Opposing a business tenancy renewal – where the relationship between the Landlord/Tenant relationship has irretrievably broken down

Landlords should bear in mind the availability to them of a ground of opposition to the renewal of a tenancy under Article 12 (1) (c) of the Business Tenancies (Northern Ireland) Order 1996 ("the 1996 Order") –

“(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 tenant’s use or management of the holding.”

This provision is in precisely the same terms as Section 30 (1) (c) of the Landlord and Tenant Act 1954 ("the 1954 Act"), the like provision which applies in England and Wales and which as such has recently been the subject of a Court of Appeal decision.

The availability of this ground of opposition is of particular interest to landlords as it is one of the grounds of opposition under the legislation which does not carry with it a requirement upon the landlord to compensate the tenant if a new Lease is not granted. It is to be noted that there are two quite separate limbs to the provision –

- .... in view of other substantial breaches by him of his obligations under the current tenancy, or
- for any other reason connected to the tenant’s use or management of the holding.

The reference to other substantial breaches is clearly a reference back to Articles 12 (1) (a) and (b) which deal with repair obligations and the payment of rent respectively.

It was the second limb of the provision that the English Court of Appeal considered in Horne and Meredith Properties Limited v Cox and another (2014).

The defendant tenants occupied premises (including a shop, two rights of way and a right to use 6 car parking spaces) for the purpose of selling women’s clothes.

The Lease was originally granted in 1981 and had previously been renewed. On this current request for renewal the claimant landlord refused to renew the tenancy relying on the grounds of opposition continued in S.31 (1) (f) and (1) (c) of the 1954 Act (Note: Section 30) (1f) is in terms similar to Article
12 (1) (f) of the 1996 Order – a ground of opposition which does entitle the tenant to compensation if a new Lease is not granted).

At first instance the judge held that only the ground of refusal under section 31 (1) (c) of the 1954 Act had been established. He decided that the fact the parties had been in frequent litigation over a period of 16 years with respect to the tenants’ allegations that the rights of way had been obstructed and that the tenants’ conduct had grossly exceeded what would have been reasonable in the circumstances had been capable of being “any other reason connected to the tenant’s use or management of the holding” under Section 30 (1) (c). It was the case that large sums of money had been spent on litigation often without regard to legal advice and involving unnecessary proceedings. The tenants took the view that this ongoing litigation was necessary to uphold their legal rights while the Landlord took the view that it was a nuisance which had led to a complete breakdown of the relationship between the Landlord and Tenant.

The Judge approached the issue “by recognising that both parties accept that the relationship between them as irretrievably broken down”.

It then fell to the Court of Appeal to determine whether the Judge had been correct in considering that the parties’ history of litigation fell within Section 30 (1) (c) so as to enable the Landlord to oppose the grant of a renewal Lease.

Lewison LJ, giving the leading judgement of the Court of Appeal, considered that the second limb of Section 30 (1) (c) should be given a wide interpretation. In this he relied on the case of Turner and Bell –v- Searles (Stanford le-Hope) Limited 33 (477).

In the instant case of Horne, the tenants sought to argue that the Court could only consider the second limb of the provision if there was also a breach of covenant. Applying the earlier Court of Appeal decision in Beard –v- Williams (1986) the Court took a different view holding that the second limb of Section 30 (1) (c) can stand alone.

It has to be said that the wording of the provision in both jurisdictions is, as legislation goes, fairly clear in that the two limbs are separated by the conjunctive “or”. It may be that the law would be clearer if the legislation had split ground (c) into two separate grounds (c) and (d). In any event the Court of Appeal approach is clearly correct both on the authorities and as a matter of logic.

A “floodgates” argument was put forward on behalf of the tenants if the Court were to refuse a renewal Lease. That is a valid concern but the Court of Appeal disagreed rationalising the point that the Act (as does the Order) provides a safety mechanism. Described by Lewison LJ as more of a value judgment than a discretion, the opening words of Section 30 (1) (c) are “that the tenant ought not to be granted a new Lease”. This allows the trial Judge (or in Northern Ireland the Lands
Tribunal) where it is just and equitable in all of the circumstances to order that a new tenancy will be granted even if ground (c) is otherwise made out.

In any event there is clearly another safety mechanism in that the “any other reason” in the second limb of ground (c) has to be “connected with the tenant’s use or management of the holding”, thus limiting the types of litigation for which concern was expressed.

But what else could be relied upon by a Landlord as “any other reason connected to the tenant’s use or management holding” to enable it to oppose the grant of a new tenancy. Can it be extended to matters strictly beyond the relationship of Landlord and Tenant and the answer to that must be yes provided that it is connected to use or management of the holding. In another English case of Fowles –v- Heathrow Airport Authority (2008) the carrying on of illegal activity by the Tenant was considered to be such a reason.

It has to be said that on many occasions the carrying on of illegal activity will in any event be a breach of covenant on the part of the tenant. Clearly it will be a concern for tenants that grievances felt by the Landlord may be taken into account when it comes to considering Lease renewal. There will, however, have to be reasonableness between the parties as it must be recognised that this remains a discretionary ground of opposition.

The importance of the decision in Horne is that ground (c) provides a ground of opposition to a renewal of a tenancy protected by the 1996 Order which requires no payment of compensation to the Tenant if the Lease is not granted.

Not all cases where litigation is a factor will necessarily be decided the same way; each will have to be decided on its own particular circumstances. As the Court of Appeal held, this will be a value judgment for the tribunal at first instance.

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