

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/57/1998
BETWEEN
GILLIAN CAMPBELL - APPLICANT/TENANT
AND
JOHN RAYMOND FINEGAN & PRISCILLA FINEGAN - RESPONDENTS/LANDLORDS

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

Belfast - 14th April 1999

Appearances

Justin Byrne BL instructed by Messrs McIlldowies appeared for the Applicant/Tenant. Patrick Good BL instructed by David Carson & Co appeared for the Respondents/Landlords.

Terms had been agreed between the parties for the new lease. The rent was agreed at £5,995 per annum, the duration was agreed at 3 years from the 1st December 1998 and the other terms were agreed to be the same as the current lease. The only issue for the Tribunal was the allocation of costs.

The Respondents/Landlords applied for their costs. Mr Good referred to the Notice to Determine served by the Respondents/Landlords and the Tenancy Application, made by the Applicant/Tenant to the Tribunal. The Tenancy Application had proposed that the current lease rent of £4,650 per annum should continue but the terms that now had been agreed were those set out in the Landlords' Notice to Determine. Those could have been accepted straight away and the Tenant had put the Landlords to trouble and expense without achieving anything.

In the absence of exceptional circumstances, costs follow the event and there is no doubt that the Applicant/Tenant lost but the Tribunal now turns to the question of whether there were such circumstances.

Mr Byrne had to accept that the substantive issues had been settled on the terms of the original proposal but contended that matters were not quite as straightforward as they appeared to be.

The Tribunal had openly been informed that there had been negotiations but, to demonstrate the conduct of the tenant, Mr Byrne sought to introduce particulars of a “without prejudice” offer. Mr Good objected.

The Tribunal refused to admit the evidence and now sets out its reasons. The law, on grounds of public policy, protects bona fide negotiations and, unless the appropriate right (to produce an offer in the matter of costs) is reserved, the protection continues even after disposal of the substantive issues. See Walker v Wilsher (1889) 23 QBD 335 CA, Tramountana Armadora SA v Atlantic Shipping Co SA [1978] 2 All ER 870, Rush & Tompkins Ltd v GLC [1988] 3 All ER 737 and Cutts v Head [1984] 1 All ER 597 considering Calderbank v Calderbank [1975] 3 All ER 333. There is a particular “mutuality” that attaches to offers to settle: an offer by one may be in response to an offer by the other. Nothing without prejudice should be looked at without the consent of both parties, otherwise the whole object of the limitation would be destroyed. Although past encouragement of settlements has been of a hands-off variety, current policy more positively makes a Hearing the last resort. There was nothing, before the Tribunal, that would justify lifting the veil.

Mr Byrne submitted that it was not just a case of the Applicant/Tenant doing nothing for a year. The Respondents/Landlords had not opposed the grant of a new tenancy on grounds of alterations but it appears that they had made proposals to carry out work to the premises. Also, a dispute had arisen in connection with some out-buildings, but the parties had taken that issue to another place. She, being uncertain about the proposals, had actively sought alternative premises and, he contended, could not have been expected to accept the offer at the time. Even if costs were awarded against her, it should not be all the Respondents/Landlords’ costs. The Tribunal is not persuaded to depart from the ordinary rule on these grounds and further, accepts Mr Good’s contention that it should not rely on what must remain an incomplete picture of negotiations. It concludes that it should rely, in determining success, on the matters in the notices.

That being so, Tribunal concludes that the Applicant/Tenant should pay the Respondents/Landlords’ costs and so orders. Such costs in default of agreement to be taxed by the Registrar on the County Court Scale.

ORDERS ACCORDINGLY

19th April 1999

**MR M R CURRY FRICS FSVA IRRV ACIArb
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:

Justin Byrne instructed by Messrs McIlldowies, Solicitors, for the Applicant.

Patrick Good instructed by Messrs David Carson & Co, Solicitors, for the Respondents.