

LANDS TRIBUNAL FOR NORTHERN IRELAND
LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972
BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

IN THE MATTER OF AN APPLICATION

BT/82 & 83/2010

BETWEEN

EDWARD TEAGUE & PATRICIA TEAGUE - APPLICANTS

AND

JOHN CORRY – RESPONDENT

Re: 19 Market Street, Ederney

COSTS

Lands Tribunal - Henry M Spence MRICS Dip.Rating IRRV (Hons)

Background

1. The respondent held the premises under a lease made 13th August 2004 for an initial term of 3 years. Following the settlement of an earlier application to the Lands Tribunal for a new tenancy, an order of the Tribunal extended the initial term for another 3 years from 1st January 2008.
2. On 14th December 2010 the applicants filed a tenancy application seeking an order that the respondent was not entitled to the grant of a new tenancy. On 15th December 2010 the respondent filed a tenancy application with the Lands Tribunal. Subsequently on 15th February the applicants served a notice to determine the tenancy.
3. On 29th May 2012, being the date listed for hearing, the Tribunal consented to the applicants' withdrawal of its application for an order that the respondent was not entitled to the grant of a new tenancy and ordered that the applicants pay the respondent's costs. The matter was then adjourned to enable the terms of a new lease to be considered under the respondent's tenancy application.
4. This is the respondent's application for assessment of his costs. The applicants have objected to the respondent's solicitors costs.

Procedure

5. The issue of costs was dealt with by written submission. Angela Matthews BL wrote on behalf of the applicants and Bernard Brady BL on behalf of the respondent.

Positions

6. The respondent sought costs totalling £10,940. The applicants contended that the amount should be much less.

Statute

7. Rule 33(2) of the Lands Tribunal Rules (Northern Ireland) 1976 provides:

“(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. The Tribunal was also referred to the following statutes/references:

Solicitors (Northern Ireland) Order 1976, Article 3(2)

Interpretation Act (Northern Ireland) 1954, Section 46

Rules of the Supreme Court (Northern Ireland) 1980, (as amended) Rule 62

Practice Direction No 1 of 2001, the Taxing Office, High Court of Justice

Reynolds & Clark, Renewal of Business Tenancies, 3rd edition, 2007, Sweet & Maxwell, paragraph 7-129, 7-144

Cooke on Costs, Michael J Cooke, Butterworths (2013)

Case Law

9. The following authorities were referred to the Tribunal:

Cunliffe v Gordon [1950] 2 KB 237 at 254

Lloyds Bank v Eastwood [1973] 3 All ER 1079

Thompson v The Department of the Environment for Northern Ireland [1986] NI 74

Johnson v Reed Corrugated Cases Ltd [1992] 1 All ER 169

Donaldson v Eastern Health & Social Services Board [1997] NI 232

Respondent's Submission

10. A bill of costs was submitted to the applicants in respect of the respondent's legal fees in the matter. The total sum of £10,940 comprises:

- £1620 in respect of counsels bill;
- £2 fee to the Lands Tribunal;
- £7765 respondent's solicitors fee; and
- £1553 in respect of VAT

11. Mr Brady on behalf of the respondent submitted:

- i. The respondent seeks that the Lands Tribunal settle the amount of costs due under the order for costs in accordance with rule 33.
- ii. The respondent's bill of costs has been calculated using the standard formula ("Thompson", "Donaldson") to produce a composite hourly rate of £150.00. The bill had been itemised for the benefit of the applicants.
- iii. Time spent is shown for each item of work, broken down into units of 6 minutes. It is commonplace within the solicitor's profession to charge for work in 6 minute units.
- iv. The respondent's solicitors' bill has therefore been prepared using standard measurements of hourly rate and time, and accordingly represents a reasonable assessment of their professional fees.

Applicants' Submission

12. Ms Matthews submitted on behalf of the applicants:

- i. The applicants cannot ascertain from the information provided by the respondent what is the nature of the work undertaken, the parties involved or the need for same. In these circumstances the applicants can only consider the reasonableness of the activities detailed in the furnished bill by considering the aggregate level of activity billed for. The bill of costs, therefore, is neither reasonable nor proportionate in light of the nature and complexity of the case.

- ii. Telephone and letter correspondence together account for 45% of the respondent's bill at a cost of £3,460. This appears to be a disproportionate amount in light of the nature and complexity of the case.
- iii. The respondent has accepted that no uplift should have been applied to the travel figure in the present bill. It is the applicants' submission that no uplift should be applied to telephone calls made or received, letters issued or received, travel time or waiting time.
- iv. As the respondent has furnished a bill which purports to apply a fee on the basis of time spent, the time actually spent should be recorded on the bill. Alternatively if the respondent has applied an average charge of 6 minutes for each activity then he cannot exceed that in individual cases.
- v. The fees applied for internet searches total 70 minutes. This is an administrative task to establish whether or not the property was being marketed online and it is therefore not appropriate to apply a fee for a solicitor to undertake this work ("Cooke", "Butterworths")

DECISION

13. The Tribunal considers there is some merit in Ms Matthews' criticism of the respondent's bill of costs:

- £3460 seems slightly excessive for telephone and letter correspondence in this type of case.
- No uplift should be applied to telephone calls, letters, travel time or waiting time.
- Internet searches to establish if the property was being marketed were an administrative task.

14. The Tribunal awards as follows:

- £1620 counsels fees;
- £5000 respondent's solicitors fee.

15. Accordingly the Tribunal fixes a lump sum of £6620 plus VAT.

Aborted Hearing

16. The respondent seeks the costs of the hearing fixed for 15th May 2013, on the grounds that the adjournment of the hearing was necessitated by the receipt the previous afternoon of the applicants' submission, setting out their objection to the respondent's bill.

17. Ms Matthews submitted:
 - i. A copy of the applicants' submission was forwarded to the Lands Tribunal on 10th May but due to an administrative oversight this was not served on the respondent until 14th May by fax.
 - ii. At no time after receiving the applicants' submission did the respondent contact the applicants to indicate they required further time to consider same or they wished to adjourn the hearing.
 - iii. The respondent took no steps to avoid incurring costs by having both counsel and solicitor at court on 15th May when it must have been apparent to the respondent on 14th May that they wished to seek an adjournment of the hearing.
 - iv. Had the respondent approached the Lands Tribunal on 14th May seeking an adjournment or contacted the applicants indicating that an adjournment was being sought the matter could have been dealt with without the need for the parties to attend court and incur the costs of same.

18. The Tribunal considers there was sufficient time for the respondent to seek an adjournment of the Hearing scheduled for 15th May and on that basis the Tribunal makes no award as to the costs of the aborted hearing.

ORDERS ACCORDINGLY

13th September 2013

**Henry M Spence MRICS Dip.Rating IRRV (Hons)
LANDS TRIBUNAL FOR NORTHERN IRELAND**