

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

IN THE MATTER OF THE FOLLOWING APPLICATIONS

BT/123/1991

SAMUEL JOHNSTON LIMITED - APPLICANT

AND

**ANDRAS HOUSE LIMITED & CLEAVER DEVELOPMENTS LIMITED - RESPONDENTS
(GROUND FLOOR SHOP 31-33 GREAT VICTORIA STREET, BELFAST)**

BT/124/1991

SAMUEL JOHNSTON LIMITED - APPLICANT

AND

**ANDRAS HOUSE LIMITED & CLEAVER DEVELOPMENTS LIMITED - RESPONDENTS
(GROUND FLOOR SHOP 35 GREAT VICTORIA STREET, BELFAST)**

BT/125/1991

DAVID J DEVENNEY - APPLICANT

AND

**ANDRAS HOUSE LIMITED & CLEAVER DEVELOPMENTS LIMITED - RESPONDENTS
(GROUND FLOOR SHOP 43-45 GREAT VICTORIA STREET, BELFAST)**

**Lands Tribunal for Northern Ireland - The President,
His Honour Judge Peter Gibson QC & Mr A L Jacobson FRICS**

Belfast - 3rd February 1992

These applications were heard together under Rule 14 of the Lands Tribunal Rules (Northern Ireland) 1976. A preliminary issue arose and each is identical. It may be stated shortly. Was the landlord's notice of opposition in each case to the tenants' request for a new tenancy out of time and, if so, had the Lands Tribunal a discretion to extend that time?

Mr Alastair Devlin of Counsel appeared for the Applicant tenants in each case.

Mr Mark Horner of Counsel appeared for the Respondent landlords.

The following facts were agreed:-

1. Tenure

- (a) The premises at 31-33 Great Victoria Street were held under lease dated 1st April 1987. The term of the lease was for five years from 1st February 1987 and it expired on 31st January 1992.
- (b) The premises at 35 Great Victoria Street were held under lease dated 29th June 1988. The term of the lease was for three years and eight months from 1st June 1988 and it also expired on 31st January 1992.
- (c) The premises at 43 Great Victoria Street are held under lease dated 1st July 1987. The term of the lease is for five years from 1st July 1987 and it will thus expire on 30th June 1992.
- (d) The premises at 45 Great Victoria Street are held under an agreement for a lease. The agreed term is for one year and six months from 1st January 1991 and will also expire on 30th June 1992.

2. Tenants' request for new tenancy under Section 5 of the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act").

The tenants' request for a new tenancy was in each case dated 3rd September 1991 and it was conceded that each request for a new tenancy satisfied the requirements of the 1964 Act.

3. Landlord's notices of opposition to a new tenancy.

In each case the landlords' notice of opposition to a new tenancy was on its face dated 1st November 1991 and as such within time. Each notice contained the following ground of opposition:-

"That on the termination of the current tenancy we intend -

- (i) to demolish or rebuild the premises comprised in the holding or a substantial part of those premises; or
- (ii) to carry out substantial works of construction on the holding or part thereof;

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

Letters which accompanied each notice of opposition were dated 1st November 1991 but further letters dated 15th November 1991, were delivered. Each reads -

"We refer to previous correspondence regarding the above premises. We regret that due to an oversight the Notice of Opposition by Landlord to Application for New Tenancy (sic) was not served within the two month period. We would therefore request that you accept service of a back-dated Notice of Opposition. We await hearing from you."

In each case the notices of objection and the letters referred to were served by hand at the premises of the solicitors acting for each tenant on 15th November 1991. On the face of things these were out of time.

4. **Tenants' replies to Landlords' Notices of Opposition.**

(a) Nos 31-33 and 35 Great Victoria Street.

By letters dated 18th November 1991 the Tenants' solicitor replied:-

"We refer to your letter of 15th November and regret that we are not in a position to accept service of the backdated Notices of Opposition under Section 5(6) of the Business Tenancies Act (Northern Ireland) 1964. To do so would prejudice the interests of our client."

(b) No 43 Great Victoria Street and No 45 Great Victoria Street.

By letter of 22nd November 1991 in each case the Tenants' solicitor replied:-

"We have taken our client's instructions with regard to your letter dated 15 November 1991 and write to inform you that we have been instructed to reject service of the Notice of Objection backdated to 1 November 1991. In addition this notice was not served on our client. Accordingly, our clients have instructed us to apply for a new tenancy to the Lands Tribunal and we are to submit to the Tribunal that this application should be granted on the grounds that your clients have not complied with the mandatory two months service

requirement under Section 5(6) of the Business Tenancies Act (Northern Ireland) 1964."

5. **Applications to the Lands Tribunal under Section 8(1) of the 1964 Act.**

- (a) Nos 31-33 Great Victoria Street and No 35 Great Victoria Street, Belfast.

Application for a new tenancy for each holding was made to the Lands Tribunal on 18th November 1991.

- (b) No 43 Great Victoria Street and No 45 Great Victoria Street, Belfast.

Application for a new tenancy for each holding was made to the Lands Tribunal on 22nd November 1991.

It was agreed that all four Applications were made in the proper form to the Lands Tribunal within the time limits required by Section 8(3) of the 1964 Act, and that a copy of each Application was correctly served on the Landlords' solicitors.

Mr Alastair Devlin of Counsel for the Applicant tenants submitted:-

1. Section 5(6) of the Business Tenancies Act 1964 is mandatory and requires the landlord, if he wishes to object to a new tenancy, to serve within two months of the making of the Tenant's request for a new tenancy, a notice of opposition on the tenant. The landlords in the instant cases did not comply with that requirement and they were thus precluded from opposing the grant of a new tenancy. Mr Devlin referred to Halsbury's Laws of England 4th edition, volume 27, para 487.
2. He did, however, concede that while the Landlords failure to serve within the two months period precluded opposition to the grant of a new tenancy the landlord was still entitled to appear before the Tribunal and be heard on the terms of the new tenancy. In this respect he referred to Williams - Handbook of Business Tenancies at paragraph 4-45.
3. Although he had been unable to trace any authorities which dealt with the time limits for a Landlord's counter notice to a Tenant's request for a new tenancy, assistance was derived from those authorities which dealt with time limits for a Tenant's notice that he is unwilling to give up possession following a Landlord's Notice to determine under

Section 25 of the Landlord and Tenant Act 1954 in England (which is the equivalent to Section 4 of the 1964 Act in Northern Ireland). He relied on Williams at paragraph 1-03, Halsbury 4th edition, vol 2, paragraph 489 and the decision in Donegall Tweed Co Ltd v Stephenson and Others [1929] WN 214, a decision by the Court of Appeal in England which dismissed an appeal against the County Court Judge's decision that he had no power to alter any of the time limits fixed by statute. He further referred to In re Nos 55 @ 57 Holmes Road Kentish Town Beardmore Motors Ltd v Birch Bros (Properties) Ltd [1959] 1 CH 298, a case under the Landlord and Tenant Act 1954. The decision emphasised that failure to serve within the time prescribed by statute gave rise to vested rights in favour of either the Landlord or the Tenant and that the Court had no power to extend such time limits because such extension would divest them of a right in favour of which time had run. Finally he referred to the decision in Meah v Sector Properties [1974] 1 All ER 1074, which decided that a statutory notice served out of time was a nullity.

4. The statutory time limits are absolute and no discretion is given in the 1964 Act or in the Lands Tribunal Rules to extend that time so as to remove the statutory right vested in the Tenant.
5. It was agreed by the Landlords that there is no question of waiver or estoppel arising in this case.

Mr Mark Horner of Counsel for the Respondent landlords submitted:-

1. While the weight of all the text books on business tenancies is against the Landlords, the paragraph in Halsbury referred to by Mr Devlin was not final. Nowhere is it stated, for example, that the time for Landlord's notice is mandatory. Paragraph 489 merely says that the Tenant's opposition to a Landlord's Notice should be made within two months.
2. All the authorities quoted by Mr Devlin refer only to statutory time limits which must be complied with by the Tenant and not to the time limit for the Landlord.
3. The time limit imposed by Section 5(6) of the 1964 Act is not mandatory but permissive. A landlord's counter notice of objection may be served outside the two months time limit, or alternatively the Lands Tribunal has a discretion or power to extend that time. In this respect he argued that sections 5(2) and 5(3) of the 1964 Act

are in clear terms, as are Section 8(2) and 8(3) of the 1964 Act. Those mandatory time limits clearly refer to the time limits imposed on the Tenant's actions. However Section 5(6) of the 1964 Act uses the words "the landlord may serve notice on the tenant" and is thus permissive.

4. In support he relied upon the decision in Chiswell v Griffin Land and Estates Ltd [1975] 2 All ER 665, and particularly upon the judgment of Orr LJ @ p 669 letters g and h who said -

"The argument advanced for the tenant is that nothing contained in section 25 of the 1954 Act in its terms imposes any burden on a tenant as to what he is to do but merely a burden on the landlord. It is claimed that the words 'duly notified' in s 29(2) involve no more than that the notice must be a proper notice in its terms, and cannot be read, or should not be read, as introducing the time limit contained in a different section imposing duties on the landlord.

If that argument be right, the consequences would seem to be that there would be no time limit after the receipt of a landlord's notice for the tenant to put in a counternotice, and that there would be great difficulties about the jurisdiction of the court, which must, as it seems to me, depend on a dispute between the parties which would be constituted by the giving of a notice on the part of a tenant in answer to a notice given by the landlord." In other words the jurisdiction of the Lands Tribunal depends essentially upon the Tenants' application to the Tribunal for a new tenancy.

5. He emphasised this argument by submitting that there can never be a dispute between the Landlord and the Tenant because the Tenant must make an application to the Lands Tribunal for a new tenancy and the Lands Tribunal always has jurisdiction over a new tenancy.
6. Finally he submitted that there was a complete absence of case law regarding a mandatory service of a notice of opposition by the Landlord. Implicit in this submission was that it was so clear that a landlord could serve a notice of opposition at any time.

Mr Devlin in reply stated:-

1. It would be an absurdity if the Landlords right to object to a new tenancy was not subject to a strict time limit. In those circumstances he could wait to object until the date of the hearing.
2. In the instant case there is no absurdity. The position is clear. If the Landlord does not comply with the time limit he cannot argue at all against the grant of a new tenancy. In this respect he cited case 27 in Williams - Handbook of Business Tenancies.
3. It is illogical to argue that because the Tenant must always apply to the Lands Tribunal for the grant of a new tenancy the Landlord should be given an extension of time in which to object.
4. The apparent absence of case law on this matter is not surprising because the landlord's rights and duties are so clearly spelled out by the legislation.

DECISION OF THE LANDS TRIBUNAL

Two questions arise in the instant cases. First is the two month time limit in Section 5(6) of the 1964 Act (which is in identical terms to Section 26(6) of the Landlord and Tenant Act 1954 in England) imperative in that the landlord must serve his notice of objection to a request by his tenant within two months from that request or lose his right to object to the grant of a new tenancy? Secondly has the Lands Tribunal any power to abridge or extend the two months time limit?

The second question can be dealt with shortly. The Lands Tribunal was set up by statute. It thus has no inherent jurisdiction to abridge or extend time limits unless statute provides or imports such a power. There is no such statute. It was also argued, however, that such a power arose under the Tribunal's Rules. This is simply incorrect. Where relevant the Rules expressly state that they are subject to statute. This argument is thus untenable.

The remaining question, therefore, is whether the two months time limit in Section 5(6) is imperative or permissive. A discussion of the overall scheme of the 1964 Act may clarify the position.

The general scheme of the Act is to give business tenants security of tenure. It provides for the renewal and continuation of tenancies subject to the terms of and the rent reserved in

the renewed lease being agreed by the parties or, if in dispute, decided by the Lands Tribunal. This is counter balanced by allowing landlords to oppose the grant of a new tenancy in certain circumstances, for example if they wish to demolish and rebuild the premises. Thus the Act attempts to strike a balance between the interests of landlords and those of tenants.

Unless a business tenancy is forfeited or surrendered or the tenant serves a notice to terminate the tenancy under the terms of his lease (Section 6 of the Act) a business tenancy can only be brought to an end in one of two ways. First by the landlord's service of a notice to determine under Section 4 (which is identical to Section 25 of the English 1954 Act), or by a tenant making a request for a new tenancy under Section 5 (Section 26 of the 1954 Act in England). It may be of assistance to look at these two alternatives in detail.

1. **Landlords notice to determine**

Section 4 enables the landlord to terminate the tenancy (if he so wishes) in the following words:-

- "(1) Subject to section 9 the landlord may terminate a tenancy to which this Part applies by a notice to determine served on the tenant in the prescribed form specifying the date at which the tenancy is to come to an end (in this Part referred to as "the date of termination").

- (2) A notice to determine shall not have effect unless it complies with the provision of this section and, subject to subsection (3), is served not more than twelve nor less than six months before the date of termination specified therein.

- (3) In the case of a tenancy which but for this Part could have been brought to an end by a notice to quit -
 - (a) subsection (2) shall, where but for this Part more than six months' notice to quit would have been required to bring the tenancy to an end, have effect with the substitution for twelve months of a period six months longer than the length of notice to quit which would have been required as aforesaid; and

- (b) the date of termination specified in a notice to determine shall not be earlier than the earliest date on which the immediate landlord could, but for this Part, have brought the tenancy to an end by notice to quit served on the same date as the notice to determine.
- (4) In the case of a tenancy dependent on the fall of a life or other uncertain event the landlord may, after the fall of that life or the happening of that uncertain event, terminate the tenancy by a notice to determine served not more than twelve nor less than six months before the date of termination specified therein.
- (5) In the case of any tenancy, other than a tenancy referred to in subsection (3) or subsection (4), a notice to determine under this section shall not specify a date of determination earlier than the date on which, but for this Part, the tenancy would have come to an end by the effluxion of time."

Thus where a landlord wishes to determine the tenancy he may do so providing he selects the date of termination precisely in accordance with the subsections (2), (3), (4) and (5) above. The notice to determine must be carefully completed and must conform to the requirements of section 4(6). This provides that a landlords notice to determine shall -

- "(a) require the tenant, within two months of the service of the notice, to notify the landlord in writing whether or not, at the date of determination, the tenant will be willing to give up possession of the property comprised in the tenancy; and
- (b) state whether the landlord would oppose an application to the Lands Tribunal under section 8 and, if so, on which of the grounds mentioned in section 10 he would do so."

The tenant is thus placed on notice that if he does not notify the landlord in writing within two months that he is not willing to give up possession, the tenancy is ended and vacant possession must be given. If, however, the tenant does notify the landlord within two months period the Act protects him. It has been clearly settled by a number of authorities that if the tenant wishes to oppose a landlords notice to determine he

must strictly observe the statutory time limits and that there is no discretion to extend them.

This is underlined by Section 8 of the 1964 Act which requires the tenant to apply for a new tenancy to the Lands Tribunal. It reads -

- "(1) A tenant under a tenancy to which this Part applies may apply to the Lands Tribunal for the grant of a new tenancy -
 - (a) where the landlord has served a notice to determine the tenancy in accordance with section 4; or
 - (b) where the tenant has made a request for a new tenancy in accordance with section 5.

- (2) An application made in consequence of a notice to determine served by the landlord under section 4 shall not be entertained by the Lands Tribunal unless the tenant has duly notified the landlord that he will not be willing at the date of termination to give up possession of the property comprised in the tenancy.

- (3) An application under this section shall not be entertained by the Lands Tribunal unless it is made not less than two nor more than four months (or with the written consent of the landlord within such period as the landlord may specify) after the service of the landlord's notice to determine under section 4, or as the case may be, after the making of the tenant's request for a new tenancy under section 5."

Thus once a landlord has triggered the termination of a business tenancy by a section 4 notice, the tenant must carry out certain actions in accordance with a statutory timetable. If he does not observe those time limits he loses the protection of the Act.

2. **Tenants request for a new tenancy**

Section 5 of the 1964 Act enables the tenant to terminate the tenancy (if he so wishes) in the following words:-

- "(1) A tenant may, subject to and in accordance with this section, make a request for a new tenancy where the tenancy under which he holds for the time being (in this Part referred to as "the current tenancy") is -
- (a) a tenancy granted for a term certain exceeding one year, whether or not continued by section 3; or
 - (b) a tenancy granted for a term certain exceeding one year and thereafter from year to year; or
 - (c) a tenancy granted for a period dependent on the fall of a life or other uncertain event and continued by section 3.
- (2) A tenant's request for a new tenancy shall be for a tenancy beginning with such date, not more than twelve nor less than six months after the making of the request, as may be specified therein, and in the case of such a tenancy as is specified in paragraphs (a) and (b) of sub-section (1) such date shall not be earlier than the date on which but for this Part the current tenancy would come to an end by the effluxion of time or could be brought to an end by notice to terminate served by the tenant under and in accordance with the terms (whether express or implied) of that tenancy.
- (3) A tenant's request for a new tenancy shall not have effect unless it is made by notice in the prescribed form served on the landlord and sets out in general terms the tenant's proposals as to -
- (a) the property to be comprised in the new tenancy (being either the whole or part of the property comprised in the current tenancy);
 - (b) the rent to be payable under the new tenancy;
 - (c) the duration of the new tenancy; and
 - (d) the other terms of the new tenancy.
- (4) A tenant's request for a new tenancy shall not be made if the landlord has already served a notice to determine under section 4, or if the tenant has already served a notice under section 6; and no such notice shall be served

by the landlord or the tenant after the making by the tenant of a request for a new tenancy.

- (5) Where the tenant makes a request for a new tenancy in accordance with this section, the current tenancy shall, subject to section 9 and to section 17(2), terminate immediately before the date specified in the request for the beginning of the new tenancy."

It is common case in the present applications that each tenant served on his landlord a request for a new tenancy, in accordance with Section 5. It was further agreed that in each case the tenant had made a proper application for the grant of a new tenancy to the Lands Tribunal in accordance with Section 8. The current tenancy, in each case, thus terminates in accordance with subsection (5) above.

The Tribunal now turns to Section 5(6) of the 1964 Act which lies at the heart of the dispute. It reads -

- "(6) Within two months of the making of a tenant's request for a new tenancy in accordance with this section, the landlord may serve notice on the tenant that he will oppose an application to the Lands Tribunal under section 8 for the grant of a new tenancy, and any such notice shall state on which of the grounds mentioned in section 10 the landlord will oppose the application."

The finite point in the preliminary matter in each of these cases is whether it is imperative for the landlord to serve within two months, of the tenant making a Section 5 request, a notice of opposition stating such grounds mentioned in Section 10 on which he will oppose.

Mr Horner relied on the word "may" in subsection (6) to show that the time limit was permissive, in contrast to the wording in Section 4 and Section 8 of the 1964 Act in which all time limits are imperative. In the alternative he argued that the Tribunal had power to extend the two months time limit set out in section 5(6). The Tribunal has already dealt with this alternative point.

The Tribunal is unable to agree with the submissions made on behalf of the landlords. To begin with it would lead to the surprising result that a tenant must observe the statutory time limits or lose the protection of the Act, but that a landlord could serve his

counter notice of objection at any time, and thus ignore the provisions of section 5(6). Such a result cannot have been contemplated by the legislature. It runs contrary to the statutory scheme of time limits which is embodied in the 1964 Act and, indeed, in the Landlord and Tenant Act 1954 in England. The Tribunal's view is that the wording of section 10 of the 1964 Act (which is equivalent to section 30 of the English 1954 Act) underpins the obligations on the parties to observe the statutory time limits. It begins, in subsection (1) by providing that -

"The grounds on which a landlord may oppose an application made under section 8 to the Lands Tribunal for a new tenancy are such of the following grounds as may be stated in the landlord's notice to determine under section 4, or as the case may be, in the landlord's notice under section 5(6) ...".

It would be an absurdity if the landlord had to observe the time limits set out in section 4, but not the time limit set out in section 5(6). This would render section 10 meaningless. To take an extreme example, a section 5(6) counter notice could be served on the morning of the substantive hearing for a new tenancy. The tenant would thus be placed in an impossible position. He would not even know until the last moment if the landlord was going to object, or if he was, what were the grounds of objection.

The Tribunal does agree that the word "may" in section 5(6) is permissive, but it is quite illogical to jump from that position to the conclusion that a landlord can therefore serve his counter notice at any time outside the two month time limit. The word "may" has been used quite deliberately in section 5(6). Where a tenant makes a request under section 5 for a new tenancy a landlord has two choices; either to oppose that request or not to do so. Section 5(6) has to cover these two choices, and thus has to use the word "may". If it used the word "shall" a landlord would be compelled to serve a notice of opposition in cases in which he did not wish to oppose at all. In essence what section 5(6) says is this. If a landlord wishes to oppose a tenant's request for a new tenancy he must serve his notice of opposition within two months of the making of the tenants request. If he does not wish to oppose the grant of a new tenancy he need not serve a notice of opposition at all.

The views of the Tribunal are reinforced by every text book or authority on business tenancies to which it has referred. Examples are -

- (a) Halsbury's Laws of England, 4th edition, volume 27 which states at para 487 -

"Where the tenant makes a request for a new tenancy, the current tenancy will terminate immediately before the date specified in the request for the beginning of the new tenancy. Within two months of the making of the request the landlord may give notice that he will oppose an application to the court for the grant of a new tenancy. This notice must state on which of the grounds allowed he will oppose the application." Note 15 states quite unequivocally that "Failure to serve this notice will preclude the landlord from opposing the grant of a new tenancy."

- (b) Woodfall on Landlord and Tenant, is more emphatic. Paragraph 22.066 reads -

"Within two months after the making of a tenant's request for a new tenancy, the competent landlord may give notice to the tenant that he will oppose an application to the court for the grant of a new tenancy. This notice is usually referred to as a landlord's counter-notice. If he does give counter-notice, the counter-notice must state on which ground in section 30 [of the Landlord and Tenant Act 1954] the landlord will oppose. If the landlord does not give counter-notice within the prescribed time, he will lose his ability to oppose the grant of a new tenancy, although he will retain his right to be heard on the question of rent, duration and terms of any new tenancy."

- (c) Of more authoritative weight is the statement of the Law Commission in England, in its Working Paper No 111 which deals with Part II of the Landlord and Tenant Act 1954 at page 13, paragraph 2.14 -

"A landlord who wishes to oppose any application for a new tenancy must, within two months, serve a counter notice on the tenant stating the grounds of opposition on which he may choose to rely. A failure to do so will mean that the landlord loses any right to oppose." [The Tribunal's emphasis.]

Turning to case law the Tribunal also finds the judgment of the Court of Appeal in England in X L Fisheries Ltd v Leeds Corporation [1955] 1 QBD 636 of considerable assistance on the question of whether the two month time limit under section 26(6) of the English Act of 1954 is imperative. Section 5(6) of the Northern Ireland 1964 Act is

of course identical. This was not cited to the Tribunal. The case concerned a tenant's request for a new tenancy. There then followed a change of landlord within the two month period and the question arose as to whether this allowed the service of a notice of opposition under section 26(6) of the 1954 Act. The full facts are set out in the headnote. The point of most interest, however, reads -

"Per curiam. A landlord, whether a public authority or not, who acquires his interest within two months after the tenant has requested a grant of a new tenancy is not disabled from serving a notice under section 26(6) and objecting to the grant on one or more of the grounds specified in section 30(1)(a) to (f) which exist at the date when the notice of objection is served, assuming that the predecessor in title of the landlord has not before the sale already served notices of objection on the tenant." [The Tribunal's emphasis.]

It is implicit in this portion of the headnote, and more to the point in the judgment of the Court, (which was given by Lord Evershed MR) that the two month time limit in section 26(6) of the 1954 Act in England (section 5(6) in the Northern Ireland Act of 1964) was a strict time limit which had to be observed. Indeed this very point was made in argument by Mr Nigel Bridge (now Lord Bridge of Harwich), at page 640, to the effect that - "a notice of objection must be served on the tenant within the stipulated period ...". The Court of Appeal did not in any way dissent from that view. It was in effect one of the premises upon which the Court of Appeal based its judgment. Thus the Lands Tribunal cannot agree with Counsel that there is a complete absence of authority on the point directly in issue in these proceedings.

The Tribunal is therefore unable to treat the two months time limit in Section 5(6) as permissive. It is firmly of the view that it is a time limit which must be strictly observed, not only for the reasons which have been given but because to treat the time limit otherwise would to a significant extent destroy the balance created by the 1964 Act between the statutory rights of the tenant and those of the landlord.

The Tribunal thus concludes that the landlords' counter-notice under Section 5(6) of the 1964 Act in each case was out-of-date and that there is no question of the tenants by their actions being estopped from pleading that the counter-notices are invalid or have been waived.

In each Application (BT/123/1991, BT/124/1991 and BT/125/1991) the Landlords' notice is a nullity. In each case, therefore, the landlord cannot object to the grant of a new tenancy but may appear before the Tribunal and be heard on the question of the terms of that tenancy.

The question of costs will be reserved until these applications have been finally determined.

ORDERS ACCORDINGLY

28th February 1992

**The President, Judge Peter Gibson QC
and Mr A L Jacobson FRICS
Lands Tribunal for Northern Ireland**

Appearances:-

Mr Alastair Devlin of Counsel (instructed by John Johnson & Son and Cleaver Fulton & Rankin, Solicitors) for each of the Applicants/tenants.

Mr Mark Horner of Counsel (instructed by Maurice McIvor & Co, Solicitors) for the Respondents/landlords.