LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

IN THE MATTER OF AN APPLICATION

BT/35/1994

BETWEEN

KIN LEUNG YUEN - APPLICANT

AND

BRIDGET McHUGH, ANNE McLAUGHLIN, ALFRED McAVOY, JOHN McAVOY MARY BRANNIGAN & MARTHA KELLY - RESPONDENTS

Lands Tribunal for Northern Ireland - The President Judge Peter Gibson QC and Mr Michael R Curry FRICS

Belfast - 29th June 1994

This was an application under Section 8 of the Business Tenancies Act (Northern Ireland) 1964 by the Applicant/Tenant ("the Tenant") of premises at 782 Springfield Road, Belfast, for a new tenancy.

The Tenant had made a request, dated 15th February 1994, for a new tenancy under Section 5 of the Act.

By letter dated 21st February 1994 the Respondent/Landlords ("the Landlords") had informed the Applicant that they were "refusing to grant your clients new tenancy for the above premises and we shall put you in formal notice that we shall be objecting to any application made". No specific ground of opposition was mentioned at all, and no other document was served on the Tenant prior to the application to the Lands Tribunal under Section 8 of the Act. After that application, however, Mary Margaret Brannigan had sworn an affidavit setting out a history of problems alleged to have been caused by the Tenant in his use and occupation of the premises. This purported to show that the Tenant had not observed the terms of his lease.

The only issue for the Tribunal at this hearing is the validity or otherwise of the Landlords objection.

Mr Ciaran Murphy BL appeared for the Tenant, instructed by Messrs Nigel Greeves, Solicitors.

Mr Martin McLaughlin, Solicitor of Messrs Oliver J Kelly & Co, appeared for the Landlords.

Mr Murphy contended that the letter of 21st February 1994 did not constitute a valid objection within the meaning of Section 5(6) of the Act because the Notice failed to state any grounds.

He referred the Tribunal to Woodfall at 22.099

"However, [a landlord] can only rely on those grounds which were stated .... in the counter-notice to the tenants request under [Section 5] ...."

"Once a [Section 4] notice is served, it cannot be amended, nor withdrawn except in exceptional circumstances. Thus it is clear that the landlord is absolutely limited, in the event of the tenant applying to the [Lands Tribunal], to the grounds which he has stated in the notice."

He submitted that were a landlord does not state any ground the notice cannot be valid because there is no ground on which to rely.

The point is restated at 22.066

"The general position under the Act is that notices, once given, cannot be withdrawn or amended, and accordingly it is considered that a landlord cannot add to grounds of opposition stated in his counter-notice ...

There is no prescribed form for the counter-notice, but since it is required to state grounds of opposition, it is desirable to adhere to the statutory language as far as possible".

In further support he referred to the Tribunals decisions in Harold Cowan v Luchi BT/22/1972, McMillan v Crossey BT/21/1985 and Gallagher v Morgan BT/118/1986.

Mr Murphy submitted that the "counter-notice" does not include any ground and cannot be amended.

In reply Mr McLaughlin submitted that the affidavit evidence clearly cites trouble and concern with this tenant and that the tenant had been put on strict notice. All the matters in the affidavit were in the knowledge of the tenant. The breaches were serious. There had been a long history of nuisance and the use and abuse of the premises had affected the overall value.

DECISION

The words of the Act are clear and unambiguous. The requirement to state a ground of opposition is mandatory. The Act reads (in Section 5(6)):

"And any such notice shall state on which of the grounds mentioned in Section 10 the landlord will oppose the application".

The Tribunal agrees with all the submissions on behalf of the Tenant.

As earlier set out in its decision in Joyland Amusements (Northern Ireland) Limited v A S & D Enterprises Limited BT/102/1989 the Tribunal considers that the correct approach is to be found in that of Barry J in Barclays Bank Ltd and Another v Ascott 1961 1 All ER 782 at 786 C, (whose words were adopted by Cairns LJ in the Tegerdine case, and which themselves follow the judgment of Hodson LJ in Bolton (House Furnishers) Ltd v Oppenheim [1959] 3 All ER 90)) namely -

".... the question which the court really has to consider is whether the notice given by the landlord has given such information to the tenant as will enable the tenant to deal, in a proper way, with the situation (whatever it maybe) referred to in the notice. It is clear .... that this notice should be construed liberally, and provided that it does give the real substance of the information required, then the mere omission of certain details .... will not invalidate the notice."

In the present case the notice gives no information to the tenant as to which of the Landlords grounds of opposition he has to consider. In these circumstances the Tenant

cannot possibly be in a position to deal, in a proper way, with the situation. This is not a matter of an omission of a mere detail, the omission goes to the heart of the notice.

The Tribunal finds in favour of the Tenant. The Landlords' letter is not a valid counter-notice.

The Respondents will pay the Applicant's costs, such costs if not agreed to be taxed on the County Court scale.

ORDERS ACCORDINGLY

The President Judge Peter Gibson QC
and Michael R Curry FRICS
LANDS TRIBUNAL FOR NORTHERN IRELAND

5th July 1994

Appearances

Mr Ciaran Murphy of Counsel (instructed by Nigel Greeves, Solicitor) for the Applicant.

Mr Martin McLaughlin (Oliver J Kelly & Co, Solicitors) for the Respondents.