

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

G/15

JOHN E RICHARDSON - APPLICANT

AND

MICHAEL TOAL - RESPONDENT

**Lands Tribunal for Northern Ireland - The President, Judge R Rowland QC
and Mr A L Jacobson FRICS**

Belfast - 17th January 1990 and 21st March 1990

This matter has been referred to the Tribunal by the Registrar for determination of the question whether the tenant's request for a new tenancy under the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act") is a valid one. The issue arises upon the following facts:-

- (1) There was a lease for 2 years and 3 months from 1st October 1986. The lease expired on 31st December 1988 and the tenant continued in possession.
- (2) The landlord served a notice to determine the tenancy on 30th June 1989 bringing the tenancy to an end on 1st January 1990. Such notice clearly complied with Section 4(2) of the 1964 Act; it was served in the prescribed form; it correctly stated the Landlords' objections to a new tenancy under Sections 10(1)(f) and (g) of the 1964 Act; it brought the tenancy to an end within the period of six months to twelve months after service (as required by Section 4(2)).
- (3) On 25th October 1989 the Registrar of the Lands Tribunal received a tenant's request for a new tenancy under Section 5. The accompanying letter (dated 24th October 1989) stated as follows:-

"Herewith tenant's request for a New Tenancy. We confirm we have served a copy on the landlord. Please acknowledge receipt." This was signed by the tenant's Solicitors.

The Registrar, accepting this as a copy for information, filed it in the general correspondence file.

Such request was, in any event, bad on the face of it, because it did not comply with the time limits prescribed by the 1964 Act. It should have been for a new tenancy beginning with such date, not more than twelve nor less than six months after the making of the request (Section 5(2)). In fact it requested a new tenancy commencing 1st January 1990 - which was only 2 months and 1 week after the request.

- (4) There are two situations in which a tenant can apply to the Lands Tribunal for 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.

But it must be one or the other; the tenant cannot apply to the Tribunal under both: Section 5(4) provides:

“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”.

That is particularly pertinent to the present case because the landlord had in fact already served a notice to determine and therefore the tenant was thereafter precluded from making a request for a new tenancy.

- (5) The only document which the Registrar of the Tribunal had received in connection with this matter was a copy of the tenant’s request for a new tenancy referred to above.

There was no intimation that an application for a new tenancy to the Lands Tribunal under Section 8(1) was being made or had been made.

- (6) Realising that there had been a failure by the tenant to comply with the procedural requirements the tenant’s Solicitors wrote to the Registrar of the Tribunal on 19th December 1989 seeking a ruling by the Tribunal of the question whether the tenant’s Request for a New Tenancy dated 24th October 1989 could be construed by the Tribunal as a valid Section 8 application for a New Tenancy. Their letter read as follows:-

“We refer to our letter of 24th October 1989 enclosing Tenant’s Request for New Tenancy of Business Premises.

Whilst we realise that we failed to comply with the Business Tenancy Rules insofar as the Section 5 Request had not the necessary documents attached (copies of the Landlord’s Notice to Determine Tenancy and Tenant’s objection herewith) to have the matter listed before the Tribunal, we would now respectfully ask the Tribunal to consider listing this matter for hearing on the preliminary point as to whether the Tenant’s Request for a New Tenancy dated 24th October 1989 can be construed by the Tribunal as a valid Section 8 application. We understand that our Counsel would seek to reply (rely) on Section 25 of the Interpretation Act 1954 which would assist the Tribunal in determining the matter. We would further seek to reply (rely) on Rule 38 of the Business Tenancy Rules which we are advised give the Tribunal power to deal with situations in which there has been a failure to comply precisely with the rules.

We trust the Tribunal can give this request its favourable consideration as the matter is of great importance to our client.

Finally we should point out, notwithstanding the foregoing, we intend to dispute the validity of the service of the Landlord’s Notice to Determine as we are instructed that same was not served on our client until 3rd July 1989.”

- (7) The landlord’s Notice to Determine Tenancy dated 29th June 1989 (referred to at (2) above) had objected to the grant of a New Tenancy on the grounds set out in Section 10(1)(f) and (g) (works of re-construction; and occupation for his own business purposes). In response thereto the tenant by letter dated 21st August 1989 intimated his unwillingness to give up possession of the premises on the date specified. Both these notices complied with the relevant provisions of the 1964 Act.
- (8) In summary, therefore, the Tenant’s Request for a New Tenancy dated 24th October 1989 was invalid under Section 5 (as “a Section 5 Request”) because the landlord had previously served a Notice to Determine. But if such a request could be treated as a valid Section 8 application to the Lands Tribunal for a New Tenancy it would in fact comply with the temporal requirements of Section 8 (not less than 2 months nor more than 4 months after the service of the landlord’s Notice to Determine).

So, the question for determination is:

“Whether the Tenant’s Request for a New Tenancy can be construed by the Tribunal as a valid Section 8 Application”.

Mr Patrick Good (of Counsel) for the tenant submitted:

- (i) Section 8 of the 1964 Act does not require an application to be “in the prescribed form”. In contrast, a landlord’s Notice to Determine (Section 4) and a Tenant’s Request for a New Tenancy (Section 5) must be in the prescribed form.
- (ii) The landlord has not been prejudiced. He had already received a Tenant’s Request and Notice of Unwillingness to give up possession. All the details required by a Section 8 application were contained in those two documents.
- (iii) Rule E2 of the Lands Tribunal Rules is permissive, “an application for the grant of a New Tenancy may be made by serving on the Registrar a written application in accordance with form EA”. Failure to include with the application, the documents specified in Rule E2 is not fatal; they can be sent later and the landlord is not prejudiced by the omission.
- (iv) Omissions can, in any event, be rectified, under Rule 38(1) of the Lands Tribunal Rules 1976 which provides that failure to comply with the provisions of the Rules shall not render the proceedings invalid unless the President or the Tribunal so directs.
- (v) It is conceded that the Tenant’s Request dated 24th October 1989 was wrong in form but it contained, and gave the landlord notice of, all that was required for a Section 8 application.
- (vi) The tenant relies on Section 25 of the Interpretation Act (Northern Ireland) 1954 which provides that where a form is prescribed by any enactment deviations therefrom (not materially affecting the substance, nor calculated to mislead) shall not invalidate the form used.
- (vii) The actual form now relied on, the Request, does not mislead the landlord.
 - (a) It is addressed to the landlord.
 - (b) It correctly identifies the premises.
 - (c) It applies for a new tenancy.

- (d) Gives particulars of current tenancy and suggested terms of a new one.
- (e) Gives the address of the applicant or his agent (in this case his solicitor).

All of which complies with form EA of the Lands Tribunal Rules which is not, in any event, a prescribed form under the 1964 Act. He referred to Morrow v Nadeem [1986] 1WLR 1381. In the present case the landlord was not misled nor was he prejudiced. He well knew that the tenant was seeking a new tenancy and he had all the necessary information from the Tenant's Request for a New Tenancy.

Mr Mark Orr (of Counsel) for the landlord submitted:-

- (i) The agreed findings of fact which are crucial are:
 - (a) The Tenant's Request for a New Tenancy was received by the landlord within four months of the landlord's Notice to Determine. It was therefore invalid.
 - (b) On the 8th December 1989 the landlord wrote to the tenant's Solicitor stating that the tenant had failed to serve on the Lands Tribunal within four months a Section 8 application for a New Tenancy.
- (ii) Now the Tribunal is being asked to remedy a fatal omission by construing one document as if it were something entirely different. The Tenant's Request was a nullity and cannot be elevated to the status of a legal application under Section 8.
- (iii) The Authorities show that time limits and prescribed forms must be strictly complied with. Extra legal rights have been conferred by statute on both parties. Any discretion to amend should be exercised with extreme care. He referred to:

Woodfall: Volume II Paragraph 2-0675 and 2-0685
McMillan v Crossey BT/21/1985.

The Lands Tribunal should be slow to amend notices and time limits under the Business Tenancies legislation.

Mr Good, in reply submitted:-

- (i) The letter from the landlord to the tenant dated 8th December 1989 was sent after the statutory period of four months for the tenant to make application to the Lands Tribunal had expired. The tenant seeks indulgence from the Tribunal not from the landlord.

- (ii) In this case the Tribunal is dealing with a form not prescribed by the 1964 Act. Evans Construction Co Ltd v Charrington & Co Ltd [1983] 1 All ER 310.

DECISION

The 1964 Act was essentially an Act which impinged upon the common law rights of landlords and tenants to make their own contracts; its underlying purpose was to provide security of tenure for certain tenants occupying premises for business professional or certain other purposes by enabling them to obtain new tenancies in certain cases or in certain circumstances to obtain compensation. In furtherance of this purpose the Act, by Section 3, provided for the continuation of tenancies to which the Act applied unless and until such tenancies were terminated in accordance with the provisions of the Act; these created a new code for landlords and tenants of certain business premises - a code which embraced new procedural requirements for terminating an existing tenancy by the landlord (Section 4); Request by tenant for a new tenancy for a new tenancy (Section 5); Application to Lands Tribunal for new tenancies (Section 8); Opposition by landlord to application for a new tenancy (Section 10). The Act contains important provisions for relating to time limits for taking certain steps and enabling a tenant to respond to action taken by his landlord and similarly enabling a landlord to oppose a tenant's application. The procedural steps and the time limits are strict but providing they are followed meticulously they should not give rise to any hardship. Because the Act has conferred additional rights of tenure on tenants it also imposes corresponding duties on them to observe the statutory obligations; the Act seeks to strike a fair balance between rights and obligations as between landlords and tenants. It therefore requires both parties both parties to adhere strictly and carefully to the provisions of the Act.

In this case the landlord terminated the tenancy by a Notice to Determine served under Section 4. Faced with that the tenant, if he wanted a new tenancy, should have applied to the Lands Tribunal for the grant of a new tenancy under Section 8. Instead, he made a request for a new tenancy under Section 5(1) which was clearly wrong for by Section 5(4) it is provided:

“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”.

As previously stated there are two alternative ways in which the tenant can apply to the Lands Tribunal for a new tenancy viz:

(a) Where the landlord has served a Notice to Determine. In that event the tenant must indicate by notice duly served that he is unwilling to give up possession.

or

(b) Where the tenant has made a request for a new tenancy. But this is precluded where the landlord has previously served Notice to Determine.

In the present case the tenant has chosen the wrong method of proceeding. He complied with (a) above by serving a notice unwillingness to give up possession; but he failed to take the next step of applying to the Lands Tribunal under Section 8.

His request for a new tenancy was superfluous and ineffective and directly contrary to the statutory provisions. But he served a copy of his request on the Registrar of the Lands Tribunal and he now seeks to remedy his error by having that declared to be a valid Application for a new tenancy under Section 8. But that would be very prejudicial to the landlord's interest. He knew the tenant's request was a nullity and he therefore was entitled to rely on the provisions of the Act; he could await the tenant's application under Section 8 for a period of four months and if it was served upon him he could oppose the tenant's applications by proving the grounds alleged in his own Notice to Determine. If such application was not served either in time or at all he could again rely on the provisions of the Act and the tenancy would be at an end. And that in fact is what he did. He had served his Section 4 notice validly and properly and awaited the tenant's application to the Tribunal within the statutory four month period. When that did not occur he wrote to the tenant pointing out that the matter had come to an end. The landlord was fully entitled to await the expiration of the four month period without taking any action and he was also entitled to treat the tenant's request as a nullity - which is what it was.

What seems to have put the tenant on the wrong track was his allegation, contained the final paragraph of his letter to the Registrar dated 18th December 1989:

"Finally we should point out, notwithstanding the foregoing, we intend to dispute the validity of the Service of the Landlord's Notice to Determine as we are instructed that the same was not served on our client until 3rd July 1989".

It may be that in the face of what he contended was an invalid Notice to Determine the tenant thought he had better make a Request for a new tenancy rather than a Section 8 application for a new tenancy. In the event, and with hindsight, he would have been better

advised to keep his options open by serving both a Request and a Section 8 application. Then, if the landlord's Notice was declared null and void (for want of good service) his request would stand; if the landlord's notice was good his Section 8 application would prevail over the Request. In the event the tenant abandoned his point at this hearing and the question of service has not been challenged.

The tenant has called in aid General Rule 38 and Rule E2 of the Lands Tribunal Rules (Northern Ireland) 1976 together with Section 25 of the Interpretation Act (Northern Ireland) 1954. But in the opinion of the Tribunal these can be of no avail in changing a Section 5 Request into a Section 8 Application. The Section 5 Request was addressed to the landlord; if it had been an application to the Tribunal it would have been addressed to the Registrar. In every respect it was what is purported to be - a Request for a New Tenancy, albeit made inside the four month period. If an application of some sort had been made under Section 8 to the Registrar within the four month period the fact that all the requirements of Rule E2 were not strictly complied with might not necessarily have proved fatal; the Tribunal has a discretion in certain circumstances to correct lack of form and might allow such application. But the statutory time limits are strict and are not to be interfered with by the Tribunal; no such discretion as is contained in Section 44 (Part II of the 1964 Act: "Compensation") is conferred in relation to the procedural provisions contained in Part I. The limits imposed are strict in that the Tribunal has no jurisdiction to interfere and extend the time although the parties may waive the limits either expressly or by implication. Tenants and landlords alike must be alert to observe the steps to be taken and the time limits laid down. In the result the Tribunal holds that it has no discretion to extend the statutory time limits and consequently it cannot treat the tenant's Request for a new tenancy dated 24th October 1989 as a valid Section 8 application to the Lands Tribunal.

The Tribunal having heard the parties award costs to the Respondent such costs in default of agreement to be taxed by the Registrar on the County Court Scale.

ORDERS ACCORDINGLY

6th April 1990

**The President, Judge R Rowland QC and
Mr A L Jacobson FRICS**

Appearances:-

Mr Patrick Good of Counsel (instructed by Messrs Cooper and Cooper, Solicitors) for the Applicant/Tenant.

Mr Mark Orr of Counsel (instructed by Messrs Anderson Agnew & Co, Solicitors) for the Respondent/Landlord.