

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 8(1)(a) OF THE
BUSINESS TENANCIES ACT (NORTHERN IRELAND) 1964 FOR A
GRANT OF A NEW TENANCY OF BUSINESS PREMISES SITUATE AT
AND IN THE MATTER OF BUSINESS PREMISES AT
22 HIGH STREET, BANGOR, CO DOWN**

BT/22/1972

BETWEEN

HAROLD COWAN – APPLICANT/TENANT

AND

ALDO LUCHI – RESPONDENT/LANDLORD

Lands Tribunal - Mr F A L Harrison QC

Belfast - 25th June 1973

PRELIMINARY HEARING

This was a hearing on a preliminary point of law pursuant to an Order of 8th May 1973 made on an Application dated 25th April 1973 and which was

“Whether or not the landlord is entitled to oppose the tenant’s application for the grant of a new tenancy having regard to the matters mentioned in the Application of 25th April 1973 and especially the landlord’s Notice of 31st August 1972 in which he stated that he would not oppose the said Application.”

Mr T T Ferriss instructed by McCloskey & Co, Solicitors, appeared for the tenant.

Mr J Petrie instructed by W G Wilson & Nesbitt, Solicitors, appeared for the landlord.

The landlord served notice to determine under Section 4 of the Business Tenancies Act (Northern Ireland) 1964 (hereinafter called “the Act”) terminating the tenancy on 31st August 1972 stating (inter alia) that he would not oppose an application under Part 1 of the Act for a new tenancy.

On 24th October 1972 the tenant duly notified the landlord in accordance with Section 4(6) of the Act that he would not be willing to give up possession of the property comprised in

the tenancy and on 27th November 1972 applied to the Lands Tribunal for the grant of a new tenancy under Section 8(1)(a) of the Act.

On the 25th April 1973 Solicitors for the tenant applied for a determination of the above point of law.

It appeared on the hearing that by a letter dated 30th October 1972 the landlord gave notice to the tenant of his intention to oppose the granting of a further tenancy and purported “to withdraw the Notice to Determine of the 31st August 1972” stating that he had instructed his solicitors to serve a “new notice terminating your tenancy” and stating that he would oppose the granting of a new tenancy. By a notice in the prescribed form also of 30th October 1972 the landlord personally gave notice to the tenant purporting to determine the tenancy on 1st May 1973 and stating that he would oppose an application to the Lands Tribunal under Part 1 of the Act for the grant of a new tenancy upon the ground that

“there have been substantial breaches by you of your obligations under the current tenancy and that the premises are not being used for the purpose for which they were let but merely as a store”.

For the tenant Mr Ferriss submitted that the landlord having stated his intention not to oppose an application for the grant of a new tenancy could not “withdraw” the original Notice of 31st August or any part of it and could not substitute in its place a “new notice” raising grounds of objection to such an application to the Lands Tribunal.

A notice to determine once served contains the only matters upon which a landlord can rely on the hearing of an application, see Section 10 of the Act, and after service of a notice to determine stating that an application for a new tenancy will be unopposed, a tenant becomes entitled to a new tenancy provided he takes the appropriate steps to obtain it.

Cited Woodfall on Landlord and Tenant 27th Edition Vol 2 paras 2474, 2511 & 2482.

Pipe v Muggleton [1956] 2 QB 569 at 578.

X L Fisheries v Leeds Corporation [1955] 2 QB 636 at 640.

Once a tenant has given notice that he was unwilling to give up possession he acquired a statutory right to bring the application to the Lands Tribunal which cannot be affected by any subsequent unilateral action by the landlord.

If a successor in title to the landlord cannot rely upon any ground of objection not stated in the notice to determine, then a fortiori the landlord himself cannot raise any grounds of

objection when he has formally stated that he would not oppose an application to the Lands Tribunal.

Mr Petrie for the landlord accepted that the notice to determine in this case terminated the tenancy, but submitted that the statement to oppose or not to oppose an application was a statement of intention which was not necessarily final and could be varied subsequently to the service of a notice to determine, though once grounds of objection were stated these were exclusive and could not be extended at the hearing before the Tribunal,

Cited In re 14 Grafton Street [1971] Ch 935 at 942F

and he submitted that as the Act cut down the common law rights of landlords, it should be construed beneficially so as to allow “withdrawal of a notice to determine” so as to make way for a second notice raising any objection which was valid. Otherwise valid objections might never be heard. The statement of intention not to oppose an application was like a pleading and in that context a change of mind should be allowed where reasonable to do so.

DECISION

The point of law raised can be answered simply.

A notice under Section 4 of the Act is a formal legal document which once served has precise legal consequences and which is intended to be treated by the tenant as the basis upon which he can decide whether to give up possession or to serve notice of unwillingness to do so and to proceed with an application for a new tenancy. No provision is made in the Act for withdrawal of a notice to determine once served nor for its amendment, and the provisions of Section 10 confining a landlord to the grounds of objection stated in his notice to determine seems to be irreconcilable with any variation of such grounds after service of the notice. A fortiori, a notice raising no objection to a renewal of a tenancy could hardly have been intended by Parliament to be changed in character into a notice raising objections, and a second notice to replace the first can be in no better position.

The opinion of the Tribunal is that the machinery of the Act can be set in motion by the service of a Section 4 notice by a landlord. This was a formal act which determined the tenancy and invested the tenant with the right to give up possession or to give notice of unwillingness to do so and to proceed, if he so desired, with an application for a new tenancy under Section 8.

The tenant is entitled in the present case to proceed with his application to the Tribunal and upon such application the landlord cannot be heard to oppose the application upon the grounds stated in his purported notice to determine of 30th October 1972, and the answer to the question posed is accordingly in the negative.

The landlord shall pay to the tenant the measured sum of £12 towards his costs of and incidental to this Application, the hearing and the consequential order.

ORDERS ACCORDINGLY

2nd July 1973

F A L HARRISON
LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:-

**Applicant/Tenant: Mr T T Ferriss instructed by Messrs McCloskey & Co,
Solicitors, Belfast.**

**Respondent/Landlord: Mr J Petrie instructed by Messrs W G Wilson & Nesbitt,
Solicitors, Bangor, Co Down.**