

**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/30/1998**

**BETWEEN**

**JAMES KERR, GABRIEL SHERIDAN, MARIA WILSON &  
MAURA LUNDY - APPLICANTS/TENANTS**

**AND**

**ABC CREDIT UNION - RESPONDENT/LANDLORD**

**Premises: 491/495 (part of) Crumlin Road, Belfast**

**Lands Tribunal - Mr Michael R Curry FRICS FSVA IRRV ACI.Arb**

**Belfast - 22<sup>nd</sup> April 1999**

Under the Business Tenancies (NI) Order 1996, the termination of a business lease may be triggered by either the Landlord or the Tenant:

- (1) a Landlord may serve a 'Notice to Determine' on a Tenant, or
- (2) a Tenant may serve a 'Request for a New Tenancy' on a Landlord.

If a Landlord wishes to oppose the grant of a new tenancy it may either:

- (a) serve a Notice to Determine in the prescribed form, setting out its grounds of objection, or
- (b) respond to a Request by serving a counter-notice, stating its opposition, and grounds.

If (b), Article 7(6) applies:

“the Landlord shall serve notice on the Tenant -

- (a) ....
- (b) that he will oppose a tenancy application by the Tenant (and any such notice shall state on which of the grounds mentioned in Article 12 the Landlord will oppose the application)”.

There is no prescribed form for that counter-notice.

In this application, the Applicants/Tenants had triggered the procedure and the Respondent/Landlord then served a Notice which was in the form of a Notice to Determine and that, it seems clear, is what it was intended to be. However Article 7(4) provides that, once one party has triggered the procedure, it cannot be triggered by the other, and there was no suggestion that the Tenant's Request was, in any way, defective. But, the requirements, of the prescribed form of Landlord's trigger notice, include, among other things, the required content of a Landlord's counter-notice. So this notice included all that was required of a counter-notice but was flawed in that it purported to be a Landlord's Notice to Determine. Was this an error that can be overlooked?

The parties agreed that it was desirable that the issue be determined as a preliminary point. The agreed question put to the Tribunal was this:

"Does the Landlords' Notice to Determine under Article 6 of the 1996 Order, which includes a statement to the effect that the Landlord will oppose a tenancy application, constitute "Notice" that he will oppose a tenancy application for the purposes of Article 7(6)(b) of the Business Tenancies (NI) Order 1996?"

Mr Adrian Colmer BL instructed by James T Johnston & Co appeared for the Applicants/Tenants. Mr Joseph McEvoy BL instructed by Murtagh Breen & Co appeared for the Respondent/Landlord.

Mr Colmer drew attention to the inconsistencies between the notice and the requirements, noting not just the Headings but also the specification of a different date of termination. He submitted that the notice should be considered in the context of the Order as a whole and not just in the context of Article 7(6)(b).

Mr McEvoy submitted that whether one called the notice a Notice to Determine or not, it contained the entire substance of what was required and, importantly, the Applicant/Tenant had not alleged any prejudice as a result.

The Tribunal was referred to a number of authorities, including M & P Enterprises (London) Limited v Norfolk Square Hotels Limited & Others [1994] 1 EGLR 129 in which the same point arose under the equivalent legislation in England, i.e. whether Section 25 notices under the Landlord and Tenant Act (1954) were effective counter-notices to a request, made under Section 26, for a new tenancy. The Court held that they were and that the specified ground was a ground upon which the landlords may rely but the judgement on that issue was more conclusive than reasoned.

In the light of more recent cases concerning the validity of notices, the Tribunal has, on reflection, considered it proper to review whether that conclusion represents the law as it currently stands.

In Mannai Investment Company Limited v Eagle Star Life Assurance Company Limited [1997] 1 EGLR 57 the House considered the correct approach to the construction of a Notice under a contract. Lord Steyn set out a number of propositions and stated, at (2):

“... the question is not how the Landlord understood the Notices. The construction of the Notices must be approached objectively. The issue is how a responsible recipient would have understood the Notices. And in considering this question the Notices must be construed taking into account the relevant objective contextual scene”.

He expanded:

“... the enquiry is objective: the question is what reasonable persons, circumstanced as the actual parties were, would have in mind. It follows that one cannot ignore that a reasonable recipient of the notices would have had in the forefront of his mind the terms of the leases.”

And later, he said:

Counsel for the Landlord “invited your Lordships to speculate that the tenant’s error was due to a mistake of law rather than a typing or clerical error. That argument, if accepted, would drive a juggernaut through the objective tests. Speculation about the subjective intention of the tenant is irrelevant. The only question is how a reasonable recipient would have understood the notice.”

More recently, in York & Another v Casey & Another [1998] 2 EGLR 25, the Court of Appeal held that there was no material distinction between the approach to the validity of notices in a case involving a notice in a statutory context and the approach which the House, in Mannai, had said should be adopted in a contractual setting.

To reflect the circumstances of this application, the test may be refined. The issue is how a responsible recipient would have understood the notice. And in considering this question the notice must be construed taking into account the relevant objective scene which included:

- (i) the circumstances that the tenant had triggered the procedure;

- (ii) the tenant was, or must be presumed to be aware, of the statutory requirement that, if the landlord wished to oppose the grant of a new tenancy, it must respond by a counter-notice within a time limit; and
- (iii) the notice included all that was required of a counter-notice but, if it is was one, it clearly was flawed, and it purported to be something it could not be.

The enquiry is objective: the question is what a reasonable person, in these circumstances, would have in mind.

The Tribunal cannot ignore that a reasonable recipient of the notices would have had in the forefront of his mind the statutory provisions relating to a landlord's opposition, and would have construed the notice in that light. It follows that the Tribunal finds that the notice was effective, as a counter-notice, to inform a tenant of everything of which it was entitled to be informed, under the Order.

In "Business Tenancies" LRAC No. 2, 1994, the Law Reform Advisory Committee for Northern Ireland, in its review of the notice procedure, was concerned that Tenants should not lose their statutory rights over what was no more than a technicality. Taking a broader view of this application, the Tribunal concludes that if it had come to the contrary conclusion, the effect would be that the Respondent/Landlord should lose its statutory rights over what was no more than a technicality.

Although is it of course desirable that notices should not contain errors, this is an error that can be overlooked. Other issues may have arisen if the Applicants/Tenants had actually been prejudiced as a result of the flaws.

The Tribunal answers the question in the affirmative: yes, the Landlord's Notice to Determine does constitute "Notice" that it would oppose a tenancy application.

#### **ORDERS ACCORDINGLY**

**5<sup>th</sup> May 1999**

**MR M R CURRY FRICS FSVA IRRV ACI.Arb  
LANDS TRIBUNAL FOR NORTHERN IRELAND**

**Appearances:**

**Mr Adrian Colmer BL instructed by Messrs James T Johnston & Co, Solicitors, for the Applicants/Tenants.**

**Mr Joseph McEvoy BL instructed by Messrs Murtagh Breen & Co, Solicitors, for the Respondent/Landlord.**