[2019 Gib LR 1]

JJB AMAR LIMITED v. ARETHUSA DEVELOPMENT LIMITED

SUPREME COURT (Ramagge Prescott, J.): December 14th, 2018

Landlord and Tenant—rent—interim awards—under Landlord and Tenant Act 1983, s.76, court may set interim rent if parties unable to agree terms of new tenancy—where parties agree tenancy to end, court cannot determine rent to be paid in extension period before end of tenancy—extension period not new term but period of grace

The defendant requested the court to impose an interim rent pursuant to s.76 of the Landlord and Tenant Act 1983.

The defendant owned the freehold of a building. The claimant carried on a bakery business from the ground floor of the property. In June 2017, the defendant issued notices terminating what it alleged to be the claimant's licence to occupy the premises and, in the alternative, a notice to quit pursuant to s.44 of the Act, terminating the claimant's tenancy in December 2017 and indicating that it would oppose the grant of a new tenancy on the ground of its intended redevelopment of the property. The claimant served on the defendant counter notices stating that it would not be willing to vacate the property, and it applied for a new tenancy.

As a result of a Part 36 offer made by the defendant, it was agreed that the proceedings would be settled on the basis that the defendant recognized the claimant's status as a tenant of the premises; the claimant in turn accepted the defendant's entitlement under s.49(1)(d) of the Act to refuse to grant a new tenancy on the ground of its intended development; the claimant and the defendant agreed that, by operation of the Act (Schedule 5), the claimant was entitled to have the tenancy that was in existence at the time of the issue of the notice to quit extended for 18 months, to June 2019; and the defendant agreed that the claimant was due compensation under s.49(2)(a)(ii) of the Act. The remaining issue between the parties was whether the claimant should continue to pay the same rent as was due under the existing tenancy for the extended period of 18 months (as the claimant claimed) or whether it should pay a higher interim rent during that period (as the defendant claimed). The rent paid by the claimant had not been reviewed since the 1980s and was well below current market value.

Section 76 of the Act provided:

"Where the landlord and the tenant of any premises to which Part IV applies are unable to agree on the terms and conditions of a new tenancy within 3 months after the date of termination of the current tenancy, the Supreme Court may—

(a) on an interlocutory application to it by either party, make any interim order as to the payment of rent . . ."

Schedule 5 provided:

"2. Where a landlord opposes an application for the grant of a new tenancy on any ground specified in paragraph (d) or paragraph (e) section 49(1)—

(a) in the case where the landlord under section 44(2) has given notice, notwithstanding any other provision in this Act, the current tenancy shall not come to an end before the appropriate period, specified in the second column of the Table to this paragraph, immediately following the date of termination of the tenancy; and

(b) the amount of the compensation referred to in section 49(2) shall be calculated in accordance with the Table."

The defendant submitted *inter alia* that (a) s.76 of the Act gave it a right to apply for interim rent; (b) although the contractual tenancy ended in December 2017, it was extended by operation of the Act, and the extension was subject to the jurisdiction of the court to intervene and impose a reasonable rent for the extension period; (c) the extension period operated effectively as a new tenancy and, in the absence of agreement between the parties as to what the level of rent should be for the period, s.76 applied; and (d) a wide interpretation should be given to s.76 because a restrictive interpretation would punish a landlord by locking him out of the benefit of seeking the court's imposition of a reasonable rent over the period of the extended tenancy simply because the landlord had endeavoured reasonably to settle the proceedings.

The claimant submitted that the court had no jurisdiction to raise the rent during the statutory run-off period of the tenancy.

Held, ruling as follows:

In the circumstances, the court had no jurisdiction under s.76 of the Act to increase the rent. Section 76 would apply in one of two instances: (i) where a landlord and tenant had agreed that a future tenancy should be granted but the terms of that future tenancy could not be agreed. In such circumstances, the usual procedure was for the tenant to apply to the court for a new tenancy and for the landlord to indicate his consent; and (ii) where, following the landlord's refusal to grant a new lease, the court had ordered that the landlord was to grant the tenant a future lease, but the parties were not able to agree its terms. An application under s.76 was predicated on the parties being faced with a disagreement as to the terms of a new lease. Section 76 did not apply in the present case where the parties had a clear and concluded agreement that there should be no new

tenancy. Section 76 as read with Schedule 5 of the Act made it evident that the period of extension was not a new term but a period of grace during which the tenant could receive compensation so that he might have a reasonable time in which to vacate and relocate before the end of the tenancy. Schedule 5 did not operate to grant a new tenancy but rather to extend the existing one which "shall not come to an end" until the end of the extended term of that tenancy. The defendant could have availed itself of s.76 at the point when a new lease was being sought by the claimant but refused by the defendant. However, the defendant did not seek to avail itself of s.76 until the parties had a concluded agreement and were therefore outside the ambit of s.76. Section 76 did not give the court a discretion to intervene in any manner whatsoever in order to ensure an equilibrium was maintained between the parties, it restricted the court's intervention to the setting of an interim rent when parties were unable to agree a new tenancy (paras. 21–33).

Legislation construed:

Landlord and Tenant Act 1983, s.76: The relevant terms of this section are set out at para. 20.

Schedule 5: The relevant terms of this Schedule are set out at para. 24.

Landlord and Tenant Act 1954 (c.56), s.24: The relevant terms of this section are set out at para. 37.

D. Feetham, *Q.C.* and *D. Martinez* for the claimant;
A. Vasquez, *Q.C.* and *D. Nagrani* for the defendant.

1 **RAMAGGE PRESCOTT, J.:** This is an application by the defendant for the court to determine whether it has jurisdiction to impose an interim rent pursuant to s.76 of the Landlord and Tenant Act 1983 ("the Act") in the circumstances arising out of this case and, if it does, to determine the amount of interim rent which the claimant should pay in respect of its extended term of tenancy of 18 months. The claimant carries on business as a bakery occupying a shop and bakery situated on the ground floor of 47 Line Wall Road ("the property"). The defendant is a Gibraltar registered company which on November 16th, 2007 bought the freehold over the whole of 47 Line Wall Road ("the building").

Background

2 The parties have set out the background to this application in some detail, I do so in summary quoting liberally from the skeletons of both counsel.

3 The building was for many years owned by the extended Benzimra family. Sometime in the 1960s, three of the Benzimra siblings established a bakery trading as Amar's Confectionery from the ground floor of the building.

4 By the early 1980s, the bakery business was being run by Sara and Jackie Benzimra who were paying a monthly rent of £400, inclusive of rates. In 1987, Sara and Jackie incorporated the claimant to operate the bakery and confectionary business.

5 In November 2007, the Benzimra family sold the building to the defendant. The ultimate beneficial owners of the defendant through various companies were *inter alia* the partners of the defunct firm Marrache & Co. The defendant purchased the building for £1.6m. with finance provided by the Irish Nationwide Building Society. Sometime after 2008, the defendant defaulted on its loan obligations and it now acts through its receivers.

6 For the defendant, said that at the time of the sale of the building Sara and Jackie were the ultimate beneficial owners of the overwhelming proportion of the equity of the freehold and that accordingly the building was being sold with vacant possession of the ground floor. For the claimant, said that the claimant had occupied the property under a tenancy since 2007.

7 On June 29th, 2017, the defendant issued notices terminating what the defendant alleged was the claimant's licence to occupy the premises and in the alternative a notice to quit pursuant to s.44 of the Act, terminating the claimant's tenancy on December 31st, 2017, and indicating that in any event the defendant would oppose the grant of a new tenancy pursuant to s.49(1)(d) of the Act, on the grounds of its intended redevelopment of the property and indeed the building. On July 28th, 2017, the claimant served on the defendant counter notices stating that it would not be willing to vacate the property and asserting that it enjoyed a tenancy over the same. On October 25th, 2017, the claimant filed a claim form applying for a new tenancy pursuant to ss. 43 and 48 of the Act.

8 As a result of a Part 36 offer made by the defendant on May 16th, 2018, it was agreed that proceedings would be settled on the basis that:

(i) The defendant recognized the claimant's status as a tenant of the premises;

(ii) The claimant in turn accepted the defendant's entitlement under s.49(1)(d) of the Act to refuse the grant of a new tenancy on the grounds of its intended development;

(iii) The claimant and the defendant agreed that, by operation of the Act (Schedule 5), the claimant was entitled to have the tenancy that was in existence at the time of the issue of the notice to quit extended for a period of 18 months until June 30th, 2019;

(iv) The defendant agreed that the claimant was due compensation pursuant to s.49(2)(a)(ii) of the Act.

In addition, the defendant made clear its expectation to receive a reviewed interim rent during the period of extended tenancy to which the claimant would become entitled.

9 Not in dispute that the remaining issue outstanding between the parties and before the court is whether the claimant should continue to pay the same rent as was due under the existing tenancy for the extended period of 18 months (as the claimant claims) or whether the claimant should pay a higher interim rent during the 18-month extended period (as the defendant claims). Not in dispute that the rent has not been reviewed since the early 1980s and the claimant continues to pay £400 per month inclusive of rates (of £708.89 per quarter) resulting in a net rent of £163.70 per month. In its current state of disrepair, at open market value, the property would likely fetch a minimum rent of £1,485 per calendar month.

Statutory structure

10 In setting out the general background, I have made reference to some of the statutory provisions as they relate to the facts of this case, however before dealing with the substantive matter in issue, it is helpful to highlight relevant provisions in the context of this application.

11 Pursuant to s.44(1), a landlord may terminate a tenancy by a notice given to the tenant in the prescribed form specifying the date of termination. Section 44 is subject to s.77.

12 Pursuant to s.44(6), such a notice will not have effect unless it states whether the landlord would oppose an application to the court for the grant of a new tenancy.

13 Pursuant to s.49(1)(d), a landlord is entitled to oppose the grant of a new tenancy on the basis that it intends to redevelop the premises.

14 Pursuant to s.48(2), a court is prevented from dealing with the landlord's application under s.44 unless the tenant has notified the landlord that he will not be willing at the date of termination to give up possession of the property.

15 Pursuant to s.43(1), a tenant may (subject to s.48) apply to the court for a new tenancy.

16 Section 77, to which s.44 is subject, provides *inter alia* that where a notice to quit is served in accordance with the Act (as was the defendant's) but that subsequently an application is made by a tenant for a new tenancy (as was made by the claimant), the existing tenancy at the time of the notice to quit shall continue to subsist until three months after the application has been finally disposed of.

17 Pursuant to s.56(2), the tenant is entitled to removal and relocation expense upon the tenancy coming to an end at the instigation of the landlord.

18 Pursuant to s.49(2)(a)(ii), in lieu of a new tenancy, a tenant is entitled to compensation in the amount specified in Schedule 5.

19 Schedule 5, apart from setting out the basis upon which compensation is to be calculated, also provides in the same tables for an extension of the tenancy.

Jurisdiction pursuant to s.76 of the Act

20 For the defendant, submitted that s.76 of the Act operates to bestow upon the defendant a right to apply for interim rent. For the claimant, submitted that the court has no jurisdiction to raise the rent during the statutory run-off period of this tenancy. Useful to set out the provisions of s.76:

> "76. Where the landlord and the tenant of any premises to which Part IV applies are unable to agree on the terms and conditions of a new tenancy within 3 months after the date of termination of the current tenancy, the Supreme Court may—
>
> (a) on an interlocutory application to it by either party, make any interim order as to the payment of rent . . ."

21 Not in dispute that s.76 would apply in one of two instances:

(i) Where a landlord and tenant have agreed that a future tenancy should be granted but the terms of that future tenancy cannot be agreed. In these circumstances the usual procedure is for the tenant to apply to the court for a new tenancy, and for the landlord to indicate his consent.

(ii) Where, following the landlord's refusal to grant a new lease, the court has ordered that the landlord is to grant the tenant a future lease, but the parties are not able to agree its terms.

22 It is of significance that in both the above situations the court places paramountcy upon the parties first attempting to agree terms and indeed it is the absence of agreement which allows the court to determine the terms of the new tenancy in accordance with ss. 52, 53 and 54 of the Act. In these circumstances an application under s.76 is predicated upon the parties being faced with a disagreement as to the terms of a new lease.

23 The situation becomes materially different, however, where the parties have agreed that there should be no new tenancy because, in that event, it is no longer a case that they are unable to agree, rather they are in absolute agreement that no new tenancy should issue. In this case there is no absence of agreement; instead there is a clear and concluded agreement

that there shall be no future tenancy. It is therefore difficult to see how s.76 has any application to the present case.

24 For the defendant, submitted that although the current contractual tenancy ended on December 31st, 2017, it was extended by operation of the Act secured pursuant to Schedule 5, and that extension is subject to the jurisdiction of the court to intervene and impose a reasonable rent for the period in question, because the intervention of the court always arises after the determination of the contractual tenancy. Useful to set out the relevant parts of Schedule 5:

> "2. Where a landlord opposes an application for the grant of a new tenancy on any ground specified in paragraph (d) or paragraph (e) section 49(1)—
>
> (a) in the case where the landlord under section 44(2) has given notice, notwithstanding any other provision in this Act, the current tenancy shall not come to an end before the appropriate period, specified in the second column of the Table to this paragraph, immediately following the date of termination of the tenancy; and
>
> (b) the amount of the compensation referred to in section 49(2) shall be calculated in accordance with the Table."

25 The defendant submits that once the contractual period ends, (December 31st, 2017) the statutory extension operates effectively as a new tenancy (albeit that the tenant is holding not under a lease for a term of years certain but essentially as a tenant from year to year) and in the absence of agreement between the parties as to what the level of rent should be for that period, s.76 applies.

26 It is a bold submission, but one which in my judgment is intrinsically flawed for two reasons:

(i) It is important to note that the statutory extension under Schedule 5 does not come about as a result of any substantive provisions, or indeed as a result of s.76 (to which it bears no connection). The statutory extension period only comes into being as a result of Schedule 5 which is engaged as a result of an entitlement to compensation pursuant to s.49(2)(a)(ii), which in turn only arises upon the termination of a tenancy. It is evident therefore that Schedule 5 only operates to extend the existing tenancy as part of the compensatory measures scheme, so that the extension goes hand-in-hand with compensation. But for the tenancy coming to an end and compensation being paid, there would be no ground upon which to extend the tenancy by 18 months. Against this background, the submission that the 18-month extension somehow mutates into a new tenancy distinct from the previous as envisaged by s.76 is simply not sustainable.

(ii) The defendant's attempt to argue that some sort of "new" tenancy exists as defined by s.76 falters in light of the agreement reached by the parties that by operation of the Act the claimant is entitled to receive a compensatory sum, because that sum is a recompense for the loss of the benefit of a future tenancy. That payment necessarily recognizes that there will be no future tenancy. It stands to reason that if a future tenancy were contemplated or being negotiated, the claimant would not be receiving compensation for its loss.

27 Section 76 as read with Schedule 5 makes it evident that the period of extension is not a new term but a period of grace during which the tenant can receive compensation commensurate to the number of years he has been in occupation so that he may have a reasonable time in which to vacate and relocate before the tenancy finally ends. It is a statutory extension of the existing tenancy which would not have any meaning in this case had the landlord not agreed with the tenant that he should recover his premises. In my view, Schedule 5 does not operate to grant a new tenancy in any form, but rather to extend the existing one which "shall not come to an end" until the end of the extended term of that tenancy.

28 I agree with counsel for the defendant that, the defendant having served a notice to quit in June 2017 and the claimant having issued a counter notice in July 2017 indicating that it was refusing to give up possession, there was nothing preventing the landlord as from April 1st, 2017 from invoking s.76, and requesting an interim rent on the basis that the parties were at that point in time unable to agree terms in anticipation of a possible new tenancy. The crucial point, however, is that at the time when a new lease was being sought by the claimant but refused by the defendant, and in the face of an inability to agree, the defendant did not avail itself of s.76. Its recourse to s.76 takes place after the parties have agreed that there will be no future lease, and that the relationship of landlord and tenant will cease after the expiration of a period of 18 months. This is material because by the time that s.76 is invoked, the parties are no longer in a position where they are unable to agree terms, they have made a concluded agreement and the starting point must be that therefore they are outside the ambit of s.76.

29 The defendant calls for a wide interpretation of s.76 because, it is submitted, interpreted restrictively it would have the effect of punishing a landlord by locking him out of the benefit of seeking the court's imposition of a reasonable rent over the period of the extended tenancy simply because the landlord has endeavoured reasonably to settle the proceedings.

30 As I have said, it was always open for the landlord to have relied on s.76 from April 1st in light of the landlord and tenant's then inability to agree a future tenancy. The defendant is locked out of the benefit of s.76,

not punitively, because he is attempting to settle proceedings, but procedurally, because by the time he invokes s.76, proceedings have already been settled with the result of an absolute agreement that no new tenancy arises going forward, the prospect of a new tenancy is the premise upon which s.76 operates, and it is the absence of that prospect together with a concluded agreement which puts s.76 beyond the defendant's reach.

31 Counsel for the defendant submits that because s.76 contains no qualification preventing a landlord from applying for interim rent if he is opposing the grant of a new tenancy under s.49 on the grounds of redevelopment, he should be able to rely on it. Section 76 identifies what either party can do by reference to those terms and provisions which are set out in the section (*i.e.*, the inability of the parties to agree a new tenancy) not by reference to possible scenarios that are omitted from the section. It seems to me trite that a statutory provision falls to be interpreted by the parameters which it sets and not by the possibilities which it omits; to hold otherwise would be to open the floodgates in such a way that a party would be able to apply for interim rent in any conceivable situation that was not expressly prohibited by the section. Where a statutory provision is capable of having only one meaning, then there can be little doubt as to what that meaning is.

32 The defendant's advocates applying a wide interpretation to s.76, the defendant draws the court's attention to the specific wording of that section, and submits that the use of the word "any" gives the court an extremely wide discretion, and in counsel's own words—

> "confirms the Court's wide ranging discretion to intervene in whatever manner it thinks appropriate in order to maintain a reasonable equilibrium between the parties and to prevent abuses from either side."

I am of the view that the discretion afforded the court by the word "any" does not extend to the court's intervention in whatever manner it thinks appropriate, rather it is a discretion limited to the level of interim rent that in the court's view is appropriate.

33 Section 76 does not give the court a discretion to intervene in any manner whatsoever in order to ensure an equilibrium is maintained between the parties, it simply restricts the court's intervention only to the setting of an interim rent and only when the parties are unable to agree a new tenancy. I have no doubt that historically the claimant has been paying what has properly been described by the defendant as a ludicrously low rent, certainly well below the current market value from time to time of the property. The landlord is aggrieved that during the extension period the tenant will continue to benefit from the derisory rent. I have some sympathy with that grievance. That said, the landlord could have applied during the currency of the lease to have the rent increased; he did not, with

the consequence that this court is in no position pursuant to s.76 to effect that increase now on the basis of restoring an equilibrium between the parties. If the defendant's application does not fall within the ambit of s.76, he cannot invoke a non-existent discretion of the court on the basis that the justice of the case requires it.

34 Submitted for the defendant, that note 43 to Practice Direction 56 to CPR 56 confirms that the application for interim rent is an independent one and can continue even if the tenant's application to renew the tenancy is withdrawn. I think little turns on this because, regardless, the application would nonetheless continue to be governed by the provisions of s.76 pursuant to which the application is made.

Scheme of the Act

35 Mr. Feetham has provided a supplemental skeleton which carries out a comparative exercise between the Act and the 1954 UK Landlord and Tenant Act, as enacted. Whilst I have carefully considered the analysis, I do not propose to rehearse that exercise in any detail for two reasons, first because although the regimes are similar in many ways, there are certain material differences between them which make any comparison (in relation to the facts of this case upon which the application is based) of limited value, and secondly because, in any event, the comparative exercise has little bearing upon my decision that s.76 has no applicability to the facts of this case. That said, Mr. Vasquez submits that the construction of s.76 which he urges falls squarely into the generally recognized scheme of the Act, and therefore he urges me to interpret s.76 as he proposes in order to achieve the purpose of the Act which, he submits, has always been to provide the tenant with security of tenure but not to allow him to abuse or profit financially from that security.

36 Mr. Vasquez refers to para. 2.5 of the 1988 Law Commission Report into the working of the Act which he submits sets out the underlying policy not to allow the tenant to profit from the extension of the tenancy but to maintain an equilibrium between the two sides:

> "The fundamental aim of the Act is to confer on business tenants security of tenure without otherwise protecting them from market forces."

And at para 2.17 in relation to the interim rent regime under the Act:

> "Clearly, in a rising market any continuation of the current tenancy beyond its contractual term date is likely to disadvantage the landlord, who will only be receiving rent at the existing level. The Act therefore provides that, once either a section 25 notice [s.44 in the local Act] or section 26 request [s.45 in the local Act] has been served, a landlord can apply for the payment of interim rent."

37 I have no quarrel with that reasoning but the point is this, the views of the Law Commission were expressed in the context of the UK legislation which provides a somewhat different regime to the Act, and therefore those comments are not necessarily applicable to the Act or to the Gibraltar legislative purpose. Section 76 has no equivalent in the UK legislation. The closest provision is s.24A of the 1954 UK Act which is a far wider provision and which was introduced by the Law of Property Act 1969. Useful to set out s.24A:

"(1) The landlord of a tenancy to which this Part of this Act applies may,—

(a) if he has given notice under section 25 of this Act to terminate the tenancy; or

(b) if the tenant has made a request for a new tenancy in accordance with section 26 of this Act;

apply to the court to determine a rent which it would be reasonable for the tenant to pay while the tenancy continues by virtue of section 24 of this Act, and the court may determine a rent accordingly.

(2) A rent determined in proceedings under this section shall be deemed to be the rent payable under the tenancy from the date on which the proceedings were commenced or the date specified in the landlord's notice or the tenant's request, whichever is the later.

(3) In determining a rent under this section the court shall have regard to the rent payable under the terms of the tenancy, but otherwise subsections (1) and (2) of section 34 of this Act shall apply to the determination as they would apply to the determination of a rent under that section if a new tenancy from year to year of the whole of the property comprised in the tenancy were granted to the tenant by order of the court."

38 The background to the introduction of that provision in the United Kingdom was highlighted in the 1969 Law Commission Report which identified the problem issue of tenants deliberately dragging their feet and enjoying low existing rents pending the outcome of their application for a new tenancy (which in reality they may not even want and in the end may be unlikely to achieve).

39 One presumes that in drafting the Act, the Gibraltar Parliament was cognizant of the UK provisions upon which the Act is generally based. It seems to me that the concern in the United Kingdom to provide security of tenure for a tenant, without otherwise protecting him from market forces, was likely not to have been a concern of the Gibraltar legislature given that they chose not to implement s.24A but instead have a more limited power in the form of s.76, with the inclusion of added provisions which

are very much more beneficial to business tenants in Gibraltar than their equivalent in the UK Act. Under the Act, the compensation which the tenant is entitled to receive is much higher; in addition the tenant is entitled to relocation expenses and to a statutory run-off period for the existing tenancy. The Act provides the added security that in cases where there is no agreement and the court orders that there should be a new tenancy, it can make up for any disadvantage that may have been caused to the landlord by ordering the payment of back rent pursuant to s.76(b).

40 Mr. Feetham makes a fair point that if a tenant believes that the landlord has a good defence to the issue of a new tenancy, extending their stay in those circumstances would delay receipt by them of significant compensation and relocation expenses (far higher than in the United Kingdom) as well as prevent them from enjoying the statutory run-off period at the same rent that they are currently paying. The commercial incentive for a tenant to make an application on unmeritorious grounds is therefore greatly reduced, and I agree that this may explain why there appears not to have been a similar difficulty in Gibraltar as there was in the United Kingdom.

41 In any event, whatever the Gibraltar Parliament's intention behind s.76, upon the facts of this case, it is of little consequence because the parties do not want to agree a new tenancy, they agree there should be no new tenancy, the tenant is in receipt of compensation and relocation expenses and the tenancy will end at the expiration of the run-off period. This is not a case where security of tenure needs to be protected. It is simply a case to which s.76 does not apply.

42 Had the 1954 UK Act applied, in the circumstances of this case, pursuant to s.24A, the landlord could have applied for an interim rent simply on the grounds that he had given notice to terminate the tenancy or that the tenant had made a request for a new tenancy, absent the requirement that parties had been unable to agree upon a new tenancy, or indeed that a new tenancy should be a factor at all. But the 1954 Act does not apply, and comparisons between the two regimes afford little assistance. Section 76 of the Act must be interpreted according to its clear and unambiguous meaning and not in a manner which bases its analysis on the interpretation of an Act which does not apply in Gibraltar and which in any event has no equivalent provisions in Gibraltar.

43 I am in no doubt that s.76 is designed to operate to bring a degree of fairness and certainty to the table during a period in which the terms of a new lease are being agreed by the parties or identified by the court. The very purpose behind s.76 is to ensure that in the run-up to a new lease the tenant pays a measure of rent which will have some bearing on the higher rent foreseen in the issue of a new tenancy. If the prospect of a new

tenancy does not exist, the requisites of s.76 are not met and the landlord cannot rely on it to force a higher rent for an existing tenancy.

44 For the reasons given the defendant's application fails.

45 Orders to issue and I shall hear the parties as to costs.

Ruling accordingly.
