

LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976

BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

IN THE MATTER OF AN APPLICATION

BT/48/2022

BETWEEN

DANIEL SEMELAK T/A SEMO AUTO – APPLICANT

AND

BRUNSWICK MANOR LIMITED – RESPONDENT

Re: Unit 94 Dunlop Commercial Park, 3 Balloo Link, Bangor

PART 2

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

Background

1. Mr Daniel Semelak (“the applicant”) is the tenant of premises at Unit 94 Dunlop Commercial Park, 3 Balloo Road, Bangor (“the reference property”) subject to a lease dated 1st February 2019 for a term of three years. The lease expired on 1st February 2022 and the applicant has made an application to the Lands Tribunal requesting a new tenancy.
2. Brunswick Manor Limited (“the respondent”) is the landlord of the reference property and the respondent contends that the applicant’s tenancy application is defective and should be struck out. This is the issue to be decided by the Tribunal.
3. This is the second preliminary hearing in the reference. In the Part 1 hearing the Tribunal exercised its statutory powers under Article 10(5) of the Business Tenancies (Northern

Ireland) Order 1996 (“the Order”) to grant the applicant an extension of time for submitting his tenancy application.

Procedural Matters

4. The parties have agreed that this preliminary issue should be decided by way of written submissions only. The Tribunal has received written submissions from Mr Nick Compton BL, instructed by John Boston & Co Solicitors, on behalf of the applicant and Mr Mark McAdam, Solicitor of CMG Cunningham Dickey Solicitors. The Tribunal is grateful to the legal representatives for their helpful submissions.

The Law

5. Article 7(3) of the Order provides:

“7.-(3) A tenants request for a new tenancy shall not have effect unless it is made by notice in the prescribed form served on the landlord and sets out in general terms the tenants proposals as to –

- (a) the property to be comprised in the new tenancy (being either the whole or part of the property comprised in the current tenancy);
- (b) the rent to be payable under the tenancy;
- (c) the duration of the new tenancy; and
- (d) the other terms of the new tenancy.”

6. Rule 38(1) of the Lands Tribunal Rules (Northern Ireland) 1976 (“the Rules”) states:

“Failure to comply with rules

38.-(1) Non-compliance with any of the provisions of these rules shall not render the proceedings or anything done in pursuance thereof invalid, unless the President or the Tribunal so directs.”

The Issues

7. The Tribunal agrees with Mr Compton BL, there are two issues to be decided by the Tribunal:
- (i) Does the tenant's request for a new tenancy comply with the statutory requirements.
 - (ii) If the answer to question (i) is "no", should the application be struck out by reason of non-compliance with the relevant rules?

Compliance with the Statutory Rules

The Applicant's Submissions

8. With regard to compliance with the statutory requirements, Mr Compton BL submitted:
- (i) The requirements for a new tenancy request are set out in Article 7(3) of the Order. All that is required is that the tenant sets out "in general terms" its proposals as to, inter-alia, the duration of the new tenancy. It makes no other provision about how the duration should be defined or with what degree of precision. The statutory requirement to provide the information "in general terms" makes abundantly clear that no particular degree of precision is required. All that is required is that the landlord has a general understanding of the application being made.
 - (ii) The respondent complains that the applicant "does not provide any proposal" as to duration. That is not the case, the proposed duration is to be confirmed. The nature of a new tenancy request is that the tenant wishes to continue to occupy the premises for a time. It is obvious to the respondent that the applicant hopes to continue occupying the premises. There is simply no prejudice to the respondent from the inclusion of "tbc" rather than a duration measured in months or years. It may be otherwise if the respondent were willing to grant a certain duration of new tenancy, but that is not the case here. The nature of the application was set out "in general terms" with sufficient particularity that the respondent could reasonably understand what the application was about. The Tribunal's interlocutory powers could deal with any other matters arising.

(iii) Accordingly, the answer to question (i) is “yes”.

The Respondent's Submissions

9. Mr McAdam:

- (i) In his application the applicant has indicated his proposals for a new tenancy were set out in his request for a new tenancy and the duration of the new tenancy is “tbc”, which the respondent takes to mean “to be confirmed”.
- (ii) The applicant’s request for a new tenancy, dated 29th April 2022, also includes “tbc” as the proposed term of the new tenancy. Article 7(3) of the Order states that a tenant’s request “shall not have effect” unless it sets out in general terms the tenant’s proposals for among other things, the duration of the new tenancy.
- (iii) The Order makes it obligatory for a tenant to set out the terms that it wants in the request for a new tenancy. In his application to the Tribunal the applicant refers to his request for a new tenancy which is defective as it does not provide any proposal for the duration of the new tenancy.
- (iv) The application is therefore defective.

The Tribunal

- 10. A tenant’s request for a new tenancy is a formal legal document and once served, has precise legal consequences and which is intended to be treated by the landlord as the basis upon which he can decide whether the terms proposed by the tenant are reasonable and acceptable to him.
- 11. The Tribunal agrees with Mr McAdam, the term “tbc” is too vague and does not provide the respondent with sufficient information as to the proposed duration of the new tenancy. If the term “tbc” is acceptable, then a tenant could use “tbc” for all of his proposals for a new lease, thus rendering the tenant’s request Form EA totally meaningless.

12. The Tribunal's answer, therefore, to question (i) is that the tenant's request for a new tenancy does not comply with the statutory requirements.

Should the Application be Struck Out?

13. Mr Compton BL:

- (i) Even if the answer to question (i) is no, it still does not follow that the application should be disposed of at this stage. The discretion rests with the Tribunal as per rule 38.
- (ii) Although the respondent requests that the Tribunal exercises its discretion, it has chosen to provide no principled reason on why it should do so. This is astonishing in a case where it seeks to have a summary disposal of the new tenancy application.
- (iii) It is axiomatic that a case should only be summarily struck out where there are compelling reasons to do so. Mere irregularity is not such a reason. That is why the rules provide that non-compliance does not invalidate proceedings without further order. The presumption is that non-compliance is merely an irregularity.
- (iv) This is equivalent to the position arising under Order 2 rule 1 of the Court of Judicature (NI) 1980 which provides that:

“... at any stage in the course of ... proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these Rules ... the failure shall be treated as an irregularity and shall not nullify the proceedings.”
- (v) The Supreme Court Practice 1999 Edition at paragraph 2/1/3 also states:

“The authorities show that O2, r.1 should be applied liberally, in order, so far as is reasonable and proper, to prevent injustice being caused to one party by mindless adherence to technicalities in the rules of procedure.”

- (vi) While there are recognised circumstances where a Court may be slow to waive an irregularity (such as where the validity of a writ has expired and an application to extend its validity would not be successful), the focus is on ensuring justice is done as between the parties.
- (vii) The respondent can point to no prejudice and instead simply asks the Tribunal, without more, to make a direction. The natural and ordinary consequence of any defect the respondent may prove is that the application remains valid and there is no reason at all why the application should be struck out at this stage. Instead, the Tribunal should have the opportunity to consider the substance of the dispute and to form its own views on whether a new tenancy should be permitted in accordance with the relevant statutory scheme.
- (viii) Accordingly, the answer to question (ii) is “no”.

Mr McAdam

- 14. The purpose in providing the proposed duration of the new tenancy is that the respondent and the Tribunal can properly consider the application. The respondent submits that the application is too vague to be capable of its consideration.
- 15. Rule 38 of the Rules provides that failure to comply with the Rules will not render proceedings invalid unless the Tribunal so directs. The respondent respectfully requests the Tribunal to exercise its discretion and strike out the application.

The Tribunal

- 16. The issue for the Tribunal is does the omission in the tenancy request form of a specific duration for the proposed tenancy warrant the striking out of the entire proceedings, thus denying the applicant his statutory right to a new tenancy under the Order?

17. The Tribunal agrees with Mr Compton BL, the omission in the circumstances of the subject reference is an irregularity which does not warrant the striking out of the entire proceeding.

18. The Tribunal, therefore, declines to exercise its power under Rule 38 to strike out the application and directs that the applicant should provide the respondent with its proposed duration of the new tenancy within one week of the date of this decision.

19. A mention will now be convened at which the Tribunal will issue directions for the consideration of the substantive application for a new tenancy.

20. The issues of costs will be dealt with when the entire proceedings are finally disposed of.

27th January 2023

**Henry Spence MRICS Dip.Rating IRRV (Hons)
Lands Tribunal for Northern Ireland**