

Court should have regard to passing rent when determining the rent on renewal of a business tenancy.

The Message: The Court will have regard to the previous rent payable when fixing the new market rent on the renewal of a business tenancy.

The Case: The Court of Appeal has allowed an appeal against a Judgment which fixed the market rent on the grant of a new business tenancy without having due regard to the previous rent payable or to the rent payable for the adjoining property (*Trans-World Investment Limited v Anita Dadarwalla (22 May 2007)*).

Trans-World is the landlord of a lock up shop at 104 Walm Lane London NW2 which is let to Ms Dadarwalla, the tenant. The term of the Lease expired on 14 November 2005 and the parties agreed on all of the terms for a new Lease save for the amount of the rent.

The rent payable under the old tenancy for the last 5 years was £6,250 per annum and the landlord proposed that the new annual rent should be £8,500 per annum and the tenant initially proposed £6,000. Unfortunately, the parties were unable to agree the rent and the matter proceeded to Court so that the new market rent could be decided.

The property is part of a parade of three ground floor lock-up shops all owned by the landlord. The adjoining property at number 106 was let in 2001 at £7,500 per annum which equated to £90.36 per sq.ft. The landlord's expert contended that the rent for number 104 should be £7,850 per annum but the tenant's expert argued that the rental figure of number 106 was out of line with other comparables in the area, including number 108, which he claimed evidenced that the true market rent level was only at £40-£50 per sq.ft. He argued that the new rent should only be £3,150 per annum which is approximately half the previous rent.

The Trial Judge accepted that the previous rent was a relevant factor to be considered when determining the new rent but he then decided not to place any reliance on it as he had no evidence as to how it had been agreed when there was a rent review in 2000. He also sought to disregard the rental evidence in relation to number 106 upon the basis that, firstly, he also had no evidence as to how this rent was agreed and, secondly, that it was not in accordance with other rents achieved in the locality. He fixed the new rent at £3,937.50 per annum.

The landlord appealed on the ground that the previous rent was determined in 2000 pursuant to a rent review and this rent of £6,250 per annum should be the starting point for assessing the rent on renewal. The landlord further relied on the fact that there was no dispute that there had been an increase in rental values in the area since this rent review and it also argued that the Judge had wrongly failed to take into account the rent payable in relation to number 106.

The Court of Appeal held that the Judge had been clearly wrong as both the rent previously payable and the rent payable for the adjoining property were clearly relevant valuation evidence of the market rent of the property and there was no requirement for the landlord to produce positive evidence to show how these rents were determined. It was for any party who sought to challenge the relevance of the previous rent or the rent of any adjoining comparable property to adduce evidence to show that these rents were not relevant factors and it held that the tenant had not adduced any evidence to warrant these rents being disregarded in the valuation exercise.

The Court remitted the matter to the County Court for the rent to be re-assessed and it ordered the tenant to pay the landlord's costs of the appeal assessed in the sum of £15,224.03. The tenant is, therefore, going to have to pay a very heavy price for having sought to achieve a lower rent than the rent previously payable.

