

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF AN APPLICATION
BT/52/1992
BETWEEN
HOWARD T J SAWYERS - APPLICANT
AND
ALISON E NESBITT - RESPONDENT

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Belfast - 18th August 1992 and 20th August 1992

This was an application, under Section 8(1) of the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act"), for the grant of a new tenancy of 31A Hamilton Road, Bangor, Co Down. Mr Sawyers, the Applicant, carried on a taxi office at that address.

The matter commenced with a Landlord's Notice to Determine Business Tenancy (under Section 4 of the 1964 Act) dated 10th April 1992 served on the Applicant. That notice terminated the tenancy on 31st October 1992 and opposed an application to the Lands Tribunal for the grant of a new tenancy on the grounds:-

"you ought not to be granted a new tenancy in view of your persistent delay in paying rent, and breaches of covenants in your agreement regarding alterations or additions to premises."

On 29th May 1992 Messrs McCoubrey & McClelland (the then solicitors for Mr Sawyers) wrote:-

"Kindly note that we act for our above-named Client, who has handed us your letters dated 9th April 1992 enclosing Landlord's Notice to Determine Business Tenancy. Kindly note that our Client has instructed us that he will not be willing to give up possession of the premises on the date specified in the Notice",

The Applicant's application to the Lands Tribunal requested a new tenancy for five years from 31st October 1992 at a rent of £500 per quarter (the same amount as under the existing tenancy), and requested the same other terms as in the existing tenancy "(other than Clauses relating to alterations and improvements)".

Prior to the first day of hearing, on 17th August 1992, Messrs McCoubrey & McClelland Solicitors, notified the Lands Tribunal that Mr Sawyers had withdrawn his instructions and had appointed Francis Hanna & Co, Solicitors to act for him in this matter.

Consequently on the next morning, ie the first day of hearing Miss Christine Bateson of Messrs Francis Hanna & Co understandably requested an adjournment to enable proper instructions to be received from Mr Sawyers. Mr Gilbert Nesbitt, Solicitor, of Messrs Wilson Nesbitt strongly opposed any adjournment but after discussion it was agreed by all that a short adjournment to the 20th August 1992 was acceptable. Mr Sawyers was not present in Court.

On 20th August 1992, when the hearing re-commenced, Miss Christine Bateson of Messrs Francis Hanna & Co requested permission to withdraw from the Case for after consultation with Mr Sawyers and Counsel there was no other option. In answer to the Tribunal she did not expect Mr Sawyers to put in an appearance. The Lands Tribunal granted the permission requested and as there was no appearance by Mr Sawyers the Tribunal proceeded to hear the matter.

Mr Gilbert Nesbitt called Mr Alfred Arthur Russell ARICS partner in Messrs Russell Bros Chartered Surveyors of Newtownards and Miss Nicola Ann Edwards (Negotiator) of SPC Property Centre, Bangor to give evidence.

Each witness proved the rental payments made and the date cash payment was due while each firm had been given the responsibility for management and collection of rent. Additionally, Miss Edwards proved photographs taken by herself of the front and rear of the premises indicating the physical state of the premises.

The Tribunal finds the following facts proved:-

1. The original Memorandum of Agreement has been mislaid. A photocopy of that lease was certified a true copy by Mr Russell (who had witnessed Mr Sawyers signing of that document).
2. The term was for eleven and a half months from 15th November 1987 and then quarter to quarter. The rent was due on the first day of each quarter and was £500 per quarter.

Clause 7 of that Memorandum of Agreement required the tenants to "during the tenancy hereby created put and keep the said demised premises and all fixtures, glass and additions thereto in good, substantial and tenantable repair and condition and for

this purpose shall carry out all such repairs as may be necessary whether by reason of fair wear and tear of the premises or otherwise".

And Clause 6 required that:- "The Tenant shall not make any alteration or additions to the said premises without the written consent of the Landlord or the Agent, and in the event of any such consent being given the Tenant agrees to reinstate the premises to their original condition if called upon by the Landlord or Agent to do so, or deliver up possession in their altered condition at the option of the Landlord".

3. As far as payments of rent are concerned:-

Date Due	Date Paid
1 st February 1988	8 th February 1988 (£416.66)
1 st May 1988	18 th May 1988
1 st August 1988	15 th August 1988
1 st November 1988	8 th November 1988
1 st February 1989	8 th February 1989
1 st May 1989	3 rd May 1989
1 st August 1989	8 th August 1989
1 st November 1989	15 th November 1989
1 st February 1990	22 nd February 1990
1 st May 1990	17 th May 1990
1 st August 1990	27 th August 1990
1 st November 1990	29 th November 1990
1 st February 1991	13 th March 1991
1 st May 1991	20 th May 1991
1 st August 1991	7 th October 1991
1 st November 1991	5 th December 1991
1 st February 1992	30 th April 1992
1 st May 1992	-
1 st August 1992	-

4. As far as alterations and additions are concerned:-

Neither Estate Agent had received any application for making alterations and/or additions to the premises.

The timber fire escape at the rear of the premises has been removed at some time and the rear window at first floor level has been bricked up.

DECISION OF THE TRIBUNAL

Payment of rent due has been tardy since the beginning of the tenancy. At first, for the early eight quarters it was rarely more than a week late, but then for the next four quarters it was up to four weeks late and for the next four quarters only once was it less than four weeks late and was as much as nine to ten weeks late. The last payment made was on 30th April 1992 but was due on 1st February 1992 and **no payments have since been made** even up to the second date of this hearing.

The Tribunal was told that on two previous occasions summonses for non-payment of rent had been issued before payment was made and on a number of occasions letters were sent to Mr Sawyers regarding late payment.

The wording of the 1964 Act, Section 10(1)(b) viz:-

"that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due;" gives to the Lands Tribunal a discretion. This is not a case where the Tribunal properly could exercise its discretion to grant a new tenancy. There has been a flagrant disregard of the tenant's duty to pay the rent promptly and he has not come to the Court to give any reason or excuse to explain the reason why. Indeed since the Landlord's Notice to Determine only one rent payment was made (30th April 1992) and that was due on 1st February 1992.

The Landlord's objection to a new tenancy because rent payments were persistently delayed must be upheld.

Secondly, the removal of fire escape probably has made the premises unfit to comply with fire regulations and the bricking-up of the window may give rise to lack of ventilation and the possibility of dry rot. All of these certainly give rise to concern for the safety of persons working in or visiting the premises if a fire were to break out: Section 10(1)(c) once again gives the Lands Tribunal a discretion:-

"that the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding;" As far as the bricking-up of the window looked at in isolation might be a situation (given proper promise by the Applicant to rectify) where the Tribunal properly might exercise its discretion in favour of the Applicant, but the removal of the fire escape is such a substantial breach of the obligations under the current tenancy that the Tribunal must uphold the Landlord's objection in this regard.

Finally, looking at the Tenant's behaviour overall both the matters complained of, underline the fact that the Lands Tribunal must find that the Landlord has established both grounds of opposition to the Tenant's application for a new tenancy.

The Lands Tribunal, in accordance with Section 11(1) of the 1964 Act dismisses the application for a new Tenancy. The Tribunal directs that the tenancy will end on the date stated in the Landlord's Notice to Determine viz:- 31st October 1992.

The Applicant will pay the Respondent her reasonable costs of this hearing, if not agreed to be taxed by the Registrar of the Lands Tribunal on the County Court Scale.

ORDERS ACCORDINGLY

A L JACOBSON FRICS

LANDS TRIBUNAL FOR NORTHERN IRELAND

4th September 1992

Appearances

Mr Gilbert Nesbitt, Solicitor (of Messrs Wilson Nesbitt, Solicitors) for the Respondent.

No appearance by the Applicant.