

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

In the Matter of the Business Tenancies Act (Northern Ireland) 1964

BT/78/1992

BETWEEN

MAXIM VIDEO LIMITED - APPLICANT/TENANT

AND

JAMES DELARGY - RESPONDENT/LANDLORD

Lands Tribunal for Northern Ireland

Michael R Curry FRICS FSVA IRRV ACI.Arb

Belfast - 2nd June 1994

This is an application under Rule 34 of the Lands Tribunal Rules (Northern Ireland) 1976 by the Applicant/Tenant to withdraw, without the Respondent/Landlord's consent, his application for a new tenancy under the Business Tenancies Act (Northern Ireland) 1964.

The Registrar referred the application to the President for decision. I am authorised by the President to exercise and discharge his powers and duties.

Mr P Cullen BL appeared for the Applicant. Mr R G Weir QC appeared for the Respondent.

The subject premises are situated at 8 Castle Street, Antrim. They are held under two leases at a rent of £11,000 per annum. The Landlord served Notice to Determine dated 5th June 1992 with a date of termination of 1st January 1993. The Landlord did not oppose the grant of a new tenancy. The Tenant requested a new tenancy, for a term of 4 years from 1st January 1993 at a rent of £5,750 per annum, much less than the current rent. There were negotiations between the parties. But, eventually the Tenant found other premises more suitable and now wishes to go out of the premises on the 30th June 1994.

In this jurisdiction there is no provision for an "interim rent".

Following requests from the Registrar, in December 1992, for the expert evidence to be submitted within 28 days, unopposed extensions of time were granted on the application of both parties on many occasions between then and March 1994. Although on one occasion

the Applicant/Tenant wrote to the Tribunal setting out an intention to oppose a further extension of time, on subsequent occasions he then applied for extensions of time.

The expert valuer for the Respondent/Landlord, Mr Whelan FRICS, lodged his evidence, dated 24th March 1994, on 13th April 1994.

The Applicant/Tenant's application to withdraw is dated 15th April 1994 and the objection to the application is dated 18th April 1994.

To assist the parties in their preparation to deal with issues which might arise at the hearing of this application, a copy of Mr Whelan's evidence was provided to the Applicant/Tenant, with the consent of the Respondent/Landlord. That evidence deals only with rental values, not with commencement date, nor with duration and assesses the rent "as of now" or "as at the present time".

Mr Weir contended on behalf of the Respondent/Landlord:

- If the application were permitted:
 - (a) the Landlord would be deprived of the opportunity of arguing before the Tribunal that the proper course for the Tribunal would be to grant a lease with effect from the 1st January 1993 until 30th June 1994, at the rent proposed by Mr Whelan.
 - (b) as there is no provision for an "interim rent" in this jurisdiction, the Applicant/Tenant would have the unfair benefit, as a result of delay, of continuing at the old rent from 1st January 1993.
- The Rules make it clear that refusal of the application is within the discretion of the Tribunal and the Tribunal should refuse the application.

Mr Cullen submitted:

- Delay was not entirely the fault of the Tenant.
- The rental value of the premises is less than the figure in Mr Whelan's precis.
- The Application should be granted.

DECISION

The granting of leave to discontinue is no formality. Although the Tribunal Rules differ from those of the High Court, the Tribunal agrees with the principles set out in Covell Matthews & Partners v French Wools Limited [1977] 1 WLR 876; [1977] 2 All ER 591; (1976) 33 P & CR 445.

"The principles to be culled from these cases are, in my judgment, that the court will, normally at any rate, allow a plaintiff to discontinue if he wants to, provided no injustice will be caused to the defendant. It is not desirable that a plaintiff should be compelled to litigate against his will. The court should therefore grant leave, if it can, without injustice to the defendant, but in doing so should be careful to see that the defendant is not deprived of some advantage which he has already gained in the litigation and should be ready to grant him adequate protection to ensure that any advantage he has gained is preserved."

The judgment in that case was affirmed on other grounds by the Court of Appeal in England [1978] 2 All ER 800, [1978] 1 WLR 1477, 35 P & CR 107, 246 EG 1007, [1978] EGD 93, 9 December 1977 and again in Lloyds Bank Ltd v City of London Corporation [1983] 1 Ch 192, [1983] 1 All ER 92, [1982] 3 WLR 1138, 45 P & CR 287, 264 EG 1001, [1982] EGD 354, 7 July 1982.

Rule 34(2) of the Lands Tribunal Rules (Northern Ireland) 1976 provides that "the Registrar, or the President on appeal from the Registrar, may permit such withdrawal on such terms as to costs or otherwise as he may think fit".

Starting from first principles, what are the consequences of a Landlord's Notice to Determine?

Among other things, the effect of the Notice is to bring the current tenancy to an end and to give the opportunity to an Applicant/Tenant to apply for a new lease. If the parties do not agree on the terms of the new lease an Applicant/Tenant may make reference to the Lands Tribunal for its decision. **But the Tenant is not obliged to take up that new lease.** Section 17 of the Act provides that:

"(2) If the Tenant, within 14 days after the making of an order under this part for the grant of a new tenancy, applies to the Lands Tribunal for the revocation of the order, the Tribunal shall revoke the order; and where the order is so revoked, then, if it is determined by the

Lands Tribunal, the current tenancy shall continue for such a period as maybe so agreed or determined to be necessary to afford to the Landlord a reasonable opportunity for reletting or otherwise disposing of the premises"

"(3) Where an order is revoked under sub-section (2) any provision thereof as to payment of costs shall not cease to have effect by reason only of the revocation; but the Lands Tribunal may, if it thinks fit, revoke or vary any such provision or, were no costs have been awarded in the proceedings for the revoked order, award such costs."

Whilst many might consider the absence of an interim rent provision in the legislation here is a shortcoming in these circumstances, if an Applicant/ Tenant decides not to take up the new lease, the current lease continues in the interim, at the old rent. The Tribunal has a discretion with regard to costs of either or both the revocation and the order, but not otherwise.

If I refuse this application and in consequence the Tribunal hears the Reference and makes an Order for a new tenancy it is plain that this Applicant/Tenant will apply for revocation of the Order. But the current tenancy would continue until some future date at the old rent. The effect of the current application is, in a sense, to bring that application for revocation forward and thereby save the parties the consequences, in terms of further expense and delay, of the Hearing of the Reference.

I agree with Mr Weir's contention that, if the application is permitted the Respondent/Landlord is deprived of the opportunity of arguing the case, but I do not accept that he has, at this stage, gained any advantage.

That is enough to dispose of the matter but for completeness I now deal with the questions of delay and rent.

I find that both parties wished to delay the proceedings and there is no evidence before me that the Applicant/Tenant, in particular, sought deliberately to delay proceedings to obtain any advantage. Even if that had been his intention, the Respondent/Landlord would have had an adequate remedy through objecting to the applications for extensions of time.

It was suggested that at a Hearing, the Tribunal would be bound to accept only the evidence of Mr Whelan, that being, at present, the only evidence lodged. With respect I do not agree. I think the Tribunal would allow, albeit on terms, expert evidence on behalf of

the Applicant/Tenant. But even if it did not allow competing expert evidence, Mr Whelan's evidence would not likely be accepted at face value as wholly satisfactory with regard to a proposed letting for 18 months from January 1993. Mr Whelan's precis deals with rental values as at March 1994 and makes no allowance for an unusually short term. It is possible that, as Mr Whelan's evidence was submitted before the application for consent to withdraw, he contemplated a longer duration than that short term.

Whilst not wishing to prejudge the issues at this stage it does appear likely that if the Tribunal decided on a term of that short duration, the rent would be less than the £14,000 per annum put forward by Mr Whelan. Indeed although the proposed rent put forward by the Applicant/Tenant seems inexplicably low, it does perhaps make the point that there is no presumption that, on lease renewal, rent would be revised upwards beyond the current £11,000 per annum.

For the reasons I have outlined above, I permit withdrawal on the following terms:

1. The Applicant/Tenant shall pay the Respondent/Landlord's costs of the Reference. Such costs to be on the High Court scale and taxed if not agreed.
2. Although unlikely to be able to do so, for the avoidance of any doubt, the Applicant/Tenant shall not make any fresh application for a new tenancy nor any application for compensation under the Act.
3. The current tenancy shall terminate on 30th June 1994.

In all the circumstances I make no order as to the costs of this application.

ORDERS ACCORDINGLY

10th June 1994

**MICHAEL R CURRY FRICS FSVA IRRV ACIArb
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances

Mr P Cullen of Counsel (instructed by Mackenzie & Dorman, Solicitors) for the Applicant.

Mr R G Weir QC (instructed by Holmes & Swann, Solicitors) for the Respondent.