

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964
BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

IN THE MATTER OF AN APPLICATION

BT/55/2007

BETWEEN

SAI K CHEUNG & CHRISTINE CHEUNG – APPLICANTS/TENANTS

AND

FERNHEATH DEVELOPMENTS LIMITED – RESPONDENT/LANDLORD

Re: Unit E, Building A, Throne Centre, 250 Whitewell Road, Newtownabbey

Lands Tribunal - Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI

1. The tenants occupied premises at Unit E, Building A, Throne Centre, 250 Whitewell Road, Newtownabbey under a lease dated 30th August 2000. They wished to assign their interest in the lease but the landlord refused consent. On 14th June 2007 the tenants applied to the Tribunal for an Order that the landlord had unreasonably withheld its consent. Subsequently, on 1st October 2007, after the matter had been fixed for hearing but before the hearing took place, the tenants withdrew. They said that was because the proposed assignee had decided not to proceed.
2. The issue of costs was dealt with by written representations. Mr Toby McMurray of Tughans, Solicitors, wrote on behalf of the Respondent. Mr Gerard McClure of Thompsons McClure, Solicitors, wrote on behalf of the Applicants.
3. Mr McMurray suggested that, as the application to withdraw resulted in a presumption that the tenants recognised that they were unlikely to succeed on the substantive issues, costs should follow the event. The Respondent claimed its legal costs – solicitor and counsel.
4. Mr McClure suggested that each party should bear their own costs. Mr McClure further suggested that the transaction had been lost because of delay on the part of the landlord and that the amount of costs was disproportionate because of the landlord's decision to instruct counsel.

5. The sequence of events in this Application was this. In accordance with directions of the Tribunal, made on 20th June 2007, the landlord requested information about the intending assignee and, on 24th July 2007, it refused consent - essentially on grounds of lack of information relating to the intending assignee. On 31st July 2007 Mr McClure asked for more time to provide information and subsequently, in August 2007, a guarantor was nominated. On 6th September 2007 the landlord gave a further refusal with reasons for that decision. The matter came on for hearing on 19th September 2007 but, as a result of a slip by the tenants' solicitors, had to be adjourned until 8th October 2007. By this date counsel had been instructed on both sides.
6. The starting point is the presumption, which follows from the application to withdraw, that the tenants have lost. Mr McClure drew attention to the condition of the building, apparently due to work being carried out by the landlord, and the effect on the marketability of the tenants' interest. But, if so, the Tribunal does not consider that to be something for which there is a remedy in the form of the allocation of costs in this case. The Tribunal is satisfied that the presumption is not displaced.
7. The next question is whether there was anything in the conduct of the case by the landlord that should be reflected in a reduction in its costs. The Tribunal has concluded there was no unreasonable delay. Both sides had instructed counsel so it is difficult to conclude that the landlord's decision to do so was disproportionate. The Tribunal concludes that its costs should not be reduced.
8. Tribunal concludes that the landlord is entitled to its legal costs – solicitor and counsel.
9. The amounts were not in dispute.

ORDERS ACCORDINGLY

16th June 2009

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