

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**IN THE MATTER OF AN APPLICATION**  
**BT/79/1989**  
**BETWEEN**  
**JOHN JOSEPH CLANCY - APPLICANT**  
**AND**  
**WINE INNS LTD - RESPONDENT**

**Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS**

**Belfast - 10<sup>th</sup> November 1989**

This was an application dated 9<sup>th</sup> August 1989 by the Applicant/Tenant of No 45 Winetavern Street, Belfast. The application was made under Section 8(1) of the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act") following a Notice of Determine Business Tenancy under Section 4 of the 1964 Act served by the Respondent/Landlord on 15<sup>th</sup> May 1989. Such notice stated that the landlord opposed an application for a new tenancy to the Lands Tribunal on the ground that "the Landlord intends 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." (ie under Section 10(1)(f)(ii) of the 1964 Act) The tenant's solicitor by letter of 22<sup>nd</sup> June 1989 confirmed that the tenant was "unwilling to give up possession".

Mr Liam McCollum of Counsel (for the Landlord) called Mr Rory Desmond Ramsay McConnell (partner in McConnell Martin & Co, Estate Agents), Mr Timothy Hugh Geary (registered Architect and partner in Messrs Barrie Todd Architects) and Mr Patrick McCormack (Director of the Respondent Company) to give evidence.

Mr Kevin Hart, Solicitor (for the tenant) called Mr John Joseph Clancy, the tenant, to give evidence.

After all the evidence was heard, Mr Kevin Hart conceded that the Applicant/Tenant accepted that the landlord's objection to a new tenancy had been established and that the landlord requires possession because under the accepted tender for works involving No 140 North Street, Belfast and Nos 45 and 47 Winetavern Street only the works to be carried out on No 45 Winetavern Street remained. He conceded that those works were substantial. Mr Hart submitted that the Tenant required more time to rehabilitate himself elsewhere in

the general area and further submitted that the Tenant's occupation should come to an end on 28<sup>th</sup> February 1990.

Mr McCollum of Counsel submitted:-

1. The landlord having completed his works on No 100 North Street and No 47 Winetavern Street required immediate possession for:-
  - (a) The builder's tender of £143,871 for the entire works contained a penalty clause which will be brought into action if the builder is held up before completing his contract.
  - (b) Of that total tendered amount, £69,600 has already been paid, a final account (for work so far done) of £20,000 is now due and will be paid this coming week leaving approximately £53,000 for work on No 45 Winetavern Street.
2. It will be to the detriment of the landlord if possession is not given by the date of determination stated in the Landlord's Notice to Determine Business Tenancy viz:- 20<sup>th</sup> November 1989.
3. If the Lands Tribunal were to be minded to use the discretion given by Section 9(1) of the 1964 Act the Tribunal should consider 31<sup>st</sup> December 1989 in view of the length of time already given to the tenant.

## **DECISION**

The Tribunal is not required to state all the facts proved because the final concessions made by the Solicitor for the tenant has narrowed the dispute to a finite issue viz:- should the date of termination expressed by the landlord's notice to determine be complied with and vacant possession be given on 20<sup>th</sup> November 1989. If not what later date should be adopted? The Applicant says 28<sup>th</sup> February 1990 and the Respondent 31<sup>st</sup> December.

The facts relative to that finite issue are:-

1. The Tenant, who has been in occupation since March 1975, carries on the business of selling second-hand books. For many years he was employed by Mr Harry Hall (second-hand book seller) in the old Smithfield Market. Since receiving the landlord's notice to determine he has been endeavouring to obtain a tenancy from the Belfast Corporation of a vacant shop in the new Smithfield Market. That Corporation will be

next allocating tenancies either late this year (1989) or early next year per letter of 21<sup>st</sup> June 1989. The Tenant has not looked seriously at other accommodation.

2. The Landlord purchased the corner properties of No 100 North Street and Nos 45 and 47 Winetavern Street on 5<sup>th</sup> January 1984. The landlord instigated a scheme for the general rehabilitation of all three properties. A tender for the work required was accepted at £143,871 and work commenced on 15<sup>th</sup> May 1989. That figure amended the original tender of £139,758 because of some delay in giving possession of the premises to the builder. That tender included fines to be paid to the builder if No 45 Winetavern Street is not available to the builder when the work on No 100 North Street and No 47 Winetavern Street is completed. That situation is just about to arrive.

Section 9(1) of the 1964 Act gives discretion to the Lands Tribunal to direct the date at which the tenancy should determine. In looking at the positions of both landlord and tenant the Tribunal prefers the date submitted by Mr McCollum for the landlord viz 31<sup>st</sup> December 1989 for that will allow the tenant to make further representations to the Belfast Corporation and at the same time enable him to use any Christmas trade that he does to reduce his stocks prior to removing them.

The Tribunal therefore dismisses the Application and terminates the tenancy on 31<sup>st</sup> December 1989.

The tenant has been in occupation for more than 14 years (and during the whole of that period). Therefore by Section 19 of the 1964 Act the tenant is entitled to compensation of twice the Net Annual Value of the holding. That Net Annual Value is agreed to be £270. Compensation payable by the Landlord to the Tenant is £540.

The Tribunal makes no order as to costs.

#### **ORDERS ACCORDINGLY**

**27<sup>th</sup> November 1989**

**Mr A L Jacobson FRICS  
Lands Tribunal for Northern Ireland**

#### **Appearances:-**

**Mr Liam McCollum of Counsel (instructed by Messrs McCann & Greyston, Solicitors)  
for the Respondent.**

**Mr Kevin Hart, Solicitor for the Applicant.**