

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/8/1996
BETWEEN
STANLEY PRIESTLY - APPLICANT
AND
MARGARET E BROWN - RESPONDENT

Lands Tribunal for Northern Ireland - Michael R Curry FRICS FSVA IRRV ACI.Arb

Belfast - 10th January 1997

This was an application made under Rule 34 of the Lands Tribunal Rules (Northern Ireland) 1976 to withdraw, without the Respondent's consent, an application for the grant of a new tenancy ('the Tenancy Application'), which the Landlord opposed, under the Business Tenancies Act (Northern Ireland) 1964 ('the Act') of premises at 1 Antrim Road, Ballynahinch.

The Rule gives the discretion to "permit such withdrawal on such terms as to costs or otherwise as he may think fit".

Mr Jonathan Corbett appeared for the Applicant. Mr Norman Scott appeared for the Respondent.

The Tenancy Application was registered on the 29th January 1996. It was mentioned before the Member on the 28th February 1996 and, following discussion, it was agreed that the matter be left in abeyance for 3 months to enable the Landlord to seek to obtain a planning permission.

In mid May, in response to an enquiry from the Registrar, the Solicitors for the Applicant informed the Registrar that

"to the best of my knowledge, both parties to this are still negotiating to have the matter settled, without recourse to the Tribunal" ...

"The terms of any possible new Lease are also subject to negotiations between the parties. I would not, however, rule out that this matter will come before the Tribunal".

At the end of June, the Solicitors for the Applicant advised that negotiations were currently ongoing. However, the Solicitors for the Respondent asked for the matter to be listed for Hearing in September, after the Summer vacation.

The matter was mentioned again before the Member on Tuesday 24th September 1996 following which the Tribunal directed that, unless by the 21st October 1996 the matter had been settled, it would be minded to fix a timetable and issue directions including directions for the preparation and exchange of expert reports for a hearing.

By letter dated 15th October 1996 the Solicitors for the Applicant informed the Tribunal that they were instructed to withdraw the Tenancy Application. The Respondent did not consent. The Tribunal fixed a date for hearing of the application to withdraw. It was informed by the Solicitors for the Respondent that there were a number of outstanding matters, namely, confirmation that the Applicant shall and will vacate the premises, settlement of arrears of rent accrued to date and an undertaking to settle the Respondent's costs and outlay.

At the hearing, the only remaining issue between the parties was that of costs ie whether the withdrawal should be permitted on terms that the Applicant pay the Respondent's costs. The parties agreed that the application was to deal with legal costs only.

Mr Corbett said that the reasons for the application to withdraw the Tenancy Application were twofold.

The first was that the Applicant did not wish to risk having to bear the expense of going on. The Tenancy Application was made on the assumption that the parties could reach agreement which would resolve the dispute without recourse to the Tribunal and with the intent that both parties would bear their own costs. That was the best course of action as he did not want to involve his client in the expense of a formal hearing. A Tenancy Application was subject to time limits and had been made as a prudent business measure; the grounds of opposition set out in the Landlords Notice to Determine would have been rebutted. Mr Corbett added that his client could have been entitled to compensation on one of the grounds of Landlord's opposition, even if successful. The settlement the parties had reached was not an indication of acceptance of future defeat.

It was 12 months since the Tenancy Application, the application was lodged to protect the tenant and secure some avenue for the continuance of his business. In reply to that point, Mr Scott submitted that the delay may have assisted the tenant in relocating.

The second reason for the application to withdraw was that there was a personal relationship between the parties and the Applicant did not wish to have that relationship strained by a Hearing.

Both parties made submissions of the merits of the Landlord's opposition to the Tenancy Application. The Tribunal could not come to any conclusion on those merits without hearing the substantive case.

It is unfortunate that negotiations in this dispute, which was otherwise wholly resolved, left the one issue - costs - remaining.

The procedures for dealing with the ending of a business tenancy include a number of steps and options. If a tenant does not wish to take a new tenancy he may terminate the lease without reference to the Act's requirements. If a Landlord wishes to determine a lease, it must be done in accordance with the provisions of the Act, but that does not of itself imply that the work done in that regard is either contentious business within the meaning of the Solicitors (Northern Ireland) Order 1976 or that any costs incurred are costs of or incidental to proceedings in the Lands Tribunal. The Notice procedure under the Act is in two steps. The first is the Notice to the tenant. The proposals in that Notice, and the tenant's response to it may allow matters to be resolved without any application to the Lands Tribunal. There is a short time allowed for that, but that time may be extended with the consent of the Landlord. If all matters can be resolved during that period, there is no need for a Tenancy Application and the Tribunal would have no jurisdiction in regard to costs. In response to an enquiry from the Tribunal it appeared that the parties had not attempted to agree any extension of time for making the Tenancy Application.

Once a Tenancy Application has been made, parties may continue to seek to resolve their dispute in a variety of ways before a Hearing. The practice of settling disputes without recourse to a Court hearing is to be encouraged but there is, of course, a cost implication to that. Some alternative dispute resolution methods may include a provision for dealing with their costs, for example, private arbitration or perhaps a procedure for dispute resolution under the rules of an association or professional body. On the other hand the parties may negotiate through their agents or solicitors in an attempt to settle some or all of the issues. Such negotiations are at a cost which must be recognised as costs which may be costs of or incidental to the proceedings.

Under Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 the process of deciding disputes about costs may be considered as involving two possible stages. The first stage is the exercise by the Tribunal of its discretion to make an award as to costs. If the Tribunal orders that the costs of a party to proceedings shall be paid by another party, it may either

fix a lump sum or direct that the costs shall be taxed. If the latter option is chosen, the second stage is the Taxation of costs by the Registrar and, in so doing, the Registrar will examine each item individually.

Turning now to the issues in this Application, there was a Tenancy Application before the Tribunal and it was not suggested that the legal costs properly incurred, in negotiations to settle, were not part and parcel of the business done in or for the purposes of the proceedings and a matter outside the jurisdiction of the Tribunal. That being so, the question of who pays such costs, if not agreed between the parties, is a matter for the discretion of the Tribunal. Such discretion must be properly exercised.

The parties accepted the presumption, discussed previously by this Tribunal in Napier and Others v Nurse R/1/1996 that, as a general principle, the party seeking the withdrawal is taken to have recognised that they were unlikely to succeed on the substantive issues and would be ordered to pay the other party's costs. That presumption may be displaced and the only issue for the Tribunal was whether that presumption should apply in this application.

In the view of the Tribunal, the cost of efforts to settle all or parts of a dispute, without a Hearing, are costs of and incidental to the proceedings and the Tribunal may order that one party pay the other's costs and direct that costs be taxed. If so, although the question of how the Registrar exercises his discretion in taxing costs is not a matter for the Tribunal, it goes without saying that, in deciding the reasonableness or otherwise of any item, the Registrar shall have regard to the circumstances and whether it was reasonable to incur each item in all the circumstances at the time when it was incurred. Relevant circumstances may include any stated intention to attempt to compromise without a Hearing. In that regard, points raised on the issue, before the Tribunal, on the question of principle of who should pay, may be very important considerations for the Registrar in applying a test of reasonableness, item by item.

The Tenant elected to seek and obtained some protection from the Act. There was no agreement that each side would pay its own costs, nor, judging from the need for this decision, was such agreement likely. Apart from the short term continuance of the current lease, there is nothing before the Tribunal to support a conclusion that the Applicant has gained anything of significant value from the Tenancy Application. On the contrary, the Respondent has successfully opposed the grant of a new tenancy. The Tribunal is not persuaded that the desire of the Tenant to achieve a settlement, to avoid the expenses of a formal Hearing, is sufficient to displace the general presumption that the party seeking withdrawal should pay the other's costs. But, to allow the reasonableness of each item to

be tested individually, the Tribunal directs such costs are to be taxed, in default of agreement.

That is an order to which the Respondent is entitled, however, if personal relationships and circumstances are such that the Respondent chooses to reflect them in a reduction of the costs he seeks from the other party, there is still an opportunity to do so but that is entirely a matter for him and not for the Tribunal.

ORDERS ACCORDINGLY

5th February 1997

**Michael R Curry FRICS FSVA IRRV ACI.Arb
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:-

Jonathan Corbett (Messrs Nelson-Singleton, Solicitors) for the Applicant.

Norman Scott (Messrs F J Orr & Co, Solicitors) for the Respondent.