

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

BT/35/2007

BETWEEN

**CHARLES BRANDON GOUGH, PETER WILLIAM ALLEN, ALAN McFETRIDGE &
NOEL STEWART – APPLICANTS**

AND

JERMON DEVELOPMENTS LIMITED – RESPONDENT

Premises: Fanum House, 108 Great Victoria Street, Belfast

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

Belfast – 3rd July 2007

1. Mr Frank O'Donoghue QC instructed by Tughans appeared for the applicants. Mr Mark T Horner QC instructed by C & H Jefferson appeared for the respondent.
2. The applicants previously leased and occupied office premises at Fanum House, 108 Great Victoria Street, Belfast. These were held under a number of leases (7 in total). In 2001 the applicants ceased their occupation of the premises and leased new premises at Mays Meadow, Belfast. As an incentive the new landlord agreed to an assignment to it of the applicants' existing leases, and the obligations that flowed from them, at Fanum House. The respondent was requested to consent to the assignment. Consent was not forthcoming. It was not content with the relative financial standing of the proposed assignee. The matter was not pursued.
3. On the 21st February 2007 the applicants reactivated the application for consent in regard to the one remaining outstanding lease which was made on the 19th November 1990 and was in respect of part of the 6th floor of the building. The term of this lease would expire on 6th May 2010 and the current annual rent payable is £5,800. Again consent was not forthcoming and on 16th April 2007 an application was made to the Lands Tribunal on the basis that "the landlord is unreasonably withholding its consent".

4. The parties made some progress but, as the matter was not resolved, on 7th June the Tribunal fixed a date for Hearing. On 14th June, by consent, the Hearing was moved to 3rd July 2007.
5. On 22nd June the respondents raised a fresh issue in regard to the repairing and yielding up obligations contained in the lease and the night before the hearing a fully costed "Terminal Schedule of Dilapidations" was served on the applicants. Clearly that left them no time to take an informed view of apparently the only pivotal issue outstanding.
6. Unfortunately, at the commencement of the Hearing, the Tribunal realised that as the relevant tenancy was entered into before the commencement of the Business Tenancies (NI) Order 1996, it was unlikely that it had any jurisdiction to deal with the matter. See paragraph 7 of Schedule 2 (transitional provisions and savings) of the 1996 Order. Mr O'Donoghue QC properly made an application to dismiss the reference for want of jurisdiction. Mr Horner QC was instructed to ask for costs.
7. The general rule is that the respondent is entitled to its costs where the reference is dismissed.
8. The Tribunal accepts that to begin with, because the 1996 Order did not apply, the respondent may not have been under any obligation to set out his reasons. But, once the Reference had been made and the respondent had taken steps in the proceedings, in the view of the Tribunal it may then take into account the subsequent conduct of the parties in the context of the standards it expects to be maintained. The respondent did not put its cards face up on the table as promptly as it should have. That is of particular significance in cases of this nature. The Tribunal concludes that it should recover some but not all of its costs. The value of the case is modest. The parties were not opposed to the award of a lump sum.
9. The Tribunal therefore awards the respondent costs of £750 plus VAT.

ORDERS ACCORDINGLY

10th July 2007

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

Appearances:

Mr Frank O'Donoghue QC instructed by Tughans appeared for the applicants.

Mr Mark T Horner QC instructed by C & H Jefferson appeared for the respondent.