

**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/95/2000**  
**BETWEEN**  
**AGE CONCERN – APPLICANT**  
**AND**  
**THE HONOURABLE THE IRISH SOCIETY – RESPONDENT**

**Premises: 1 Waterside, Coleraine**

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

**Coleraine – 6<sup>th</sup> September 2001**

The landlord had served notice under the Business Tenancies (Northern Ireland) Order 1996 to determine the tenancy on two grounds under Article 12 of the Order. The first was ground (c):

“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 tenants use or management of the holding;”

The second ground was ground (f):

“that on the termination of the current tenancy the landlord intends –

- i. to demolish a building or structure which comprises, or forms as a substantial part of, the holding and to undertake to a substantial development of the holding; or
  - ii. to carry out substantial works of construction on the holding or part of it;
- and that the landlord could not reasonably do so without obtaining possession of the holding;”

The parties came to an agreement. The landlord would pay the statutory compensation and the tenant vacated the premises. However the parties could not agree the allocation of costs.

Mr Rex Anderson of Anderson & Co, Solicitors appeared for the Applicant/Tenant. Ms H R Alison Millar of Macaulay Wray, Solicitors appeared for the Respondent/Landlord.

The parties agreed that although that the matter should be treated as an application to withdraw under Rule 34 which provides that the Tribunal may permit such withdrawal on such terms as to costs or otherwise as it may think fit. However, the parties also agreed that the presumption that the party applying to withdraw should be treated as 'throwing in the towel' did not apply.

Ms Millar submitted that the application had never seriously troubled the Tribunal, both parties were charities and the Tribunal's discretion should be exercised on the basis that each side pay its own costs.

Mr Anderson submitted that the tenant had to make a tenancy application to the tribunal in order to protect its right to compensation, that had been paid and so the tenant had succeeded.

To reduce the number of unnecessary and wasteful applications to the Lands Tribunal, the Law Reform Advisory Committee for Northern Ireland in their report "Business Tenancies" LRAC No.2, 1994 recommended that "where the landlord's Notice to Determine or Notice of Opposition to a new tenancy relies upon the grounds and sections 10(1)(e), (f) or (g) **and no other grounds**, and the tenant either does not apply for a new tenancy or applies and then withdraws the application, the tenant will have a right to compensation". These grounds (e) to (g) were 'not the tenant's fault' grounds.

However the requirement the landlord should rely "on no other grounds" was not carried through into the legislation. The relevant provisions of Article 23 are:

"23.-(1) Where a landlord-

- (a) has served-

  - (i) a notice to determine a tenancy to which this Order applies, or

*(ii) not applicable*

and the notice states that a tenancy application by the tenant would or will be opposed, on any of the grounds specified in sub-paragraphs (e), **(f)**, (g), (h) and (i) of paragraph (1) of Article 12; and

(b) either-

(i) in consequence of the landlord's notice the tenant does not make a tenancy application or, if he has made such an application, withdraws it, or

(ii) *not applicable*, and

(c) *not applicable*,

then, subject to the provisions of this Order, the tenant shall be entitled on quitting the holding to recover from the landlord by way of compensation a sum determined in accordance with the following provisions of this Article.”

The Tribunal does not agree with Mr Anderson's contention that a tenancy application had to be made. Once a notice includes ground (f) then, whether or not any other ground is specified, the tenant need not make a tenancy application in order to secure his right to compensation. As the landlord had included that ground, the right was established and by going on with the tenancy application the tenant achieved nothing more.

For the reasons outlined above, the Tribunal makes no order as to costs.

#### **ORDERS ACCORDINGLY**

**9<sup>th</sup> October 2001**

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

#### **Appearances:**

**Mr Rex Anderson of Anderson & Co, Solicitors appeared for the Applicant.**

**Ms H R Alison Millar of Macaulay Wray, Solicitors appeared for the Respondent.**