

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**IN THE MATTER OF AN APPLICATION UNDER**  
**THE BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996**  
**BT/65/2000**  
**BETWEEN**  
**MARGARET McCANDLESS - APPLICANT**  
**AND**  
**EUGENE LYNCH - RESPONDENT**

**Premises: The Coffee Shop, 134a and 136 Andersonstown Road, Belfast**

**Lands Tribunal - Mr Michael R Curry FRICS Hon.FIAMI IRRV MCI.Arb**

**Belfast - 14<sup>th</sup> February 2001**

In 1994 Eugene Lynch let two shop units at 134(a) and 136 Andersonstown Road, Belfast to Margaret McCandless for 6 years from 1992. The contractual terms of both leases expired in October 1998 and in February 2000 Margaret McCandless requested the landlord to grant a new tenancy for 15 years commencing on 1<sup>st</sup> August 2000. Eugene Lynch did not agree to do that: he opposed a new tenancy on grounds that he intended that the premises would be occupied for a reasonable period for the purposes of a business to be carried on by him. In July 2000 the tenant referred the dispute to the Lands Tribunal, the parties sensibly having agreed that no point would be taken in relation to a defect in the tenant's request. Negotiations between the parties resolved many issues but the question of the landlord's intention remained. The parties agreed the amount of compensation to be paid if the landlord's opposition was successful and, in general terms, provisions for a new lease if the landlord's opposition was unsuccessful.

Patrick Good BL instructed by Cousins Gilmore, Solicitors appeared for the Applicant. Damian McCormick of D G McCormick & Co, Solicitors appeared for the Respondent.

The Business Tenancies (Northern Ireland) Order 1996 ('the Order') gives protection to sitting tenants but does not prevent the landlord from recovering possession when an existing tenancy comes to an end, if he requires the premises for purposes of his own business: Article 12(1)(g) provides that a landlord may oppose the granting of a new tenancy on grounds that

“on the termination of the current tenancy the landlord ***intends*** that the holding will be occupied for a reasonable period -

(i) for the purposes, or partly for the purposes, of a business to be carried on in it by him .....

*(Emphasis supplied)*

The meaning of 'intention' has been the subject of some litigation over the years and was considered in the Northern Ireland Court of Appeal in the context of the Business Tenancies Act (NI) 1964 in McDevitte v McKillop [1994] NIJB 91. In that case the Landlords had fallen at the hurdle of planning permission just before the hearing in the Tribunal and, rather than seeking an adjournment, proceeded on the basis of altered plans.

Carswell LJ (as he then was) referred, at page 95, to the judgement of Asquith LJ in Cunliffe v Goodman [1950] 2KB 237, 253:

“An intention, to my mind, connotes a state of affairs which the party 'intending' - I will call him X - does more than merely contemplate. It connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which in point of possibility, he has a reasonable prospect of being able to bring about by his own act of volition.”

Kelly LJ referred to the observations of Evershed MR in Betty's Cafes v Phillips Furnishing Stores [1957] 1 All ER 1 at 17 which included the following:

“The relevant word is “intends”, a simple English word of well understood meaning. The question whether the intention is at the relevant date proved has, in my judgement to be answered by the ordinary standards of common sense”.

And later, at 18:

“... the proposed course, although it might well have been adopted as one to be aimed at and, if possible, attained, could not or could not easily, be said to be “intended” in the sense of having been finally resolved on.”

Carswell LJ highlighted the dangers of the tribunal relying too much on

“the shifts and changes which took place in the basis of the case put forward on behalf of the [the landlord] and the makeshift nature of the evidence adduced to support the case as finally presented” (see page 94)

instead of

“concentrating its determination upon the reality of [the landlord's] intention” .  
(see page 96)

What was the reality of this landlord’s intention at the time of hearing of this case?

At the commencement of the hearing the Tribunal reminded the parties of the provisions of Articles 27 and 28 of the Order relating to consequences for misrepresentation, failure to fulfil intentions, fraud or the wilful concealment of material facts.

Mr Lynch had submitted a statement of case, dated 31<sup>st</sup> August 2000, and gave evidence at the hearing.

In the statement Mr Lynch explained that though he was the landlord of the Andersonstown Road premises he was also a tenant of premises at the Derriaghy Industrial Park, The Cutts, Derriaghy from which he ran a retail carpet business. The lease of those premises had expired and his landlord there had indicated that it would not grant any new tenancy for any term greater than 3 years.

Mr Lynch said that he had investigated alternative premises in the vicinity of the Andersonstown Road but found that rental levels were high and it would be more economically viable for him to reoccupy his own premises.

At the hearing a letter, dated 2<sup>nd</sup> October 2000, from McConnell Martin, managing agents for the Derriaghy Industrial Park was handed in. In reply to Mr Lynch's solicitor they stated:

“As we are uncertain about the future plans for the above mentioned Industrial Estate, we do not want to grant your client a Lease for a period longer than 3 years. Our preferred option would be to allow Mr Lynch to continue on a quarterly basis allowing flexibility.”

At the hearing Mr Lynch explained that there were about 60 units altogether at Derriaghy Industrial Park. He had been there since 1986/87 and now had about 5,200 square feet of which he used about 2,600 square feet as a retail warehouse. When asked why he did not think of applying to the Lands Tribunal for a longer new lease there, he said he did not want to commit himself for over 3 years because of the decline and change in the area. (The Tribunal expresses no view on the duration of any new tenancy it might have granted in the circumstances.) He said there were now less retailers and wholesalers and no anchor tenant in the park and so less to draw trade to his premises. Recently his business had been just so and so and he attributed that partly to the number of vacant units and partly to a change in character of the park. One of his reasons to move back was to improve the prospect of doing business with passing trade. He was also concerned about sectarian tensions in Dunmurry.

Although the Andersonstown Road premises had a lower ceiling height and would be much smaller (about 1,200 square feet) he envisaged that he would fit it out as more of a showroom and change the emphasis of his business from fitted carpets to rugs. He said that was what the market wanted. He would compensate for size by having a store elsewhere: for the moment he would continue to hold on to part of his premises at Derriaghy but not on a permanent basis.

He said he thought he could do a lot of business at Andersonstown. There were no competing carpet shops on the main road between Belfast and Twinbrook and there was a lot of activity around that area. He was from the Andersonstown area. He outlined unsuccessful attempts to find other premises in the area. If successful in this case, he said he would set up in Andersonstown in a few weeks time. He

proposed to carry out works to the Andersonstown premises including a new window, new suspended ceiling, new lighting, possible a new alarm system and possibly new shop fronts. He was having the work priced at present but content that the cost would be within his means.

He confirmed that his solicitor had advised him of the consequences of not fulfilling his intentions.

Mr Lynch agreed with Mr Good that at the Hearing he had given 3 reasons why he was seeking possession. These were:

1. The short term available at his present location in Dunmurry.
2. The prospect of better business at Andersonstown Road.
3. Sectarian tensions.

Mr Good pointed out that two of the reasons were not disclosed in his Statement of Case. Mr Lynch said that he did not think he needed to put everything down on paper. He agreed that the further reasons he had given at the Hearing maybe should have been included in the Statement but insisted they were not new reasons just added on to boost up his case.

The Tribunal has considered the written and oral evidence and visited the Derriaghy and Andersonstown Road premises.

For the following reasons the Tribunal is persuaded that the reality of Mr Lynch's intention at the time of hearing of this reference was to occupy and use the premises at Andersonstown Road for a reasonable period for his own business purposes - namely his carpet retail business:

1. Although there were differences between the written statement and oral evidence of Mr Lynch, when taken as a whole these were not sufficient to lead the Tribunal to conclude his evidence should not be believed. The Tribunal believes Mr Lynch's evidence that his intention was to occupy and use the premises at Andersonstown Road.
2. The following support the conclusion that Mr Lynch had moved from contemplation to decision:

- (a) It was not clear whether the unwritten reasons (in particular sectarian tension and decline in the industrial estate) behind his intention were always present in his mind, were a crystallisation of a developing scheme or some were new reasons. But, whatever their nature, they did not detract from the fundamental point, the constancy of his intention to occupy and use the premises at Andersonstown Road;
- (b) The underlying reason for wishing to leave the industrial estate - long term insecurity of tenure - was supported by the letter from the managing agents;
- (c) Although the Tribunal attaches less weight to evidence that was not in the original Statement of Case, the viewing of Derriaghy by the Tribunal confirmed Mr Lynch's view that it did not have any major retail attraction.
- (d) The Tribunal accepts that Mr Lynch had reached a considered conclusion that it would be practical to carry out a retail carpet business (although with a different emphasis from his existing carpet business) from the new double shop unit premises;
- (e) Mr Lynch was aware that he would be required to pay substantial compensation under the Order; and
- (f) Sufficient investigations had been carried out by Mr Lynch into matters peripheral to the main issue:
  - (i) in an attempt to find suitable alternative premises in the location and
  - (ii) in connection with the costs of adapting the premises to his needs.

Mr Lynch confirmed that he had been made aware, both by the Tribunal and his solicitor of the provisions in the Order relating to misrepresentation and the consequences of his failure to fulfil intentions.

The Tribunal finds that the respondent landlord, Eugene Lynch, has made out the ground of opposition to the grant of a new tenancy based on Article 12(1)(g) of the Business Tenancies (Northern Ireland) Order 1996. The parties have agreed a date for the termination of the tenancy.

**ORDERS ACCORDINGLY**

**7<sup>th</sup> March 2001**

**Mr Michael R Curry FRICS Hon.FIAVI IRRV MCI.Arb  
LANDS TRIBUNAL FOR NORTHERN IRELAND**

**Appearances:-**

**Patrick Good BL instructed by Cousins Gilmore, Solicitors appeared for the Applicant.**

**Damian McCormick of D G McCormick & Co, Solicitors appeared for the Respondent.**