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/33/2011

BETWEEN

SAMUEL STRANAGHAN & MICHAEL SIMPSON – APPLICANTS/TENANTS

AND

IRIS MAY TOWNSLEY – RESPONDENT/LANDLORD

Re: 1a Castle Street/1 High Street, Carrickfergus

PART III

Lands Tribunal - Henry M Spence MRICS Dip.Rating IRRV (Hons)

Background

1. By a decision made 25th April 2012 ("the Part I Decision") the Tribunal decided that the respondent had unsuccessfully opposed the grant of a new lease to the applicants. By a decision made 14th June 2013 ("the Part II Decision") the Tribunal decided that a mutual option to break should not be exercisable earlier than 1st November 2015.

2. The parties had reached agreement on all other terms of the new lease.

Procedure

3. The issue of costs was dealt with by written submissions. Bernard Brady BL wrote on behalf of the applicants and Julie Ellison BL on behalf of the respondent.

Positions of the Parties

4. Mr Brady BL submitted that the applicants were entitled to their costs for both the Part I and Part II hearings.

5. Ms Ellison BL submitted that no order for costs was required.

Statute

6. Rule 33(1) of the Lands Tribunal Rules (Northern Ireland) 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."

Case Law

7. The Tribunal was referred to the following authorities:

- Oxfam v Earl & Others BT/3/1995

  ".... the starting point on the question of costs is the general presumption that, unless there were special circumstances, costs follow the event, i.e. that in the ordinary way the successful party should receive its costs."

  And

  "*'No fault nor principle' disputes*
  Although in general the Tribunal should be guided by Court practice, there is a special class of Reference that often comes to the Tribunal and which is less common in the Courts and that may be termed 'no fault nor principle' litigation. Unlike much other litigation, there is no presumption, flowing from the offer of a figure for the new rent in this type of Reference in which the only real issue was the amount of rent, that an Offeror is in some sense admitting he was at fault or in breach of contract or has infringed some right or was wrong on a point of legal or valuation principle. The circumstances are closer to those of party to typical 'no fault nor principle' arbitrations, such as many rent reviews, than a Court Action."

- Cox v Clancy (Part III) BT/14/2010

  This case is similar to the subject case in that the respondent had unsuccessfully opposed the grant of a new lease to the application ("the Part I decision") and in a further decision ("the Part II decision") the Tribunal decided on the contractual term of a new lease and a landlords option to break. A subsequent Part III hearing decided on costs for the "Part I" and "Part II" hearings and the following quotes are relevant to this reference:

  "(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..."

- Beaverbrooks the Jewellers Limited v Portland (NI) Limited BT/65/2012

"The Part I Costs"

8. Mr Brady BL submitted that the general principle was that costs follow the event, that is, the successful party should receive its costs. He considered there were no special circumstances connected with the subject proceedings which would warrant a departure from that rule.

9. Ms Ellison BL referred to Cox v Clancy Part III wherein the respondent successfully argued that the applicants should only be awarded 50% costs for Part I of the case as the respondent had been successful on an important issue before the Tribunal, namely demonstrating the requisite subjective intention.

10. In Cox v Clancy the Tribunal accepted that the respondent had demonstrated his subjective intention to occupy the premises and concluded there should be some reduction in the costs recoverable by the applicants as he had succeeded on this issue. In the subject "Part I" reference the Tribunal concluded that "Mrs Townsley has not as yet shown that she has 'moved out of the zone of contemplation - out of the sphere of the tentative, the provisional and the exploratory'." The respondent had not therefore demonstrated her subjective intention to occupy the premises. She did not succeed on any issue.

11. The Tribunal agrees with Mr Brady BL, there were no special circumstances in the Part I hearing to depart from the general presumption that costs follow the event. The Tribunal therefore concludes that the applicants are entitled to their costs for the "Part I" hearing.

"The Part II Costs"

12. Ms Ellison BL submitted that in deciding on costs in the "Part II" reference the 'no fault or principle' rule as outlined in Oxfam v Earl and Cox v Clancy should be applied. On that basis she considered that no award as to costs was necessary.

13. Mr Brady BL submitted that on the day of the "Part II" hearing, the respondent substantially agreed to all the elements of the applicants Article 7 Notice, save for the timing of the break clause which was subsequently determined by the Tribunal. He considered that in all aspects other than the issue of the break clause the applicants were the substantive winners. On that basis he further considered that save for an adjustment in respect of the issue of the timing of the break clause the applicants were entitled to all their costs in respect of the "Part II" hearing.

14. The Tribunal agrees with Ms Ellison BL that the 'no fault no principle' rule as outlined in Oxfam v Earl should be applied to the "Part II" reference. There was no breach of contract, no infringement of some right and no decision required on a point of legal or valuation principle. The Tribunal therefore makes no award as to cost for the "Part II" hearing.

Conclusion

15. The Tribunal awards the applicants their costs for the "Part I" hearing and makes no award as to costs for the "Part II" hearing.

ORDERS ACCORDINGLY

7th April 2014

Henry M Spence MRICS Dip.Rating IRRV (Hons)
LANDS TRIBUNAL FOR NORTHERN IRELAND