

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL COMPENSATION ACT (NORTHERN IRELAND) 1964
LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972

IN THE MATTER OF A REFERENCE

R/10/2013

BETWEEN

AMY MAY ROBINSON - APPLICANT

AND

DEPARTMENT FOR REGIONAL DEVELOPMENT – RESPONDENT

Re: Apartment 1, 86 Shore Road, Greenisland

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

Background

1. A Vesting Order (the “A2 Shore Road”) to acquire part of the applicant’s property at 86 Shore Road was made on 17th October 2012 and became operative on 3rd December 2012.
2. On 9th January 2013 the applicant issued a notice pursuant to Schedule 6 of the Local Government Act (Northern Ireland) 1972 requiring the respondent to acquire the remaining part of her property.
3. On 21st February 2013 the respondent served a counter-notice on the basis that the acquisition of the part only of the applicant’s property did not cause material detriment to the remainder.
4. The matter was referred to the Lands Tribunal on 21st March 2013 but was subsequently withdrawn on 10th May 2013. The respondent consented to the withdrawal of the case on the basis that it would be seeking to recover its costs.
5. The respondent now seeks to recover its costs.

Procedure

6. The issue of costs was dealt with by written submission. Caroline Creighton of Magennis & Creighton, solicitors wrote on behalf of the applicant and Donal Lunny BL on behalf of the respondent.

Positions

7. As the “winner” the respondent is seeking its costs in the matter. The applicant considers that both parties should be properly responsible for their own costs.

Statute

8. Rule 33(1) of the Lands Tribunal Rules (Northern Ireland) 1976 provides:

“33.-(1) Except in so far as [Article 5 of the Land Compensation (Northern Ireland) Order 1982] applies and subject to paragraph (3) the costs of and incidental to any proceedings shall be in the discretion of the Tribunal, or the President in matters within his jurisdiction as President.

9. Schedule 6 para 10(2) of the Local Government Act (Northern Ireland) 1972 provides:

”Where a vesting order applies to part only of a house, building or factory, a person having an estate in the whole thereof may, within six weeks from the date on which the order becomes operative, serve a notice on the council, requiring the council to acquire the remainder thereof.”

Case Law

10. The Tribunal was referred to the following authorities:

Oxfam v Earl BT/3/1995

- “The Tribunal must exercise that discretion judicially and the starting point on the question of costs is the general presumption that, unless there were special circumstances, costs follow the event ie that in the ordinary way the successful party should receive its costs.”

and

- “The next question for a Tribunal is whether there were special circumstances which would warrant a departure from that general rule. But these must be circumstances connected with the proceedings, for example, to reflect an unsuccessful outcome on a major issue.”

and

- “In coming to a decision it will begin by considering whether or not there was a loser. At this stage, if there was an issue of fault or principle, it does not matter whether a loser was wholly unsuccessful or achieved a near miss, he was still the loser. But, if there was no issue of fault or principle, and the outcome was a draw, or close to one, the

Tribunal will not generally consider either party to have lost. Unless there are good reasons for a special award, such as extravagant or unsatisfactory conduct of the proceedings (including the role of expert witnesses) or failure on an important issue, costs will follow the event so the 'loser pays all'."

Reilly v DRD R/10/2011 (Part 2) Costs

Applicant's Position

11. The applicant submitted:

- i. The case was referred to the Tribunal on 21st March 2013 to ensure the applicant complied with the statutory time limits.
- ii. The applicant's reference to the Tribunal was a proper one with no question of it having been vexatious.
- iii. The application was withdrawn at the first opportunity. No appearances have been necessary save those arising from the Department's request for costs and no substantive response has been required by the Department.
- iv. The Tribunal should reject the respondent's application for costs on the basis that both parties should be responsible for their own costs in the matter.

Respondent's Position

12. The respondent submitted:

- i. The instant reference was not a "no fault, no principle" case. The "winner" would expect to be awarded its costs.
- ii. The respondent refused to acquire the remaining portion of the applicant's property on the grounds that the acquisition of the vested part did not cause material detriment to the remainder.
- iii. The matter was referred to the Tribunal by the applicant on 21st March 2013. Thus the applicant did not accept the respondent's basis of refusal.
- iv. The applicant is the "winner" and therefore seeks its costs of the reference.

DECISION

13. The Tribunal is satisfied the respondent had to incur costs to address an issue the applicant did not pursue. The presumption which follows from the application to withdraw is that the applicant would not have succeeded in the issue and the Tribunal is satisfied the presumption that the “winner” should be awarded its costs is not displaced.

14. Next question is was there anything in the conduct of the proceedings by the respondent that should be reflected in a reduction in its costs. The Tribunal is satisfied there is not and awards the respondent its costs in full.

ORDERS ACCORDINGLY

19th August 2013

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

Appearances:

Applicant: Caroline Creighton of Magennis & Creighton, solicitors.

Respondent: Donal Lunny BL instructed by the Departmental Solicitor’s Office.