

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

**IN THE MATTER OF AN APPLICATION**

**BT/14/2010**

**BETWEEN**

**NOEL COX & SUSAN COX – APPLICANTS/TENANTS**

**AND**

**MARTIN CLANCY – RESPONDENT/LANDLORD**

**Part III – Costs**

**Re: Petrol Filling Station and Retail Shop, Belcoo, County Fermanagh**

**Lands Tribunal - Mr M R Curry FRICS MCI.Arb Hon.Dip.Rating**

**Background**

1. By a decision made 27<sup>th</sup> August 2010 ('the Part I Decision') the Tribunal decided that Martin Clancy had unsuccessfully opposed the grant of a new lease to Noel Cox and Susan Cox ('the Coxes'). By decision made 14<sup>th</sup> March 2011 ('the Part II Decision') the Tribunal decided that the contractual term of the new lease should terminate on 17<sup>th</sup> March 2015 and also that the landlord should have an option to break on limited grounds with a date for termination not earlier than January 2014.
2. The parties have reached agreement on all the other terms of that new lease.

**Procedure**

3. Oral submissions were received from Wayne Atchison BL and Nessa Fee BL.

**Positions**

4. Mr Atchison BL suggested that the Coxes were entitled to their costs for both the Part I and Part II decisions.
5. Ms Fee BL suggested that the Coxes should be entitled to only 50% of their costs for Part I and in Part II there should be no Order as to Costs.

## Discussion

6. The Tribunal was referred to:
  - Oxfam v Earl & Others (1996) BT/3/1995;
  - Fujitsu Telecommunications Europe Ltd v Brunswick (9 Lanyon Place) Ltd Part II (2003) BT/90/2002; and
  - Tarwood Ltd v Antonino Giordano & Anr Part II (2010) BT/38/2009 & BT/39/2009.
7. The Tribunal was shown correspondence that was marked “without prejudice save as to costs” but did not find anything in that correspondence in the nature of an offer to settle.
8. In Part I Mr Clancy was unsuccessful in his opposition to the grant of a new tenancy and it follows that there is a presumption that the Coxes should have their costs.
9. However Ms Fee BL suggested that the Coxes should be entitled to only 50% of their costs as significant costs had been incurred on an important issue on which Mr Clancy had succeeded. At the Part I stage, the issue for the Tribunal was a question of Mr Clancy’s intention. The Tribunal adopted the widely accepted distinction between two aspects of intention - the subjective assessment of the state of mind of the landlord and an objective assessment of the realistic prospect of implementing the intention held. Although Mr Clancy did not succeed on the second aspect the Tribunal accepted that he did succeed on the first aspect. The Tribunal does not agree with Mr Acheson BL that the two aspects were too intertwined for an allowance to be made. The Tribunal concludes that there should be some reduction in the costs recoverable by the Coxes.
10. In Part II Mr Clancy had sought a term of a few months. The Coxes had sought a term of 10 years and in the alternative a break clause after about 5 years. In effect the Tribunal awarded a term of 5 years with a Landlord’s option to break about 1 year earlier. The Tribunal agrees with Miss Fee BL that Part II was in the nature of no fault litigation, there was no clear winner and therefore the presumption should be that there would be no Order as to costs. However, it also agrees with Mr Atchison BL that Mr Clancy attempted to treat Part II as an opportunity to reverse the Part I decision. That added unreasonably and unnecessarily to the costs of both parties in the Part II hearing and so the Coxes should recover some of their costs.
11. Mr Atchison BL also referred to Mr Clancy’s conduct prior to the Hearing but the Tribunal is not persuaded that this was such that it should be reflected in the award of costs.

12. Adopting a broad approach the Tribunal offsets the adjustment to costs in the Part I hearing against that for the Part II hearing. It therefore concludes that the Coxes are entitled to their costs for the Part I hearing and there should be no Order as to Costs for the Part II hearing.

**ORDERS ACCORDINGLY**

**8<sup>th</sup> August 2011**

**Michael R Curry FRICS MCI.Arb Hon.Dip.Rating  
LANDS TRIBUNAL FOR NORTHERN IRELAND**

**Appearances**

**Applicants: Wayne T Atchison BL instructed by Cooper Wilkinson, Solicitors**

**Respondent: Nessa Fee BL instructed by Murnaghan Fee, Solicitors**