

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
THE BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996
IN THE MATTER OF AN APPLICATION
BT/72/2000
BETWEEN
MAURICE THOMPSON - APPLICANT/TENANT
AND
CAWOODS OF NORTHERN IRELAND LIMITED - RESPONDENT/LANDLORD

Premises: 32A Main Street, Scarva, Co Down

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

Hearing of Part 1
Belfast - 28th March 2001

Maurice Thompson ('the Tenant') commenced trading as a coal merchant in 1968 in Tandragee and surrounding areas. He said he was then young and fit and worked hard and long hours. The competition included a business in Scarva known as Scarva Coal Stores. He was invited to take over their business and did so. As a result of that, in 1973, he took a monthly tenancy of the subject premises at 32A Main Street, Scarva from the then Landlord Joseph Fisher & Sons Ltd ('Fishers'). The rent was a modest £1.00 per week and he covenanted to use the premises "only for the storage of solid fuel and the garaging of a lorry" and also undertook to purchase at least 2,000 tons of coal per annum from Fishers. In October 1982, Cawoods of Northern Ireland Ltd ('Cawoods') took over Fisher's business and, in 1995, the former landlord's interest was assigned to Cawoods.

For many years Cawoods continued to supply a great deal of coal, often much more than the minimum required, to Mr Thompson. However, in 1999 Cawoods sold their coal business to another company on terms prohibiting Cawoods from selling any further coal to any of their previous customers. No issue arose from that. But, more recently, Cawoods decided to dispose of their property interests and among other things entered into negotiations with Mr Thompson for sale of the Scarva store to him. Negotiations broke down and on 23rd February 2000 the Landlord served Notice terminating Mr Thompson's tenancy on the first day of September 2000 and opposing the grant of a new tenancy on grounds of Article 12(c) of the Business Tenancies (NI) Order 1996:

“That the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy or for any other reason connected with the tenant’s use or management of the holding.”

The parties accepted that the issues arising from the Landlord’s opposition should be dealt with at a partial Hearing, leaving the question of the terms of a new lease, if necessary, to another day.

Mr John Hare of John Hare & Co, Solicitors, appeared for the Applicant/Tenant and called William James Maurice Thompson to give factual evidence.

Mr Michael J Kilfedder of Fisher & Fisher, Solicitors, appeared for the Respondent/Landlord and called Nicholas Howard Ward, a Director of Cawoods to give factual evidence.

Both witnesses helpfully had produced written statements.

As a result of constructive discussions between the parties, by the time of the hearing the conclusive issues were reduced to these:

1. Was Mr Thompson actually in occupation of the store?
2. Mr Thompson had not paid rates on the store for some 17 years. Was that a substantial breach within the meaning of Article 12?
3. If 2 above was a substantial breach, ought that to result in the refusal by the Tribunal of the grant of a new tenancy?

1. *Was Mr Thompson actually in occupation of the store?*

Mr Thompson gave evidence of fitting new doors, improving the appearance of the premises about 5 years ago for a “best kept village” competition. He also gave evidence of more extensive use of the store years ago when solid fuel was more popular for central heating and the anthracite had to be kept dry. In more recent years the use had become more casual and intermittent and fuel was not left there for long:

- Coal arriving at the premises was pre-weighed and pre-packed and if it dried out it would lose weight and offend trading standards; and
- The business was seasonal and not much use of the store would be made over the 16-18 weeks of warmer weather each year.

Mr Howard very fairly conceded that his preliminary conclusion that the premises were vacant was based on supposition and one or two visits by other Directors who had not noted any sign of occupation.

Having heard Mr Thompson's evidence, Mr Kilfedder, properly in the view of the Tribunal, did not pursue the question of occupation to any great length.

On the basis of Mr Thompson's written and oral evidence, which was consistent, the Tribunal finds that, although his actual occupation was more intermittent or casual than it had been in the early years, the thread of continuity of business user remained unbroken up to the present time. The Tribunal concludes that Mr Thompson was in occupation of the premises at the relevant times.

2. *Mr Thompson had not paid rates on the store for some 17 years. Was that a substantial breach?*

At 2(b) of the lease the Tenant covenanted:

"To pay all existing and future rates, taxes, assessments and outgoings in respect of the demised premises whether parliamentary, local or of any other description which now are or may at any time hereafter be assessed, charged or imposed or payable in respect of the demised premises or owner or occupier in respect thereof."

In January 2000, Mr Ward had doubts about whether the premises were occupied and made enquiries of the Rate Collection Agency. They confirmed, in correspondence, there had been no rates paid on the property recently nor from 1st April 1984 and that their records showed that the property had been vacant from then.

In his early years of occupation it appears that an annual rates demand for the premises was sent to Mr Thompson at his home address at Mandeville Drive, Tandragee. But, he moved house in 1984 and, although he received demands for his new premises, from that time on he received no further demands for the Scarva store. In his oral evidence Mr Thompson said that he had paid all rents and rates demanded and that he had never told the Rate Collection Agency that the property was vacant. On the other hand he had never gone to the Agency to ask for a demand.

It follows from the ground of opposition that the conclusive issue is this: did the absence of payment of rates which had not been demanded, amount to a substantial breach by Mr Thompson of his obligations under the current tenancy.

The Tribunal does not agree with Mr Hare that the obligation to pay was confined to rates "charged or imposed" the full expression was "assessed, charged or imposed or payable"

but, on balance, for the following reasons, the Tribunal concludes that the absence of payment of rates did not amount to a substantial breach:

- Although the word “payable” may imply that a Tenant is in breach of the covenant in the lease whether or not the rates have been demanded, and Mr Thompson had done nothing about that for 15 years or so, there was nothing about his conduct that would lead the Tribunal to conclude that he would not remedy any breach and pay the rates if they were demanded;
- Mr Kilfedder very fairly accepted that there was no loss to his client;
- The Tribunal accepts that there was nothing before it that would lead it to conclude that there is any statutory obligation on an occupier to go to the Rate Collection Agency to ask for a rates demand;
- The preliminary view of the Tribunal is that, on a strict interpretation of the rating legislation, rates are “payable” before they are demanded. That approach may or may not be the proper approach to interpretation of the lease terms but there is no need to take that question any further in the context of interpretation of this lease; and
- Although Clause 2(b) is in close proximity to the covenant to pay rent, the Tribunal attaches little importance to that.

3. *If 2 above was a substantial breach, ought that to result in the refusal by the Tribunal of the grant of a new tenancy?*

Mr Kilfedder stressed that the breach was a breach of law and forcefully submitted it was wrong for the Tenant to ignore the obligation to pay rates yet seek the Court’s discretion to grant a new lease. However, as the Tribunal has held that that the absence of payment of rates did not amount to a substantial breach, the question of how the Tribunal should properly exercise its discretion does not arise. But, the Tribunal would not be minded to exercise its discretion in favour of the Landlord in these circumstances.

The Landlord has not succeeded in its opposition to the tenancy application: the Tribunal orders the grant of a new tenancy at a rent and on such terms as may be agreed or, in default of agreement, to be settled by the Tribunal.

ORDERS ACCORDINGLY

24th April 2001

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

Appearances:-

John Hare, Solicitor, of John Hare & Co, appeared for the Applicant.

Michael J Kilfedder, Solicitor, of Fisher & Fisher, appeared for the Respondent.