LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

IN THE MATTER OF AN APPLICATION

BT/97/1996

BETWEEN

JITENDRA KUMAR SEKHRI & MRS KIRAN SEKHRI - APPLICANTS

AND

JAMES BLACK MILLAR - RESPONDENT

PREMISES: 106 CHURCH STREET, BALLYMENA

Part I

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

Belfast - 19th March 1997

This was an application under the Business Tenancies Act (Northern Ireland) 1964 and was concerned with whether, in light of the Landlord's opposition to the Tenants' application for the grant of a new tenancy, on grounds that the Tenants had persistently delayed in paying rent which had become due, the Lands Tribunal ought to refuse or grant renewal of a lease of shop premises in the town centre of Ballymena. The 2 storey premises comprised one ground floor room with stairs to a first floor room.

Margaret Ann Dinsmore QC instructed by James L Russell & Sons appeared for the Applicants and called Mr Jitendra Kumar Sekhri, one of the tenants, to give factual evidence. Alan Kane instructed by Millar Shearer & Black appeared for the Respondent and called Mr James Black Millar, the Landlord.

General Principles

The general approach to this type of case is for the Tribunal to first reach a conclusion on whether there has been "persistent delay" ie whether the ground of opposition has been made out and then, only if it has, reach a conclusion on the exercise of its discretion as to whether to grant a new lease. The reason for approaching the case in two stages is this. Once the ground is established, other matters such as other breaches, not relevant to the consideration of this particular ground, may properly be taken into account in the exercise of the discretion. The two stages are not watertight compartments: some matters of fact

and degree which are relevant to establishing the ground of opposition may be relevant to the question of balance on which the exercise of discretion must be based.

In this case there was a further complication. There was no formal lease and there was an issue as to when rent had become due.

Whether delay is persistent is a question of fact and degree. The word "persistent" should be given its ordinary meaning and relevant considerations will include the extent of arrears, the duration of delay, any pattern of delay and whether a Tenant persisted against resistance, complaints or proceedings by the Landlord. However persistent delay need mean no more than that one instalment was in arrears for a significant period of time, or that rent had been persistently paid late, or a combination of both. The Landlord need not have taken legal action to recover the rent or even made a written demand for it.

If the ground has been established then the discretion of the Tribunal is to be exercised on a broad rather than a narrow consideration of all relevant circumstances including what is likely to happen if a new tenancy is granted. Once persistent delay is demonstrated, the burden shifts to the Tenant to allay the fears of a recurrence. In practice there is a presumption that any misconduct which the Tribunal finds has taken place during the current lease will continue and the onus shifts to the Tenant to give reasons either to show that it will not or show that the misconduct is such that, on balance, the Tribunal should exercise its discretion to grant a renewal in any case.

In exercising its discretion the Tribunal will look at any reasons a Tenant gives for delay, and may also consider matters of general background such as the business climate and property market. Also, when taking into account the conduct of a Tenant, the Tribunal may properly do so against the background of the conduct of the Landlord. A difficulty for a Tenant is that many of the excuses he may make (for example a failure to understand the importance of the covenant to pay rent or difficulties in business) may do little to encourage the Tribunal as to his future conduct. On the other hand if it is shown that a difficulty was a temporary one, or a misunderstanding has been clarified and that proper standards of conduct have been re-established, the Tribunal may be reassured.

These principles are well established and clear from the decided cases.

The attention of the Tribunal was drawn to "Renewal of Business Tenancies" 1997 by Kirk Reynolds and Wayne Clark. At para 7.3.1 the authors suggested that the word "persistent" may have "the undertone of a deliberate or reckless attitude on the part of the Tenant so that a long history of arrears which could be explained by inefficiency or forgetfulness might not entitle the Landlord to rely upon the ground". The authors also refer to Davis & Cooper

v Geker & Co. (unreported, but referred to in Blundell & Wellings, The Landlord and Tenant Acts, including Business Tenancies, at 327) in which it appears it was held that the landlord had invited irregularity and laxity in payment and a new short lease with securities ought to be granted. The Tribunal has not seen the report and does not quite agree with the authors' conclusions. The founding of the ground is a question of degree and although the conduct of a landlord may be a relevant factor in assessing the degree of persistence, the conduct of a tenant will generally be the prime consideration. Although relevant to both, it seems to the Tribunal that inefficiency or forgetfulness on the part of a tenant or a landlord's invitation to irregularity and laxity may be matters of more weight when considering the question of the exercise of the discretion rather than when considering the founding of the ground: a Court may be satisfied that there has been persistent delay but the evidence may persuade it that a reckless attitude has changed and the inefficiency or forgetfulness is not likely to be repeated or that once an invitation to irregularity and laxity is withdrawn, regular and prompt payments will be made. That view would appear to be consistent with the unreported decision.

A question sometimes arises as to whether the ground of opposition is to be considered at the date of notice or the date of hearing. In the opinion of the Tribunal the primary consideration is the evidence available at the date of hearing. However, the conduct between the service of Notice to Determine and the hearing may be of significance in that it may be viewed in some regards as a probationary period during which time a tenant, having received a warning about his misconduct in the form of the Notice to Determine, may set about redeeming his reputation. Although punctual payment of rent whilst proceedings are pending is not a powerful factor in a Tenant's favour, failure to punctually pay rent must be a material factory to be taken into account against the Tenant.

One of the steps a Tenant may take, in an attempt to reassure the Tribunal, is to indicate his willingness to accept sanctions for misconduct in the new lease, produce securities and advance payment of a significant amount of rent. However willingness to accept such arrangements, whilst clearly a material factor to be taken into account does not remove from the Tribunal the obligation to carefully consider whether it is satisfied as to the prospect of future good conduct and whether it is likely that a Landlord may be unfairly put to the trouble and expense of relying on those sanctions.

The dealings at the commencement

Mr Millar was retired, and this retail property was an investment which formed part of his pension scheme, most of his income came from property rental but Mr Millar was not in the habit of using an Estate Agent to let or manage the property. Before the letting he said he

had substantially rebuilt the shop, he had put on a new roof and replastered the walls, installed a shop front and toilet. His other properties included the adjoining shops.

In broad terms the sequence of events was as follows:

About September 1992 the Landlord met Mr Sekhri who was accompanied by a friend. He agreed with the tenants to let the premises to Mr & Mrs Sekhri as a jewellery shop and the tenancy started about October 1992. At their meeting there was no argument about the commencing rent of £8,000 per annum. There was a discussion about what would happen if the business was unprofitable and Mr Millar agreed that the Tenant should have the option to break if he found the business unprofitable. They agreed that the rent would be payable quarterly and there would be no VAT charged on the rent. The Landlord would be responsible for external repairs and fire insurance. The Tenants would be responsible for rates, complying with any planning and public health regulations and would be responsible for fitting out and security arrangements.

The Tenants seemed keen to get in for Christmas and, on production of a cheque for £2,000 (that would be treated as rent for the months of November, December and January 1993), moved in in early October. No rent was charged for October. It was not clear to the Tribunal whether or not this was an inducement to take the tenancy or a rent free period allowed in exchange for the Tenants improving the shop: the former is the more likely. Similarly, probably as a further rental concession, the quarterly period of February, March and April would be rent free.

The Landlord thought that an oral agreement had been reached on all points. However, shortly after their meeting, in October 1992, Mr Sekhri wrote to the Landlord saying that he accepted the Landlord's offer for the first year, and confirming that he would pay £2,000 quarterly and the Landlord would give one quarter rent free. However Mr Sekhri went on to say that this concession would not be enough to compensate him for his investment in the shop, as he was spending a lot on fixtures and fittings. He proposed that he pay only £7,000 per annum for the second and third year and for the fourth and fifth years he would be willing to pay £8,000 as suggested. The Tenants also wished to obtain clarification of what notice they would be required to give if they wished to quit.

It would appear that before Mr Millar's reply was received a telephone conversation took place and Mr Sekhri wrote again. The letters crossed. In his letter Mr Millar had said that he would permit the tenancy to end at the end of 6 months without notice if trade proved disastrous, confirmed the total rent for the first year would be £6,000 and insisted the rent thereafter would be £8,000 per annum. He said that the responsibility for shop fitting was the Tenants and proposed that at the end of the year a lease would be drawn up

determining the length of lease and when a rent review would take place. In his letter Mr Sekhri asked for confirmation that the lease would continue for as long as the business was profitable and said that he would prefer not to leave discussions of the lease until after he had spent the money on the shop: he would prefer to have a lease with an option to determine after the first year. Mr Millar responded saying that sometime during the first year they could discuss a proper lease, he would have no objection to a 10 year lease with a 5 yearly rent review and that Mr Sekhri could retain occupancy of the shop as long as the business was profitable.

Mr Millar's theory was that when letting small shops in a difficult market there was no point in preparing a written agreement until one could see if the business was successful. However the result was that the Landlord did bring some problems on himself.

At the end of October Mr Sekhri wrote saying that he hoped they had settled every point but one small concession he requested was a further month rent free because of difficulties he had had in obtaining actual possession at the commencement of the lease. Mr Millar did not agree. Mr Sekhri continued to press for the concession and sought a meeting. Mr Millar did not respond. Towards the end of April 1993 Mr Millar wrote a friendly letter enclosing a rental demand for the period 1st May-31st July 1993. It seems they then met in early May and Mr Millar conceded the extra rent free month. He received three post dated cheques dated 1st May, 1st June and 1st August 1993 in broadly equal instalments totalling £2,000.

When was rent due?

Although the agreement to rent the shop was an oral agreement and some of the terms were vague, in their correspondence both the Landlord and the Tenants had referred to payment of rent quarterly in terms that suggested that that was a settled agreement. There was nothing to suggest that it was a matter to be further negotiated and in his letter of October Mr Sekhri wrote indicating that all such matters were agreed.

Mr Sekhri did not, and realistically could not, challenge the proposition that it was agreed that rent was to be paid quarterly but, at the hearing, he did suggest that it was not agreed that the rent was to be paid at the beginning of the quarter. The usual commercial practice is that, on a quarterly tenancy of a retail shop, rent is due at the beginning of each quarter. Prior to negotiations with Mr Sekhri, Mr Millar was the owner of a number of commercial investment properties and he certainly knew the practice. Although this was Mr Sekhri's first retail shop tenancy, he was already a tenant of commercial property in England and was in contact with retailers through his wholesaling business in England. Although the correspondence, at the commencement of the tenancy did not expressly state that it was

payable in advance, the first quarter's rent was demanded and paid in advance. The pattern in subsequent quarters was that the Landlord demanded rent as due in advance. There was no objection by the Tenants, instead they made excuses or gave reasons for not paying straight away: they knew the payments were due. The Tribunal finds that rent was due at the beginning of each quarter, ie quarterly in advance, in accordance with the usual custom and practice and does not accept that the parties agreed otherwise.

It was contented that the arrangement for payment of rent was vague and uncertain but it was not suggested that at the beginning of the tenancy, some special arrangement was agreed that would permit the Tenants either to pay instalments of rent by way of post dated cheque at the commencement of each quarter or that the Landlord would accept payment of each quarter's rent when it suited the Tenants.

The rental history

Mr Millar said, but the Tribunal does not accept, that rent was agreed to be paid directly into the Landlord's bank account.

There were differences between the parties and discrepancies in the documents prepared for the hearing but the Tribunal concludes that the rental history was broadly as follows. The rent demands produced to the Tribunal clearly stated that the rent was due at commencement of the quarter but the first was the only rent demand actually met promptly and in full. For the early quarters, the rent generally was paid to Mr Millar in the form of three post dated cheques, for various amounts and of various dates, amounting in total to a quarter's rent, in response to a quarterly demand at the beginning of the quarter. Later similar instalments were produced for a year's rent, then rental payments ceased but, before the hearing, most of the arrears and rent due were cleared. A more detailed history of the rental pattern is set out below.

The question of the rent free period having been resolved, Mr Millar sent a rent demand on 19th August for a quarter's rent due on 1st September 1993 and again received three post dated cheques each dated for the 20th of the month for September, October and November. He sent a rent demand for a quarter's rent due on 1st December. He received three post dated cheques for dates between 21st and 28th of the next three months and that pattern broadly continued until the end of August 1994. So the position was that each quarter Mr Millar sent out a rent demand for a quarter's rent which he stated as due quarterly in advance and the Tenants responded with three post dated cheques which could be cashed towards the end of each month of the quarter. The rent demanded in each case was £2,000 and the three cheques in each case added up to £2,000.

By demand dated 1st August 1994 Mr Millar sought a quarter's rent due on 1st September (at this stage he gave one month's notice of the rent due). No rent was paid at the beginning of September but two cheques post dated 28th November and 19th December 1994, each for £1,000 were presented.

By mid February no payment had been received in response to the demand for a quarter's rent for the period commenced 1st December 1994 and on 21st February 1995, less than 2 years after the first rent demand during the Tenants' occupation, Mr Millar wrote to Mr Sekhri reminding him of his past co-operation in regard to the rent for the previous quarter and expressing disappointment that he had not received payment for the current quarter. The Tenants replied, apologising and saying that unfortunately business had been very slow during the past two months and they had been pressed by the Rate Collection Agency to clear Rates arrears by the end of March. Three cheques were enclosed dated 30th March, 15th April and 30th April 1995. These were in response, it must be remembered, to the demand claiming rent due for the quarter beginning 1st December 1994.

On 27th May 1995 Mr Millar wrote to the Tenants pointing out that on the 1st June they would be one quarter's rent in arrears and the next quarter's rent would be due. He continued

> "I cannot allow this haphazard method of paying your rent. If you cannot pay your rent at the proper time I will seek possession of my premises and recovery of rent due through the Courts".

In reply they said

> "As you will understand the jewellery business is a seasonal business and we do expect your co-operation."

They then sent ten post dated cheques commencing on 19th June for various dates of the month totalling £8,000 and varying from a first cheque of £400, some for £800 two in November for £700, one in December 1995 for £1,000 and the same in January and February 1996. These cheques would eliminate the arrears and deal with all rent due up to the end of February 1996. It would be unnecessarily academic to analyse these in detail but the sequence of payments began and ended with delays in payment, of several months.

On 5th December 1995 the Tenants wrote to Mr Millar referring to the general climate of business and saying that they considered that the rent was excessive. It appears an adjoining shop had been let for less and that they thought the differences between the two shops did not warrant the rental difference. They referred to "an up hill struggle to maintain

the expense". Mr Millar did not reply and it appears a reminder was sent to him. He still did not respond to this complaint and instead, on the 1st March 1996, sent out a rent demand for a quarter's rent at an increased rent. He raised the rent from £2,000 to £2,100. The Tribunal considers he had no basis on which he was entitled to do this. But, in any event no rent was paid and, on 1st May he wrote saying that unless he received a cheque by return for the rent due on 1st March 1996 he would take the matter to Court and ask for an eviction order. On 13th May the Tenants replied expressing disappointment at the contents of the letter and the absence of a reply to their letter, and offering to meet but saying they would not object if Mr Millar went to Court. Mr Millar wrote in reply saying that he had instructed his solicitors to take proceedings.

About a year and a half after his first written complaint, the Landlord served Notice to Determine dated 13th June 1996 and stated he would oppose an application to the Lands Tribunal for the grant of a new tenancy on the ground that the Tenants had persistently delayed in paying the rent which had become due.

No rent was paid from March until the end of 1996.

In January 1997 the Tenants paid £7,000 to clear the arrears and rent due to the end of February 1997. At the date of hearing, no rent had been paid for the period commenced 1st March 1997. But the Tribunal was assured that funds were available.

Was the original deal varied?

The Tribunal does not accept that the parties agreed to the terms of the original deal being modified so as to permit payment in some fashion other than quarterly in advance. Clearly the Landlord did not agree because he continued to send out quarterly demands showing the rent due at the beginning of each quarter and the matter is taken beyond doubt by his clear complaints. The acceptance of instalments by way of post dated cheques is wholly consistent with a Landlord considering that a Tenant is in some difficulty and giving him some latitude in the hope that things will get better. Further, the Tribunal does not accept that the Tenant really thought that the Landlord did agree, even before his written complaints about delay. Throughout the tenancy the Tenant never complained about receiving a demand for rent quarterly in advance. In contrast, when it came to the issue of why he thought post dated cheques were satisfactory to the Landlord, and why they were post dated to odd dates, he relied on the absence of protest and the absence of monthly invoices from the Landlord.

The degree of delay

The Tribunal was invited to consider a schedule of rental payments and a superficial look at the figures might show that a full year's rent was paid each year but, having concluded that rent was due quarterly in advance, it inevitably follows from the history outlined above, that the Tribunal finds there were delays.

After the first quarter, the next quarter's rent was due on 1st May 1993. Mr Millar received post-dated cheques. There may be some doubt about when the quarter's rent was due (because of the adjustment for the extra month rent free) but the Tribunal concludes that at least part was delayed. For the next quarter, all the rent was delayed. The minimum delay for part was 20 days, the maximum delay for part was 2 months 20 days. For each of the next few quarters, a similar spread and delay ensued. There was a clear conflict in the evidence about what happened for the quarter commenced 1st September 1994 but although the Tribunal prefers the evidence of Mr Sekhri that two instalments, each of £1,000 were paid, the first was with a delay of nearly 3 months, the second longer. Although there was a warning by the Landlord, there was a delay of some 4 to 6 months at the next quarter, due 1st December 1994. The next quarter, nothing was paid and, after a stronger warning before the following quarter, a batch of 10 post dated cheques were produced. At no stage would the rent be paid in advance. From March 1996, no rent was paid until the beginning of 1997. During that period, the landlord threatened Court proceedings and then served Notice to Determine on grounds of persistent delay. As at the date of hearing Mr Millar considered that there were still arrears and a quarter's rent had been due at the beginning of March.

So the Tribunal finds there was a pattern of delay, usually on much of the rent and usually for a month or two to begin with. Later, in spite of warnings and threatened Court proceedings and finally Notice to Determine on ground of persistent delay, the position deteriorated.

The Tenant wanted a written agreement and the absence of that might have led to some confusion. However the Tribunal does not accept that the Tenant was confused about when rent was due and, although he said that if he had known that the Landlord wanted the money at the beginning of the quarter he could have arranged for money from his London account when it was due, that was very different from what actually happened when the Landlord complained: at a time when Mr Sekhri clearly did accept rent was due, he chose to delay.

So far as resistance on the part of a Landlord is concerned there is little doubt in the mind of the Tribunal that continuing misconduct in the face of protest by a Landlord adds to the degree of persistence. Acceptance of a Landlord's invitation to delay, as opposed to his tolerance of it clearly may be considered to reduce the degree of persistence. Although few

might do otherwise when given post dated cheques, the Landlord's acceptance of them, without protest, demonstrates a little less resistance on his part and that slightly reduces the degree of persistence. It is a question of degree but, in the circumstances of this case the Tribunal finds that it does not measurably reduce the degree of the persistent nature of the delay.

The change in the Landlord's attitude is not to be faulted. If a Landlord of a small shop lets it to a start-up business with no track record and the business appears to be having difficulty getting off the ground, it is not unreasonable of a Landlord to accept rent paid in fits and starts for a time and then conclude things are not going to get better and enough is enough. He might better protect his position by making clear he is accepting under protest and his patience will be limited but the very presence of the ground of opposition in the Act as a distinct ground and the decided cases underline the importance of the obligation to pay rent promptly. Although the absence of resistance may affect the view of the Tribunal as to whether and to what extent delay was persistent delay, that does not reduce the obligation to pay rent when due.

In regard to the non payment of rent after warnings of Court proceedings and the Notice to Determine, Mr Sekhri said that he paid the £7,000 when told to do so by his solicitor. He said he could pay and would pay but he relied on his solicitor for instructions when to pay. If that is so, the Tribunal does not accept that as a good reason for non payment.

It would defy the ordinary use of the English language to say that there had **not** been persistent delay. Further, the conclusion of the Tribunal is that it was extremely persistent.

Exercising the discretion

The Tribunal has come to the conclusion that there was persistent delay in paying rent that had become due. The question remains as to whether the Tenants have persuaded the Tribunal that, on the balance of probabilities, the delays would not continue and, in all the relevant circumstances, the Tenants ought to be granted a new tenancy. Having determined that the delays were extremely persistent, the Tenants face considerable difficulty in that task.

Apart from a question about one cheque and concerning which Mr Millar may have had a faulty recollection, there was no difficulty in cashing the post dated cheques.

It was contended that the Tenants were not clear that the agreement was that rent was due for each quarter at the beginning of the quarter. As stated earlier, the Tribunal is not satisfied that the Tenants were not clear, and, even if it were satisfied, would not have

much sympathy. Whatever they claim to have understood, the Tribunal cannot accept that they thought the agreement was that they should pay rent in the haphazard way they did.

Although the Tribunal does not accept the lack of protest about delays as acceptable reasons for the Tenants' conduct it does accept that the earlier absence of protest is a matter to be taken into account for two reasons. The first is that it affects the measure of the degree of persistence and reduces by a little, but only a little, the degree of its severity. The second is that it allowed the Tribunal to see what effect complaints had, when they were made, on the conduct of the Tenants and whether they responded by paying promptly. They did not.

At one point Mr Sekhri's refused to pay the rent on grounds that the Landlord did not want to talk to him about reducing the rent; at another, he delayed the rent due for 3 months because it was prior to Christmas and he needed the money to buy stock; at another, the trade was seasonal and he expected the Landlord's co-operation; at another he said he had not been advised by his solicitor to pay, at yet another arrears of rates had to be paid instead. These excuses do not inspire the Tribunal with confidence about future conduct.

The Tribunal was informed that any rent outstanding at the date of hearing was outstanding because of the litigation and there would be no difficulty in paying the money now. The Tribunal sees no justification in not tendering rent because of this application. Indeed, quite the reverse, but given that the tenancy might be about to end and not without reservations, the Tribunal disregards the delay in the rent due shortly before the hearing.

At the hearing Mr Sekhri claimed that he had spent £20,000 on fitting the shop out including a bullet proof window, display units, counters, storage units and having telephone cables for alarms put underground. He had personally invested money and hard work on the premises. There may have been some rental concession allowed for the alterations and the Tenants' fixtures and fittings may be removed, but the Tribunal accepts that the Tenants have made a financial investment in the premises and that they cannot take all the residual value with them and that is a factor to be taken into account as it represents an incentive to them to maintain their occupation. However the Tribunal is of the view that the Tenants' claim, in regard to improvements to the premises is greatly exaggerated and would be of very limited value in assuring future conduct.

It was submitted that Mr Millar was vague about when rent was due and when late. There was no documentary evidence produced by him and the statement he had prepared for the hearing contained inaccuracies and that was evidence of a man who did not keep a close note because he was not too upset. The Tribunal is of the view that the test of whether there has been persistent delay is fundamentally an objective test but, even if it is wrong in

that view, the Tribunal is persuaded by his evidence, that the Landlord was upset by the delays at all times after his first written complaint, and more so recently.

The Tenants accepted that money was due on 1st March and if the Lands Tribunal was minded to grant a new tenancy they would be willing to pay 6 months rent in advance, with a provision for re-entry on default within 21 days. Mr Millar said he would not find solace in that. He felt that the Tenants' conduct would be no better than in the past. He did not wish to change his mind, he had had such an unhappy four years he did not want to continue. He found it unsatisfactory to have this hassle at his age, not getting the money when he was entitled to it, he never had to take such steps before. His reaction was that he had had 4 years of the Tenants' approach and had no wish to have them any longer as Tenants.

As stated earlier, the Tribunal is of the view that the discretion does not turn on the views of the actual Landlord for the time being. However, the central question is whether the Tribunal is persuaded, by the Tenants, that their future conduct will be satisfactory and the Tribunal is not convinced that the conduct of these Tenants would be satisfactory in the future. They paid rent in a way that was rightly described as haphazard. Their delays in paying rent can only be described as extremely persistent. There were opportunities for them to redeem themselves and demonstrate a change in policy but there was no sign of that. There were no satisfactory reasons for delay nor sound grounds on which the Tribunal could be reassured as to future conduct. When "on probation" after service of the notice, the delays persisted. In these circumstances, their proposed undertakings, although the Tribunal accepts they would be given and due weight must be attached to that, have a hollow ring and do not persuade the Tribunal that rent would be paid when due and there would be no future difficulties. The Tribunal also bears in mind that a Landlord should not have to suffer any delay at all or be put to the trouble and expense of relying on such undertakings and, in this case the Tribunal finds little to persuade it that he would not have to do so.

Mr Sekhri complained that Mr Millar had not spent money on repairs but the Tribunal is not persuaded that the Landlord is in breach of any repairing obligation.

Mr Sekhri was quite determined that there was no problem with his method of payment until Mr Millar wanted to sell the shop. Mr Millar did not agree. He did agree that he had instructed Agents who had explored the market, and they had received offers for the premises including the adjoining shops, which were vacant at present. He said some prospective purchasers wanted the property occupied, some required vacant possession. He decided not to sell for the moment and to keep his options open. He could keep, let, sell or re-develop, and would be tempted to redevelop if he had been younger. In the view of the Tribunal, even if the prospect of a disposal or redevelopment either triggered or

contributed to a Landlord's reaction that enough was enough, that does not take away from a Landlord's right to expect proper conduct and should not encourage the Tribunal in favour of the granting of a new lease. On the contrary, an intention to redevelop, even if it were not a ground on the notice, may be a proper factor to be taken into account in opposing the grant, if the notice ground is established, but that was not a point relied on in this case.

It was suggested that the refusal of a grant of a new tenancy might lead to hardship, not just financial by taking away their livelihood, but also would uproot their family life. Mrs Sekhri, it was said, had moved to Northern Ireland and set up home here as a consequence of the shop being opened. The Tribunal does not accept that a loss of the tenancy of this shop would have that consequence on family life, but even if it did, it would be so remote from the Tenants' business tenancy of the holding as to be beyond consideration.

The Tribunal accepts that the Tenants have made an investment in the premises, they cannot take all the residual value with them and that represents a loss they would suffer if a new tenancy is now refused. Except in exceptional circumstances, the Tribunal does not regard such loss as a hardship to be taken into account. Although few do, the Tenants may have protected their investment and maintained an entitlement to compensation by service of the appropriate notice under the Act. The Tribunal also notes the absence of compensation provisions within the Act for a tenancy terminated on the ground of persistent delay, as opposed to circumstances in which there is no fault on the part of a tenant. In this case, before doing the work, the tenant had sought reassurances, and, in general terms had been given them, so the Tribunal has taken the investment into account but finds it to be of little consequence and attaches little weight to it. So far as goodwill as a result of their occupation is concerned, there was no evidence before the Tribunal that, if there was any goodwill, it attached to the premises rather than the Tenants.

Having carefully considered all the evidence and arguments, including some only because the case was strenuously advanced on the Tenants' behalf, the Tribunal concludes that, in all the circumstances, the Tenants ought not to be granted a new lease.

ORDERS ACCORDINGLY

23rd May 1997

MR M R CURRY FRICS FSVA IRRV ACI.Arb
LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:

Margaret Ann Dinsmore QC instructed by James L Russell & Sons, Solicitors, for the Applicants.

Alan Kane instructed by Millar Shearer & Black, Solicitors, for the Respondent.