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/36/1999
BETWEEN
JAMES RAINEY T/A FIRST CLASS TAXIS - APPLICANT/TENANT
AND
H ROGERS & SON LTD - RESPONDENT/LANDLORD

Premises: Unit 8, 190 Saintfield Road, Belfast

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

Belfast - 14th June 1999

The Respondent/Landlord was a Company that owned a parade of shops, with off-street parking, at 190 Saintfield Road, Belfast. The Applicant/Tenant was a taxi business ('First Class Taxis') that occupied a first floor office above the shops. For some 10 years the parties had enjoyed a relationship as landlord and tenant but problems had developed, particularly about where the taxis parked.

The lease was coming to an end and the Landlord opposed the grant of a new tenancy, under Article 12 of the Business Tenancies (Northern Ireland) Order 1996, on Grounds (a) and (c). In particular it complained:

- that the Tenant had not complied with repair and maintenance obligations,
- of other substantial breaches by him of obligations under the current tenancy, and,
- other reasons connected with the Tenant's use or management of the holding.

Mr Gerard McClure appeared for the Respondent/Landlord and Mr Michael Keogh BL appeared for the Applicant/Tenant.

The Tribunal was referred to a number of authorities:

Sweeney v Newry UDC BT/21/1967
Ready Mixed Concrete (Ulster) v McCaffrey BT/63/1990
Turner & Bell v Searles (1997) 33 P&CR 208
Lyons v Central Commercial [1958] 2 All ER 767

Eichner v Midland Bank [1970] 2 All ER 597
Betty's Cafes Ltd v Phillips [1958] 1 All ER 607
Beard v Williams (1986) 278 EG 1087

Mr Denis Herbert Rogers and Mr Philip Denis Rogers, both Directors of the Landlord Company, and Mr James Rainey of the Taxi Business, gave evidence.

Some years before First Class Taxis had moved to the subject premises, the Landlord had let to it part of a yard at the rear, for parking, and later, a portacabin had been installed for use as an office. Then, the Landlord had obtained planning permission for, and developed the parade of shop units and, later again, obtained permission for a store over the shops to be changed to office use.

The location was on a short slip/loop road off a main arterial route out of the city, on-street parking was not possible on the main road, there were no convenient side streets and the Landlord had difficulty in complying with the car parking requirements of the Planning Authority. He had had a series of meetings on site with planners, local councillors and an Alderman, who lived beside the parade. Not without difficulty and expense, their requirements were met, with a car park that provided some spaces directly in front of the shop units and some opposite, between the slip/loop road and the main road. In 1994, the Landlord let to First Class Taxis a first floor office together with a parking bay for three cars (the 'reserved bays'). The somewhat isolated location and the nature of other occupiers in the parade, probably reflecting its location, put car parking space at a premium: the other occupiers included a restaurant with a 'takeaway', two 'takeaways', an off-licence and a bank with a ATM. In addition to the three reserved bays, extra parking was available to First Class Taxis, between the filling station and premises occupied by another tenant. First Class Taxis covenanted not to permit taxis to be parked anywhere else outside the Landlord's premises (the 'public spaces').

The 1994 lease included an option for a further three years and a new lease, dated 31st December 1996, granted a further term of 3 years from 1st September 1996 expiring on 31st August 1999.

Over the years, the relationship between Landlord and Tenant had been fairly amicable but the Landlord had received complaints from other tenants about the taxi drivers and employees (the radio 'despatchers') parking in the public spaces.

The main issue was to do with parking in the public spaces but there were other complaints; about security and maintenance. It is the cumulative effect of the findings under all the

grounds of objection that must be taken into account but it is convenient to first to deal with them individually.

Access to the first floor offices was along the side of the building and protected by a gate in a palisade fence. The lease required the Tenant to meet the Landlord's reasonable requirements for adequate security but, at times, the pedestrian gate had been left unlocked and the dark passageway had been used as a toilet. The Landlord questioned whether the tenant had complied with the requirement, in every third year of the term, to paint all the internal and front external parts of the premises usually painted.

The office was used as a meeting place for the drivers and the decoration had suffered somewhat as a result. Mr Keogh submitted that the state of repair had to be judged at this time and there was no evidence of disrepair. From the evidence and its inspection the Tribunal is satisfied that the premises had been painted and decorated from time to time but perhaps not as strictly required under the terms of the lease. On balance, primarily taking into account the current condition, the Tribunal is not persuaded that much weight should be attached to this ground of objection.

Although there may well have been serious problems with the security of the pedestrian gate from time to time, the Tribunal finds that not to add any great weight of objection. However, if requested to do so, the Tribunal would be minded to approve a term in a new lease that specifically required the tenant to provide and maintain a remote release locking arrangement.

The Tribunal now turns to the main bone of contention - First Class Taxis parking in the public spaces.

Although, in the 1994 lease, there was a covenant, prohibiting First Class from parking taxis in the public spaces, it was not repeated in the current lease and the Tribunal finds no reason to conclude that the express covenant in the former was included, by implication, in the latter. If the Tribunal had concluded otherwise then, in coming to a view on the importance of breaches, it would have taken into account the lack of evidence of any attempt by the landlord to seek the remedies that would then have been available to it.

That does not mean that the landlord had no legitimate grounds for complaint. It was clear that the Tenant had considered his use of parking spaces was regulated and Mr Keogh accepted, and in the view of the Tribunal properly accepted, that there was an informal understanding of a regulatory scheme prohibiting parking outside the three reserved bays, in the public spaces.

Although the parking issue may not have related comfortably to the first limb of ground (c) i.e. 'obligations under the current tenancy', Mr Keogh accepted that the ambit of the second leg ie "any other reason connected with the tenant's use or management of the holding" was quite wide and went beyond landlord and tenant contractual issues. He accepted that there was considerable difficulty in arguing that car parking was not a reason connected with the tenant's use and management but did not formally concede the point.

The despatchers and taxi operators, "licenced" by First Class Taxis, visited the subject premises, in connection with the tenant's business and, in that way, were or ought to be, subject to his control. In the circumstances, the Tribunal takes the view that the tenant's management of their use of the public spaces, on another part of the landlord's premises and against the background of the informal understanding, was a matter within the category of the second leg of ground (c).

Mr Denis Rogers said he had had complaints from other tenants, especially from the Bank. He did not complain of any financial loss as a result of the parking problems and when it was suggested to him that a failure to re-let a vacant unit might be attributable to car parking problems, he declined to go that far. He emphasised that he had nothing personal against Mr Rainey, it was simply the problem of too many taxis. He insisted that often there were lots more than three taxis in the car park.

Mr Philip Rogers looked after the day to day running of the landlord's business. He had received complaints from traders and he produced photographs, one of which showed six taxis parked outside the reserved bays. He said a previous manager of the bank had been particularly concerned that a despatcher persisted in parking directly in front of the bank.

Mr Rainey outlined his business operations. The trade was not based on customers coming to the premises. Part of the business was contract work, for example, regular runs taking disabled children to school. That accounted for about 70% of his business, the remainder was runs in response to telephone callers and using radioed instructions to taxi operators. Mr Rainey had 20 or more drivers on his books, 8 operating during the day. Each driver paid him for a "licence" and there could be a maximum of perhaps 2 dozen drivers working for him at the Christmas period.

Many of the contract runs were to assist disabled customers, and as their needs could change at short notice, even for the contract work, the business needed to be flexible and have a telephone contact point. He did not encourage drivers to go to the premises but they did need a base; somewhere to go to, from time to time, to have a cup of tea or something

to eat, use the toilet or to take a break when business was slack. A number parked during the lunch hour and some during slack periods at night. He thought it was not often that there would be more than three cars at the premises and if prohibited from using the public spaces they could park round the back of the premises. Recently work had been done to the petrol station and that made parking difficult. If drivers did park outside the reserved bays, he said they parked on the other side from the shops. Drivers may, from time to time, have called to eat in the restaurant. Mr Rainey maintained he enjoyed good relations with the restaurant, bank and carryout.

There was ambiguous hearsay evidence about tenants' complaints and tenants not complaining: on the one hand, tenants had written letters expressing their concern but, on the other hand, Mr Rainey had gone round with a 'petition' and had obtained signatures from staff at most of the other units confirming that they had no complaints about the taxis causing any inconvenience to themselves or their customers.

Mr Rainey had complained about customers of other tenants in the parade using his reserved bays. The Landlord had painted "Taxi" in large letters on them but there was nothing in the other tenant's leases regulating their use of the reserved bays. In the view of the Tribunal, that excuse carries little weight: the landlord had taken adequate steps to protect the reserved bays and it would be impractical to expect the other tenants to control their customer parking to anything like the extent that Mr Rainey could control his licenced drivers.

Mr Rainey unambiguously said he would accept a covenant in a new lease prohibiting First Class Taxis parking in the public spaces. When it was put to him that he had not complied with such a covenant in the earlier lease, and asked how he would now comply, he said he would "lean more seriously" on the drivers. Even if there were such an express provision in a new lease, Mr Rodgers could not see it working, but, if forced to accept a new lease, would want that to be included.

The Tribunal accepts that, from time to time, there were complaints by other tenants. As might be expected, at some times the problem appears to have been more severe than at others and to have concerned some more than others. But, the Tribunal accepts that the complaints were an annoyance to the landlord and the Company had grounds for an objection under the Order.

Looking at the Tenant's conduct as a whole, it has found that he was at fault and the Landlord had grounds for complaint. However, the Tribunal is not persuaded that he was so much at fault that it ought to exercise its discretion to deprive him of the lease renewal that

the Order otherwise entitled him to receive. It is a matter of degree and the Tribunal's reasons are as follows.

- On the parking issue:
  - There was no relevant covenant in the lease, and the Tribunal finds the conduct of the tenant did not amount to a substantial breach of an obligation under the tenancy.
  - Although there was no formal regulatory regime restricting the tenant's use of the public car park spaces, there was an informal management scheme and other tenants had complained. But:
    - There was some ambiguity in the written evidence, and no tenants came to give first hand evidence of their complaints.
    - There was inconvenience, but no evidence of any real loss to the Landlord.
  - The Tribunal accepts that an appropriate covenant in a new lease would not entirely remove the problem but it would strengthen the landlord's hand by giving the landlord instant remedy for breach.
- On the other issues
  - The Tribunal is not persuaded that the state of repair and security arrangement, at the time of the Notice or Hearing, added any significant weight to the Landlord's grounds of opposition.

The Tribunal has doubts about the relevance of the difficulty the tenant would find in attempting to operate from home, the lack of suitable alternative accommodation available at reasonable expense and the significance of the question of whether the tenant was considering selling his business. These are not factors to which the Tribunal has attached any measurable weight in reaching its conclusions.

Accordingly, the Tribunal finds the Respondent/Landlord has not succeeded in its opposition to the grant of a new tenancy but does conclude that any new lease shall contain appropriate provisions regulating car parking by the Applicant/Tenant, his employees and licensees.

ORDERS ACCORDINGLY

20th August 1999

MICHAEL R CURRY FRICS FSVA IRRV ACI.Arb
LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:

Michael Keogh of Counsel instructed by Messrs Napier & Sons for the Applicant.
Gerard McClure, Solicitor of Messrs McClure & Co for the Respondent.