

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/60/1999
BETWEEN
NORTHERN IRELAND HOUSING EXECUTIVE - APPLICANT
AND
EXTRAVISION - RESPONDENT

Lands Tribunal - Mr Michael R Curry FRICS IRRV MCI.Arb

Belfast - 20th March 2000

On 13th March 1998 the Northern Ireland Housing Executive (“the Housing Executive”) served Notice on Extravision terminating its tenancy of business premises at 65/67 Castlereagh Road, Belfast, on 30th day of September 1998. The Notice stated that the Housing Executive would oppose a tenancy application by Extravision on grounds that “possession of the premises is reasonably necessary for the Northern Ireland Housing Executive to carry out its functions under statutory provision” (i.e. based on the new provisions for opposition by public authorities contained in Article 12(1)(i) of the Business Tenancies (NI) Order 1996).

The matter was referred to the Tribunal in July 1999 and, in September 1999, the Tribunal made directions for the disclosure of documentary evidence and a Hearing. There was some delay but by the end of 1999 the essential evidence had been produced and a preliminary point, the scope of the Housing Executive’s statutory powers, had crystallised (for convenience, an ‘empowerment’ issue). By that stage Extravision had been encouraged by the Tribunal to seek legal advice.

As arranged, the Housing Executive first set out, in general terms, its submission on that point. However, in its response, Extravision then shifted away from the empowerment issue and onto a somewhat different tack that may be termed, for convenience, a ‘reasonable necessity’ issue.

In all the circumstances, the Tribunal came to the view that it was no longer a suitable case for a split hearing, the matter should be considered in the round and go to a full hearing on the application for an Order that Extravision was not entitled to the grant of a new tenancy.

At the hearing, Mr R E Weatherup QC appeared for the Housing Executive, Mr Henry Toner QC appeared for Extravision. Mr Toner did not consent to, but did not oppose refusal of the grant of a new tenancy.

The Tribunal orders that the tenant is not entitled to the grant of a new tenancy.

The Housing Executive applied for costs.

The Housing Executive has won, Extravision has lost. The preliminary conclusion is that costs must follow that event.

The Tribunal now turns to the question of whether there were sufficient grounds to depart from that preliminary view. It follows that the real question is whether there was anything in the conduct of the case by the Housing Executive that would displace that presumption.

Extravision might have sought legal advice earlier and thereby curtailed the proceedings but that is not a matter for which the Housing Executive ought to be penalised.

However, the Tribunal does not consider that sufficient cards were placed face up on the table (details of the manner of the proposed development) by the Housing Executive, to allow Extravision to know where it stood at the earliest opportunity. That did not happen until about the end of 1999, beginning of 2000. Adopting a robust approach, the Tribunal finds that the Housing Executive is not entitled to costs from any earlier than the beginning of the year 2000.

The Tribunal also notes that Mr Weatherup accepted that Mr Toner had informed him during the week before the Hearing, that he would not be opposing the refusal of the grant of a new tenancy.

The Tribunal orders that the Respondent, Extravision, pays the costs of the Applicant (the Housing Executive) from 1st January 2000. Such costs to be taxed by the Registrar in default of agreement.

ORDERS ACCORDINGLY

12th April 2000

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

Appearances:-

R Weatherup QC instructed by Messrs Cunningham & Dickey, Solicitors for the Applicant.

H Toner QC instructed by Messrs Elliott Duffy Garrett, Solicitors for the Respondent.