LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

IN THE MATTER OF AN APPLICATION

BT/71/1989

BETWEEN

MARY HARTE - APPLICANT

AND

JAMES HUGHES - RESPONDENT

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Armagh - 18th September 1989 and 6th October 1989

This was an application by Mary Harte under Section 8(1) of the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act") for a new tenancy of business premises at No 4 George's Street, Dungannon, Co Tyrone. It commenced with a Landlord's Notice to Determine Business Tenancy (dated 6th April 1989) under Section 4 of the 1964 Act. That Notice brought the existing oral tenancy to an end on 31st October 1989 and stated that the Landlord's opposition to a new tenancy on the grounds that "on the termination of the current tenancy I intend to demolish the premises comprised in the holding and could not do so without obtaining possession".

On 25th April Mary Harte's Solicitor served on James Hughes' Solicitors a letter stating that the tenant "is not agreeable to hand over the tenancy on the 31st October 1989 and proposes to apply for a new tenancy".

On 1st August 1989 Mary Harte made the application for a new tenancy to the Lands Tribunal.

There were two preliminary matters to be disposed of at the outset viz:-

(a) The tenant did not serve a copy of the application to the Lands Tribunal on the Landlord. After hearing legal argument, the Tribunal ruled that was not fatal to the application for:-

(i) in the 1964 Act there was no statutory requirement to serve such notice;

(ii) the Landlord was in no way disadvantaged;

(iii) the Registrar of the Lands Tribunal in accordance with his normal practice on 3rd August 1989 notified the landlord's Solicitor that such an application had been made to the Lands Tribunal;

(iv) the tenant in her letter of 25th April 1989 had already informed the Landlord that she proposed to make such an application to the Lands Tribunal;

(v) it was accepted by the Landlord that in the absence of a statutory requirement the Lands Tribunal Rules and the authorities give the Tribunal discretion.

(b) The wrong street number viz No 4 George's Street had been written in to the Landlord's Notice to Determine, the tenant's refusal to give up possession and the tenant's application to the Lands Tribunal. In each case the property referred to was No 6 George's Street NOT No 4 George's Street. Neither party was put at a disadvantage because of the incorrect numbering. The Tribunal used its discretion and gave permission to amend No 4 to read No 6 on all documents.

Mr Stewart Beattie of Counsel (for the Respondent/Landlord) called Mr James Hughes (the Respondent) and Mr Ignatius Harrington (Member of the British Institute of Architectural Technicians) to give evidence.

Mr Jim Rafferty LLB MA, Solicitor (for the Applicant/Tenant) called no evidence.

Mr Harrington testified that on instructions from Mr Hughes he inspected Nos 4 and 6 George's Street, made a detailed survey and prepared plans. Those plans were submitted for full planning permission which was granted on 15th March 1989. Building Control permission which was applied for on 8th March 1989 has not yet been received. Following what was called a "snagging list" received from Building Control the application was "put on ice" but a new meeting with the Building Control Officer was arranged for the past week.

Mr Hughes testified that he entered into a contract to purchase in late 1987 both No 4 and No 6 George's Street. For taxation purposes the purchase of each property was completed on different dates - No 6 purchase was completed about March 1988. He further testified that he was in business as an accountant and had purchased the properties with the intention to convert and refurbish for offices for his own business use. He had made enquiries of some clients who were builders who gave him a "ball-park estimate" of £30,000 to carry out the alterations indicated by the plans approved by the planning authorities.

The Tribunal finds the following facts proved or admitted:-

1. Mr Hughes purchased Nos 4 and 6 George's Street in late 1987 early 1988. At that time No 4 was vacant and dilapidated and No 6 was occupied by Mrs Harte on an oral tenancy (since June 1983).

2. Both properties are in poor repair. The roof over both needs to be replaced. Ingress of rain water has caused wet rot throughout the roof timbers; the flooring at the first floor and ground floor is badly affected by wet rot and requires replacement; the stud partitioning also suffers from wet rot.

3. Planning permission was granted on 13th March 1989 for change of use from retail shopping to offices and also for extension of the properties doubling the useful space on the ground floor. Other alterations approved by those plans included a new main roof; new windows to the front; new ground and first flooring; the removal of most of the rear ground floor wall of No 6 George's Street to form a display area and a reception area; making a new door opening at the first floor between No 4 and No 6.

4. Building Control was applied for on 8th March 1989. As a result a list of amendments (a "snagging list") was received by Mr Harrington. Most of those amendments were not difficult to comply with, but the Fire Authority required the stairway in No 4 George's Street to be repositioned. In the past 6 months no further discussions with Building Control took place until about a week before this hearing. Building Control had been told that the application for permission had been temporarily suspended and Building Control had raised no objection.

5. Neither No 4 nor No 6 George's Street in their present state would comply with Fire Authority and Public Health requirements.

6. Clients of Mr Hughes' accountancy business who were professional builders were shown the plans which had been given full planning permission. A "ball-park" estimate of cost at £30,000 had been used to submit an application for Urban Development Grant sometime in March 1989. No formal answer has been received as yet. Even if approval in principle is given Urban Development Grant cannot be obtained without proper specifications and a bill of quantities. Work cannot commence (if a grant is to be paid) until full approval is given.

7. Mr Hughes' present business accommodation is too small for his requirements. The plans for Nos 4 and 6 provide sufficient space for his immediate and future foreseeable requirements, but cannot do so if only one property is improved and enlarged.

8. Mr Hughes discussed with the Allied Irish Finance the financial aspects of the development indicating to them the "ball-park" estimate of £30,000 cost. At this stage the Allied Irish Finance "are prepared to finance the development of these premises along the lines discussed with yourself" (per letter of 3rd October 1989).

Mr Stewart Beattie of Counsel for the Respondent submitted:-

1. Mr Hughes' intention as indicated by the evidence shows that he has moved out of the tentative position into the valley of decision (Cunliffe v Goodman [1950] 2 KB 237, [1950] 1 All ER 720).

2. There are some difficulties remaining with Building Control permission but the architect's discussions with the Building Control Officer shows that approval is probable. The only problem outstanding is the position of the new stairway in No 4 George's Street and although the plan submitted shows the old stairway position, that stairway is no longer in existence.

3. As far as Mr Hughes' ability to finance the project is concerned there was no challenge to his financial ability to carry it out. As far as the Urban Development Grant is concerned the evidence was that Mr Hughes will go ahead whether or not such a Grant is forthcoming.

4. The intention to occupy the premises himself is not relevant. It is put forward to the Tribunal to indicate that his decision to carry out the project is firm, not to uphold his objection.

5. The lack of a timetable is not essentially wrong. The evidence shows that Mr Hughes is prepared to move on immediately. Submits there is a reasonable chance of the Landlord carrying out the project to a successful conclusion.

6. The holding is No 6 George's Street. The work to be carried out on the holding is extensive viz:-

   (a) the interior is to be gutted - floors and stud walls to be renewed;

   (b) demolition of the major part of the rear wall at the ground floor;

   (c) the roof to be renewed;

   (d) the ground floor to be doubled in size by an extension to the rear.

Submits that is clearly an extensive redevelopment of the holding.

The evidence shows that work cannot be done in isolation but must go ahead in tandem with No 4 George's Street.

7. Vacant possession of No 6 George's Street is required in order to carry out the works and in order to carry out the redevelopment of the building. The architect's evidence was that the works could not be carried out without complete vacant possession and that re-roofing, re-flooring on two floors were impossible with a tenant in occupation.

8. The Landlord on the evidence has moved well into the valley of decision and has a more than reasonable chance of success even with all the indicated difficulties eg stairs not in existence in No 4 George's Street; the Building Control snagging list; the financial matters. Looked at from a reasonable basis none of these difficulties poses a problem.

Mr Jim Rafferty, Solicitor, for the Applicant submitted:-

1. The evidence presented is not sufficient to satisfy the Lands Tribunal that Mr Hughes has come to a final decision. A lot of weight must be given to Mr Hughes' actions - he must be judged by the action he has taken so far.

2. The onus is on the Landlord to show that his intention has moved into the valley of decision. Submits that he has not discharged that onus:-

   (a) the architect referred to correspondence with Building Control and for Urban Development Grant, also the snagging list sent by Building Control. None of that was produced in Court but should have been to allow the Lands Tribunal to better judge the evidence;

   (b) the architect in the past week met the Building Control Officer - but previously he had told Building Control to "put it on ice" (using his own words given in evidence);

   (c) no specifications nor bill of quantities had been prepared by the architect;

   (d) only "ball-park" figures of cost had been produced, and those were only for the initial purposes of an Urban Development Grant;

(e) no tenders have been drawn up nor have any builders been approached as to their willingness to tender.

3. The Respondent is a professional man who had professional advice. He should have been able to come to the Lands Tribunal with a proper tendered price for the works and with a builder prepared to start the works in the near future. The lack of that evidence shows the lack of thought - the indication of a tentative mind. An Urban Development Grant has been applied for and that could be of substantial financial benefit (up to 50% of the cost). Having already waited approximately six months for the Grant decision in principle a reasonable man would not finalise his position until he knew what the outcome would be. The evidence of the architect was that specifications and a bill of quantities would be needed after a decision in principle and before the final decision for that grant. The Respondent's state of mind regards a timetable for carrying out the works must be doubtful.

4. As far as finance is concerned, it is accepted by the Applicant that the Respondent is able to do what he plans to do but a reasonable man knows what is required and prepares all the paper work. What Mr Hughes has done so far makes the project at a very early stage.

Submits that it is premature in the part of the Respondent.

DECISION

There have been too many errors in the preparation of this case:-

(a) the property throughout until some way into the hearing was referred to as No 4 George's Street instead of No 6 George's Street;

(b) the application to the Lands Tribunal stated that a copy of the application had been served on the Landlord - it had not.

In regard to both of these matters at the request of the parties the Lands Tribunal was able to exercise discretion for neither error disadvantaged the other party in any way. However there were two other matters viz:-

(c) at the first hearing on 18th September 1989 to hear the Landlord's objection the Respondent raised for the first time (b) above was not ready (with his witnesses) to proceed and an adjournment by agreement had to be granted;

(d) the Landlord's objection to a new tenancy was based on the wording of Section 10(1)(f)(i) of the 1964 Act ie he intended "to demolish the premises comprised in the holding and could not reasonably do so without obtaining possession of the holding".

The hearing proceeded on the basis that the objection was in the terms of Section 10(1)(f)(ii) viz:-

"that on the termination of the current tenancy the Landlord intends -

(ii) to carry out substantial works of construction on the holding or part thereof;

and that the Landlord could not reasonably do so without obtaining possession of the holding".

No objection or issue was raised regarding this matter.

In general it behoves the parties to an issue under the 1964 Act to take due care in all respects.

Coming to the merits of the case the Tribunal's opinion is that on the basis of the state of the Respondent's case he has not satisfied the Tribunal that his ground of objection has been properly established for the following reason:-

While the Tribunal understands the wish for the Respondent to refurbish and enlarge the premises, to change their use from retail shops to offices (for his own business use), he has not yet taken sufficient steps to show that he is now in "the valley of decision". The facts show:-

1. The two properties were purchased in late 1987 and early 1988. Thus the Landlord could not have opposed an application for a new tenancy if he merely intended to occupy the premises for his own business without carrying out substantial works of reconstruction for he had purchased within 5 years of the termination of the current tenancy.

   However in this case the Landlord's plans submitted to the Tribunal show substantial work of construction on both the holding and No 4 George's Street with which the holding will be contiguous and interconnecting. It does not matter in those circumstances that the Landlord intends to occupy the premises himself. (Betty's Cafes Ltd v Phillips Furnishing Stores Ltd [1959] AC 20.)

2. Planning permission for the proposed alterations and the proposed change of use was obtained on 13th March 1989.

Building Control application was made on 8th March 1989 but since a snagging list was received little, if anything, was done until about one week ago.

Application for an Urban Development Grant was made sometime in March 1989 but there was no evidence that any approval in principle was imminent. For final approval of a grant a specification and a bill of quantities for the proposed work would be required. Neither is yet in course of being prepared. Work cannot proceed until final approval of grant. Mr Hughes told the Tribunal that he would proceed without grant, but as the grant might be as much as 50% of the cost the Tribunal does not consider that to be a reasonable approach. The only estimate of cost is a ball-park estimate of £30,000 given to Mr Hughes by clients of his who were builders. Such estimate was used for the application for Urban Development Grant.

While it is accepted by the Applicant that financing the project will present few problems, the Lands Tribunal expects that Allied Irish Finance would require more detailed estimate of costs before it would take its final decision to finance.

All these matters taken together show that the Respondent has failed to satisfy the Lands Tribunal that he has established his ground of objection to its satisfaction. On the other hand the Tribunal considers that after a suitable period of time has lapsed to allow the various paper work to proceed the Respondent would be in a position to satisfy the Tribunal. How long that will be is problematical but if all the outstanding matters proceed together the time lapse certainly will be within a year.

Both parties agreed that if that were the case the Lands Tribunal should exercise the discretion given by Section 11(2) of the 1964 Act.

Consequently the Tribunal makes a declaration that on the grounds specified in Section 10(1)(f) of the 1964 Act it would have been satisfied that the Respondent would establish his objection to a new tenancy if the date specified in the Landlord's Notice for the determination of the existing tenancy was 30th April 1990 (instead of 31st October 1989) and therefore, does not make an order for a new tenancy.

The Tribunal makes no order as to costs.

ORDERS ACCORDINGLY

7th November 1989 **Mr A L Jacobson FRICS**
LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:-

Mr Stewart Beattie of Counsel (instructed by Messrs C T McAlpine & Son, Solicitors) for the Respondent/Landlord.

Mr Jim Rafferty LLB MA, for the Applicant/Tenant.