premises on the one hand but on the other hand expect him to remain in situ until

contractors were on site, so that the respondent could maximise its rental income. The tenant had to make decisions based on its own financial interests, following the respondents request for him to vacate the reference property.

21. In any case the Tribunal, as it had done in previous cases before it, would have required the respondent to have appointed contractors etc. as part of its proof of intention to redevelop. These should have been in place.
22. The Tribunal has no hesitation in exercising its discretion under Article 11 of the Order to fix a termination date of 22nd November 2019, as requested by the applicant.

15th January 2020

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

Appearances:

Applicant – Mr Douglas Stevenson BL instructed by Carson McDowell solicitors.

Respondent – Mr Simon Russell instructed by John McKee solicitors.