

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996**

**IN THE MATTER OF AN APPLICATION**

**BT/30/2013**

**BETWEEN**

**COLIN KENNEDY – APPLICANT/TENANT**

**AND**

**DAM DEVELOPMENTS LIMITED – RESPONDENT/LANDLORD**

**Re: “Village Tavern”, 24 St Pauls Road, Articlave**

**Lands Tribunal – Henry Spence MRICS Dip Rating IRRV (Hons)**

**BACKGROUND**

1. Mr Colin Kennedy (“the applicant”) was the occupier of the “Village Tavern” at 24 St Pauls Road, Articlave (“the reference property”). On 30<sup>th</sup> October 2012 the applicant’s agent, Mr Richard McLaughlin, submitted a “tenants request for a new tenancy” under Article 7 of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”).
2. This request for a new tenancy was opposed by the landlord, DAM Developments Limited (“the respondent”) and on 18<sup>th</sup> December 2012 they advised the applicant that they would oppose the application on the grounds mentioned in Article 12(1)(b) of the Order: “That the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which had become due”. The matter was then referred to the Tribunal on 1<sup>st</sup> May 2013.
3. The respondent subsequently sought payment of the rent arrears through the Chancery Court and a writ of summons was served on the applicant to that effect. At

the request of the parties the case was to be held in abeyance until the issue of rent arrears had been resolved.

4. On 19<sup>th</sup> December 2013 however, Mr McLaughlin advised the Tribunal: “I can confirm that the tenant is in discussions to purchase the freehold interest. I would be grateful if you could place the matter on hold until I have confirmation that this has been formally agreed/purchased.”.
5. Mr McLaughlin further advised the Tribunal on 17<sup>th</sup> October 2014: “My client, Colin Kennedy, has agreed to purchase the freehold interest subject to contract. I therefore believe that our application for a new tenancy can be withdrawn.”. The respondent, however, did not consent to the withdrawal of the application at this stage and advised the Tribunal “we will be happy to consent to the withdrawal just as soon as the matter has been completed, provided the applicant can obtain finance”.
6. On 26<sup>th</sup> May 2015 Mr McLaughlin informed the Tribunal that his firm were no longer instructed in the matter and requested the Tribunal to contact the applicant directly.
7. The sale of the reference property to the applicant did not proceed and on 27<sup>th</sup> July 2015 the respondent submitted an application for its costs in the reference. This is the issue to be decided by the Tribunal.

#### **PROCEDURAL MATTERS**

8. The issue of costs was dealt with by written representations. Mr Keith Gibson BL provided a submission on behalf of the respondent. Mr Colin Kennedy wrote on his own behalf.

## POSITION OF THE PARTIES

9. Mr Gibson BL submitted that the applicant had failed to prosecute his application for a new tenancy before the Lands Tribunal and as a direct result of same, including the failure to attend any reviews, the respondent sought its costs. He further submitted that the respondent had in no way contributed to the costs in the matter and as a result of the applicant's failure to prosecute his claim for a new tenancy, the applicant's claim will ultimately be dismissed. Mr Gibson considered that in such a situation, the appellant had failed to procure a new tenancy and the "event" was that, for all intents and purposes, the respondent had been successful in opposing a new grant. He referred the Tribunal to a number of recent authorities in which the Tribunal had decided on costs and in particular Samuel Stranaghan & Michael Simpson v Townsley BT/33/2011, where the Lands Tribunal had revisited all of the relevant authorities on costs, including Oxfam v Earl and Others and Cox v Clancy. In conclusion Mr Gibson respectively submitted, it was clear costs must follow the event and there were no special circumstances in this particular case which would justify a departure from that course.
  
10. Mr Kennedy did not put forward any legal submissions. He was under the impression that the case has been cancelled "some time ago" as he had advised his agent that he "no longer wanted to proceed with this matter and for him to send a letter stating this".

## STATUTE

11. Rule 33 of the Lands Tribunal Rules (Northern Ireland) Order 1976 provides:

"33.-(1) Except in so far as section 5(1), (2) or (3) of the Acquisition of Land (Assessment of Compensation) Act 1919 applies and subject to paragraph (3) the costs of and incidental to any proceedings shall be in the discretion of the Tribunal, or the President in matters within his jurisdiction as President.

(2) If the Tribunal orders that the costs of a party to the proceedings shall be paid by another party thereto, the Tribunal may settle the amount of the costs

by fixing a lump sum or may direct that the costs shall be taxed by the registrar on a scale specified by the Tribunal, being a scale of costs for the time being prescribed by rules of court or by county court rules.”

## **AUTHORITIES**

12. In addition to the authorities already referred to previously by Mr Gibson BL, the Tribunal also derives assistance from Sai Cheung and Christine Cheung v Fernheath Developments Limited BT/55/2007. This case concerned the withdrawal of an application under the Business Tenancies Order. The tenant had wished to assign his lease but the landlord had refused consent. The tenant subsequently applied to the Tribunal for an Order that the landlord had unreasonably withheld its consent. After the matter had been fixed for hearing but before the hearing took place, the tenant withdrew because he said the proposed assignee had decided not to proceed. The Tribunal considers the following extracts from the decision to be relevant:

“6. The starting point is the presumption, which follows from the application to withdraw, that the tenants have lost ...”

7. The next question is whether there was anything in the conduct of the case by the landlord that should be reflected in its costs ...”

## **ALLOCATION OF COSTS**

13. As in Cheung the starting point in this case is the presumption which follows from Kennedy’s application to withdraw, that he has “lost”. The Tribunal agrees with Mr Gibson BL, for all intents and purposes the respondent was the “winner”. The Tribunal also agrees with Mr Gibson BL, there was nothing in the conduct of the case by the respondent that should be reflected in its costs. The Tribunal therefore awards the respondent its costs in the reference.

## AMOUNT OF COSTS

14. The respondent had measured its costs:

Macaulay Wray professional fee	£250
VAT	£50
Keith Gibson BL – Brief Fee	£300
Reviews (x2)	£150
VAT	<u>£120</u>
<b>TOTAL</b>	<b>£1020</b>

## CONCLUSION

15. The Tribunal considers the respondent's costs, as submitted, to be reasonable in all the circumstances. The Tribunal therefore awards the respondent its costs of £1,020.

## ORDERS ACCORDINGLY

14<sup>th</sup> January 2016

Mr Henry Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland