

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/82 & 83/2010

BETWEEN

EDWARD TEAGUE & PATRICIA TEAGUE – APPLICANTS

AND

JOHN CORRY – RESPONDENT

PART 2

Re: 19 Market Street, Ederney

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

Background

- 1.** This is an application made under the Business Tenancies (Northern Ireland) Order 1996 (“the Order”). The lease on the premises at 19 Market Street, Ederney was due to expire on the 31st December 2010. On the 15th February 2010 the landlord (“the applicants”) had served on the tenant (“the respondent”) a Notice to Determine the tenancy. The respondent subsequently advised the applicants that he did not accept their Notice to Determine and notified them that he would be making an application for a new tenancy.
- 2.** On the 14th December 2010 the applicants filed a Tenancy Application with the Lands Tribunal for an order that the tenant was not entitled to the grant of a new tenancy. The respondent immediately responded by filing a Tenancy Application for the grant of a new tenancy.
- 3.** On the 29th May 2012 the Lands Tribunal consented to the applicants’ withdrawal of their application for an order that the respondent was not entitled to a new tenancy and the matter was adjourned to enable terms of a new lease to be considered under the respondent’s tenancy application.
- 4.** The applicants have now agreed to the respondent’s request for a renewal of the tenancy for a term of five years from the 1st January 2011 on the terms of the existing lease. The only issue for determination was whether the applicants were entitled to vary the terms of the lease to include a clause to permit them periodic inspection of the premises. The existing lease had no such provision.

Procedural Matters

5. Both parties agreed that the matter should be dealt with by way of written submissions. Ms Angela Matthews BL wrote on behalf of the applicants and Mr Bernard Brady BL on behalf of the respondent.

Position of the Parties

6. The applicants sought a term to be included in the lease as follows:

“5.7.1 To permit the Landlord and the Landlord’s agents:

- (a) to enter upon the Premises every six months at reasonable times, and upon giving one weeks prior notice (except in case of emergency) for the purpose of ascertaining that the covenants and conditions of the lease have been observed and performed,
- (b) to enter upon the Premises every six months at reasonable times and in giving one week’s written prior notice (except in case of emergency) to view (to open up floors and ceilings where the same is required in order to view) the state of repair and condition of the Premises or the related parts.”

7. The respondent had objected to the applicants request for the variation of the terms of the lease as he considered it to be a significant departure from the existing terms. He provided the Tribunal with details of an open offer to the applicants in which he had suggested an alternative “inspection clause”:-

“Access of Landlord

5.7.1 to permit the Landlord’s suitably qualified agents to enter upon the demised premises once a year between the hours of 9.00am and 10.00am and giving one week’s written prior notice (except in case of emergency) to review the state of repair and condition of the demised premises and for the purpose of ascertaining that the covenants and conditions of this lease have been observed and performed. The person or persons exercising such rights causing as little disturbance or inconvenience to the tenant as possible and making good at his or their expense any damage thereby occasioned to the demised premises.”

Statute

8. The provisions contained in Article 19 of the Order give the Tribunal the statutory authority to determine the terms of a lease in the absence of agreement between the parties:-

“Other terms of new tenancy

19(1) the terms of a tenancy granted in pursuance of an order of the Lands tribunal (other than terms as to the duration thereof and as to the rent payable thereunder) shall be such as may be agreed between the landlord and the tenant, or as, in the absence of agreement, may be determined by the Lands Tribunal; and in determining those terms the Lands Tribunal shall have regard to the terms of the current tenancy and to all relevant circumstances”

Authorities

9. The Tribunal was referred to the following authorities:

- Card Shops Limited v Davies [1971] 1WLR 591
- Reynolds and Clarke on “Renewal of Business Tenancies” 4th edition page 447 and page 449 paragraph 8-48
- Dawson “Business Tenancies in Northern Ireland” page 173

Discussion

10. The parties were generally agreed that periodic inspection of the premises should be facilitated but three issues remained to be resolved:

- (i) The frequency of inspection
- (ii) The extent of any inspection
- (iii) Who should carry out the inspection

Frequency of Inspection

11. The lease conferred an obligation on the respondent to keep the interior of the premises in good and presentable repair (clause 11) and to paint and decorate the interior and exterior of the premises every third year (clause 12). In order to ensure that this obligation had been complied with the applicants were seeking inspection every six months. The respondent was willing to agree to inspection every twelve months

12. The onus is on the party seeking any changes to the existing lease terms to justify that change (see Card Shops v Davies) and the Tribunal agrees with Mr Brady BL that the applicants have not clearly demonstrated why they require inspection every six months. The Tribunal considers twelve monthly inspections to be reasonable.

Extent of Inspections

13. In their proposed inspection clause the applicants were seeking permission: “... to open up floors and ceiling where the same is required in order to view the state of repair and condition of the premises or the retained parts”. Mr Brady BL considered this proposed term to be unfair, oppressive and he submitted that it prejudiced the security of tenure of the respondent in his business. The Tribunal considers that the applicants have not clearly demonstrated a need for the inclusion of this term and finds it unnecessary in all the circumstances.

Inspection by Whom

14. The Tribunal was advised that the relationship between the applicants and the respondent had “broken down” and the respondent was therefore unwilling to permit inspection by the applicants in person. They were, however, prepared to facilitate inspection by “the

Landlords suitably qualified agents". The Tribunal had not been party to the discussions between the applicants and the respondent but considers it unreasonable that the applicants, as landlord and owner of the demised premises, should be prevented from being present at inspection, not least because it could burden the applicants with the additional and unnecessary costs of employing "agents" to inspect on their behalf.

Conclusion

- 15.** Invoking its powers under Article 19 of the Order the Tribunal Directs that the following clause is to be inserted in the subject lease.

"Inspection Procedures

5.7.1 To permit the Landlord and/or his agents to enter upon the demised premises once a year at a mutually agreed time and giving one week's prior written notice (except in the case of emergency) to review the state of repair and condition of the demised premises and for the purpose of ascertaining that the covenants and conditions of this lease have been observed and performed, the person or persons exercising such rights causing as little disturbance or inconvenience to the tenant as possible and making good at his or their expense any damage thereby occasioned to the demised premises".

ORDERS ACCORDINGLY

12th January 2015

Henry M Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland