

**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/96/2022**

**BETWEEN**

**MELANIE HARRISON – APPLICANT**

**AND**

**DANIELLE McCARTAN-QUINN – RESPONDENT**

**Re: Lands to the rear of 1 Malone Avenue, Belfast**

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

**Background**

1. Mrs Danielle McCartan-Quinn (“the respondent”) is the owner and landlord of lands to the rear of 1 Malone Avenue (“the reference property”). These lands were acquired by her late husband, Patrick Gerald Quinn, on 21<sup>st</sup> July 1995.
2. By a lease dated 28<sup>th</sup> February 2019 the reference property was let to Melanie Harrison (“the applicant”) for a period of 12 months commencing on 1<sup>st</sup> March 2019.
3. The lease terms included:
  - (i) Applicant “to rent the Parking to the rear of No 1 Malone Avenue/rear of 45/47 Malone Road”.
  - (ii) “Agreement for parking to the rear of said properties for 12 months for the period commencing 01/03/2019 to 28/02/2000 for the total Annual single payment of £2,750.00.”

4. At the end of the initial term a further lease was proposed and prepared by estate agents acting on behalf of the applicant. This proposed lease, however, was defective and was never properly executed.
5. The applicant has effectively been holding over since the expiry of the first lease and both parties were agreed that the applicant has protection under the terms of the Business Tenancies (Northern Ireland) Order 1996 ("the Order"). As a consequence the applicant has been in occupation of the reference property for some four and a half years.
6. The physical factors of the reference property include:
  - (i) Size 1,085 ft<sup>2</sup>
  - (ii) No road frontage
  - (iii) Part concrete/part gravel
  - (iv) Not secure and has open boundaries with the adjoining lands
  - (v) Access is via a laneway to the rear of 1 Malone Avenue and other property fronting the Malone Road.

These were not disputed.

7. The reference property is used by the applicant as a car park in connection with her hotel business at 43 Malone Road. The parties disagreed on the number of cars that could be parked on site. The applicant considered that the site had space for four cars, to allow for access to adjoining car parking and the respondent considered that the site had space for five cars.

8. The applicant has made a tenancy application to the Lands Tribunal under the terms of Article 7 of the Order requesting a new lease. Arising out of that application the parties were agreed that the two issues to be decided by the Tribunal were:

(i) Length of term.

(ii) The rent.

### **Procedural Matters**

9. The applicant was represented by Mr Mark Orr KC instructed by T D Gibson & Co Solicitors. Ms Lisa Moran BL instructed by SDM Solicitors represented the respondents. The Tribunal is grateful to counsel for their helpful submissions.

10. In addition, Mr Brian Wilkinson provided expert opinion evidence on behalf of the applicant. Mr Ian McCullagh provided expert opinion evidence on behalf of the respondent. Mr Wilkinson and Mr McCullagh are experienced Chartered Surveyors, and the Tribunal is grateful to both for their helpful reports.

11. The respondent gave evidence of fact on her own behalf.

### **Position of the Parties**

12. The applicant contended for a five year term at a rent of £2,400 per annum.

13. The respondent considered a one year term at a rent of £5,400 per annum to be appropriate.

### **The Statute**

14. Article 17 of the Order provides:

“Duration of new tenancy

17.-(1) Where the Lands Tribunal makes an order for the grant of a new tenancy, the new tenancy shall be –

(a) a tenancy for such period as may be agreed between the landlord and tenant, or

(b) in the absence of agreement, a tenancy for such period, not exceeding 15 years, as may be determined by the Lands Tribunal to be reasonable in all the circumstances

(2) ...

(3) ...

(4) ...”

15. And Article 18 of the Order provides:

“Rent under new tenancy

18.-(1) The rent payable under a new tenancy granted in pursuance of an order of the Lands Tribunal shall be such as may be agreed between the landlord and the tenant.

(2) In the absence of agreement the rent shall be such as may be determined by the Lands Tribunal to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor, there being disregarded -

(a) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding;

(b) any goodwill attached to the holding by reason of the carrying on thereat of the business of the tenant (whether by him or by a predecessor of his in that business);

(c) ...

(d) ...

(3) ...

(4) Where the Lands Tribunal fixes the amount of rent under this Article, it may by order direct –

(a) that the rent shall be payable in that amount from such date (including a date then past); and

(b) that interest shall be payable on rent in arrear (including rent in arrear by virtue of a direction under sub-paragraph (a) at such rate,

as the Lands Tribunal considers proper in all the circumstances.

(5) ...”.

## **Discussion**

### **Term**

16. The starting point for the Tribunal is the length of term of the previous lease, which was one year. The applicant must therefore prove that it was reasonable in all the current circumstances to depart from a one year term.

17. The applicant was seeking a five year term because, as submitted by Mr Wilkinson:

- (i) It would provide greater security for her hotel business.
- (ii) She had already been in occupation for some four and a half years.
- (iii) The respondent had no current plans for the reference property.

18. Mr McCullagh submitted that a one year term was appropriate as:

- (i) It was the term of the original lease.
- (ii) The respondent wished to keep her options open with regard to her property holdings in the subject locality.

- (iii) A five year term would have an adverse impact on her flexibility and opportunities for the reference property.
- (iv) She owned numbers 2 and 4 Malone Avenue. These were previously let as HMO's and the availability of car parking was an important factor in increasing the rent on these properties.
- (v) She had obtained planning permission for a double garage on the reference property and foundations had been laid in the 1990s to protect the planning permission.

19. Article 17 of the Order stipulates that the new tenancy shall be for "... such period ... as may be determined by the Lands Tribunal to be reasonable in all the circumstances."
20. The original term granted by Mr Quinn in 2019 was for one year, although the circumstances giving rise to the agreement for that one year term were not available to the Tribunal.
21. The respondent, in her evidence, confirmed to the Tribunal that her property holdings in the locality were in a state of flux since Mr Quinn passed away in 2021 and she wished to keep her options open.
22. The Tribunal agrees with the respondent, a five year term in the circumstances of the subject reference would take away from her flexibility and opportunities for the reference property and her other property holdings in the locality. On that basis the Tribunal finds a one year term to be reasonable in all the circumstances.

23. Mr Wilkinson had provided a comparable relating to the adjoining land at the rear of No. 3 Malone Avenue which comprised 908 ft<sup>2</sup> of car parking and which was let for a term of one year from 1<sup>st</sup> November 2022 at a sum of £2,000 per annum. This equated to £2.20 ft<sup>2</sup>. His opinion was that this site was suitable for parking four cars at a rental £500 per space.
24. He applied the rent of £2.20 ft<sup>2</sup> to the reference property at 1,085 ft<sup>2</sup> giving a rent of £2,387 per annum which he rounded up to £2,400 pa. He accepted that his opinion of the rental value was below the proposed rent of £3,000 per annum specified in the applicant's tenancy notice, which equated to a rent of £2.76 ft<sup>2</sup> or £750 per space.
25. Mr McCullagh did not consider the site to the rear of No. 3 Malone Avenue to be as good as the reference property as it required access over the reference property. Neither expert was able to clarify with any degree of certainty what the access arrangements to the land to the rear of No. 3 were.
26. Mr McCullagh had submitted comparables of garages which he had let in the locality but he accepted these were not directly comparable to the reference property which was bare land.
27. He considered that the reference property could accommodate 5 car park spaces but he accepted that this would leave no room for access to the site to the rear of No. 3. It was his opinion that the rental value of the reference property was £5,400 per annum, although he did not provide any direct evidence of how he arrived at this figure.
28. The 2019 rent for the reference property had been agreed between the parties at £2,750 per annum. There is high demand for car parking in the Malone Avenue locality and the Tribunal can see no reason why a current rent for the reference property should be less than the original rent.

29. The applicant had proposed a rent of £3,000 per annum in her tenancy application which was a 9% increase on the 2019 rent. In his written evidence Mr Wilkinson had stated that the rent should be “no more than the £3,000 specified in the applicant’s Article 7 notice”.
30. In the subject reference evidence is limited to one direct comparable and the access arrangements to that comparable are unclear. Based on that limited evidence and the fact that Mr McCullagh provided no evidential basis for his assessment of £5,400 the Tribunal agrees with Mr Wilkinson, the rent should be no more than the £3,000 proposed by the applicant in her Article 7 notice. The Tribunal therefore assesses the rent on the reference property at £3,000 per annum.

### **Conclusion**

31. Exercising its discretion under the Order the Tribunal sets the new lease terms for the reference property at a rent of £3,000 per annum for a term of one year which is to commence on 1<sup>st</sup> October 2023. The Tribunal finds these terms to be reasonable in all the circumstances.

**1<sup>st</sup> September 2023**

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