

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/27/2005

BETWEEN

LIAM O'HORA & MARY O'HORA – APPLICANTS/LANDLORDS

AND

BRIDGEWATER ACADEMY LIMITED – RESPONDENT/TENANT

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

Belfast – 21st June 2005

1. This is an application by the Landlords for an Order that the Tenant is not entitled to the grant of a new tenancy under Article 12(1)(b) of the Business Tenancies (NI) Order 1996 i.e:
“that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due.”
2. The Tenant requested a new tenancy on 7th December 2004 and the Landlords promptly responded drawing attention to grounds of objection. A Tenancy Application by the Landlords followed on 18th April 2005.
3. Mr Shane Murphy of J G O'Hare & Co, solicitors appeared for the Landlord. Mr Graham Keys of Diamond Heron, solicitors appeared for the Respondent.
4. Mr Martin Downey, a Chartered Certified Accountant and Director of Bridgewater Academy Ltd ('the Academy') gave evidence. The Academy is a Company Limited by Guarantee, the current members of which are the parents of the pupils who attend the school. It is a grammar school, teaching pupils from post-transfer age up to A-level and is known as Hampton College.

5. The pupils are a small number of the former pupils of Bruce College which had been operated by the Landlords but which ceased operations in 2003. Mr Downey said that when they had announced the cessation of their operations a meeting of parents had led to a commitment that 85 pupils would enrol at Hampton College. The holding was part of the accommodation of the former College and included some 10 classrooms. The largest room had a capacity of 40 pupils, the average about 20 and some small rooms only about 8. There were also 2 portacabins. A fee structure was designed based on that anticipated enrolment however in the event only some 62 pupils enrolled. Mr Downey emphasised the importance of the building to the pupils. A number of pupils had learning difficulties and some had been victims of bullying elsewhere. Their current role was 25 pupils and they expected 23 pupils to return in the autumn.
6. The current lease was made on 8th July 2003 for a term of 2 years and 1 month from 1st July 2003. The rent for the first year was fixed at £38,000 and for the second at £39,000 and the rent is to be paid quarterly in advance. Three months rent is held by way of deposit for the duration of the term of the lease. There is a provision for re-entry if rent is in arrears for 21 days.
7. Although the rent has always been forthcoming, and the deposit remains, the unchallenged evidence was that out of 8 quarterly instalments of rent due, 6 had not been paid on time and each had been paid more than 21 days after the due date. In a number of instances part payments had been made and in 8 instances the payments have been made through solicitors and not directly to the Landlords. Mr Keys accepted that there had been delay in payment of rent and the main thrust of his submission was to ask the Tribunal to exercise its discretion and not refuse the school a new lease.
8. Mr Murphy emphasised that he was not denigrating the work of the Academy and Mr Downey acknowledged the delays and apologised to the Landlords for those delays. He explained that the only source of funds, apart from some voluntary fund raising, is contributions from the parents. In April 2004 the Academy's bankers withdrew their support and the Academy entered into a voluntary arrangement with their creditors. But he said that the Academy had reduced the teaching staff, removed inefficient practices and arrangements had now been made for parents to pay future fees by way of monthly standing order. He assured the Tribunal that the school would be able to pay the rent by

monthly standing order with the deposit of 3 months rent remaining with the Landlord. He was asking for a new lease for 2 years although 1 year would give them time to plan for the following year.

9. Although Mr Downey pointed out that the Academy will have traded at a surplus this year, that was partly because, although preferential creditors had been paid in full, unsecured creditors had been paid 30p in the pound. Mr Murphy suggested that the reality is that it is quite possible the same difficulties could arise again and the landlords would be unsecured creditors.
10. There has been persistent delay in paying rent. It is with no pleasure that the Tribunal further concludes that it is not persuaded that the Academy has turned the corner in regard to paying the rent for the duration of a new lease and, if one were granted, there would be no recurrence.
11. The Tribunal concludes that the Academy is not entitled to a new tenancy.
12. Under the 1996 Order the Tribunal has a discretionary power to fix a date for termination. The parties are invited to agree a date. If they cannot agree the Tribunal in exercising its discretion shall of course take into account all relevant material put before it. But, without pre-judging the matter, it will be minded to have regard to the certainty of termination for the landlords, the rent on deposit and the steps the Academy has taken to rearrange its financial affairs. Perhaps most importantly, the Tribunal will be minded to treat the needs of the pupils, and time the parents may need to make orderly arrangements for their future, as very important factors in fixing a date (see e.g. Luke v Towell [1977] BT/56/1976).

ORDERS ACCORDINGLY

30th June 2005

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

Appearances:

Mr Shane Murphy of J G O'Hare & Co, solicitors appeared for the Landlords.

Mr Graham Keys of Diamond Heron, solicitors appeared for the Respondent.