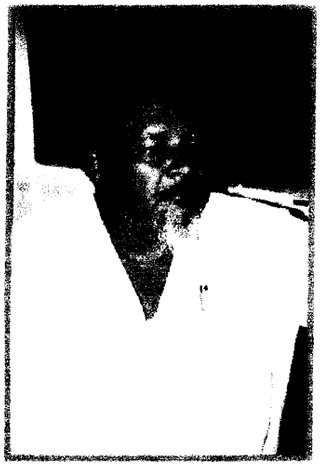
Year 1

L&T

NEED FOR RFORM OF THE RENT RESTRICTION ACT



by **Peter Carson**

As someone who has been involved in the teaching of landlord and tenant law for many years, I have had difficulty trying to explain to students, many of whom are tenants (very few are landlords) why it is that the Rent Restriction Act appears to be ignored for the most part by tenants and certainly by their landlords. The truth is that as is the case with so many other laws in Jamaica the Rent Restriction Act today is more honoured in the breach than anything else.

The circumstances in 1944 which prompted the need for rent restriction legislation and the political, economic and social environment that has supported and sustained such legislation over the past near sixty years have changed substantially in recent times. Although one may have to concede that the social and economic conditions of many persons still remain very vulnerable and would therefore still need a degree of protection. The Privy Council in **Morgan v A. G. (Trinidad and Tobago)**[1] per Lord Templeman "

> "Statutory rent restrictions imposed on dwelling-houses have long been features of many societies (including the Republic of Trinidad and Tobago) which maintains proper respect for the rights and freedoms of the individual, including the right to enjoy property. The legislature of such a society considers that it is reasonably justifiable to limit the income which a landlord derives from his investment in order to limit the rest that a tenant must pay for his home. Rent restrictions are justified by the need to prevent a landlord exploiting a shortage of housing accommodation."
> "Every administration in a democratic society retains power to counter rent rises by rent control. The likelihood of rent control legislation and the form of rent control legislation depend on the current state of housing shortages and on the current political and economic philosophy of the administration."

Nevertheless, the existing statute is in some respects an anachronism in today's market

driven economy. In addition, the effectiveness of the Rent Assessment Boards have been greatly reduced due to a lack of personnel and financing. In other words, they have been given basket to carry water.

Recently, the Ministry of Water and housing appointed a committee to consider whether there is any need at this time to amend the Rent Restriction Act. The committee consisted of a number of persons representing different groups and as to be expected with different views as to the utility or otherwise of the Act. I was a member of that committee and expressed some of my own views at the time.

Ideally what is needed is a new statute (although some might say no statute at all). The existing Act is an interpreters nightmare and not surprisingly so since the original Act of 1944 has been amended no less than 11 times. However, since this is not likely to happen in the short term with appropriate amendments the role and effectiveness of the Rent Assessment Boards could be considerably bolstered as well as the overall relevance and effectiveness of the Act itself.

But before I identify the changes that I think should be made it would I think be useful to give a brief historical background that would explain some of these changes.[2]

As was stated above, the Act has undergone many amendments over the years but some of the most important occurred in 1983. These were against a background of sharp increases in property values and rent after the 1980 elections and the public outcry by many tenants who were affected by these increases.

The result was that the amendments sought amongst other things to (I) extend the Act's application to all public and commercial buildings except those that applied for and got a certificate of exemption; (2) provide for the appointment of Assessment Officers who would determine the standard rent for all let premises; (3) make it mandatory for all landlords to apply to the Assessment Officer for the standard rent to be determined for their premises and (4) convert the Rent Assessment Boards from quasi-judicial bodies to appellate tribunals hearing appeals from any decision of an Assessment Officer (although they could still exercise the powers of an Assessment Officer).

What change should therefore be made? It is submitted that there are at least **five** areas that need immediate attention: They are –

1. exclusion from the Act of all public and commercial buildings;
2. exemption from the Act of certain categories of residential buildings or at least a more flexible arrangement;
3. a new formula for determining standard rent and increases thereafter;
4. the recognition and regulation of security deposits;
5. the right for a landlord/vendor to sell the premises with vacant possession.

It is my view that all public and commercial premises should be automatically exempt from the Act. This is not a revolutionary proposal since the Act provides for the granting of certificates of exemption for various categories of public and commercial lettings including premises whose square foot value is less than $4 in rural areas and $6 in urban areas – even the most derelict building would qualify for exemption. So what's the point.

There can be no justification in a market driven economy to include public and commercial lettings at this time. A better approach would be to let the parties negotiate and settle the terms of the letting.

2. With respect to residential lettings, the current practice seems to be this: landlords and tenants determine rent in arms length transactions without regard to the rent-setting mechanism of the Act. In fact rent is often agreed and paid in US dollars. This situation is not new because from the inception of the 1983 amendment Act, the failure to appoint a sufficient number of assessment officers meant that from the outset there was a backlog of applications for premises to be assessed.

Having regard to the above, therefore, it would seem that one of two things need to be done.

1. Divide residential lettings into two categories: those whose value is such that the landlord and tenant should be free to negotiate the rent and other terms of the letting. The remaining lettings involving the most economically vulnerable in the society would continue to be protected under the Act.

2. Alternatively, abandon the mandatory requirement that all premises that are let should be assessed for the determination of the standard rent and return to the pre 1983 system when Rent Assessment Boards acted as quasi judicial bodies which could be assessed by either landlord or tenant to have the rent of

premises which have been let set by the Board. This is also the position in many other Commonwealth Caribbean jurisdictions.

This procedure, as it did before, would be available to all landlords and tenants who wanted rent determined and other disputes resolved but would obviously exclude those who were satisfied with the terms of their contract.

Where rent is set by the Board, of course provision would have to be made for future increases. The current arrangement is that landlords are entitled by ministerial order to an automatic 71/2 per cent annual increase. This order has been in effect since 1988. Clearly, what is needed is a more flexible system for increases. At the moment 71/2 per cent per annum may not be unreasonably low having regard to the official cost of living figures but in the very recent past it was totally out of sync with reality.

There are any number of options – any one of which would reflect prevailing market rates. For example, increases in rent could be linked to the cost of living index or treasury bills interest rates on an annualised basis.

In addition to the above proposed changes, the date lines in the Act obviously need to be updated. In 1983 when a number of substantial amendments were made to the Act the datelines were appropriate. 1976 as the base year for calculating the rent for premises already let, 1980 for those let thereafter and 1983, the year of the amendments. These dates have created difficulty for student-attorneys and some attorneys who often think that premises built or acquired at arms length transactions after 1983 are exempt from the Act. Today, it would seem more logical to have a progressive dateline and therefore have the Act applied on an ongoing basis.

Fourthly, to the very vexed issue of security deposits. The Rent Board has insisted time and time again that such deposits are illegal. If this is so then many if not most landlords are in breach of the Act. I am not aware that the Rent Board has made any distinction between security deposits which are a genuine attempt by landlords to secure some protection against unpaid rent, unpaid utility bills and damage to the premises committed by recalcitrant tenants which occur quite often and those which are simply a premium or fine.

Most attorneys, however, distinguish security deposits from premiums and fines which are prohibited by the Act and argue that such a sum when made refundable to the tenant or treated as the last month's rent if there are no outstanding bills or any damage

to the premises is not in breach of the Act.[3]

It seems therefore, that the Act ought to be amended to expressly allow for a security deposit of the kind described above not to exceed say two months rent, with the caveat that accrued interest should also be returned. This latter proposal is likely to be controversial but should seriously be considered.

Finally, the contortions that are required by a landlord who wishes to sell his property to a purchaser with vacant possession need to be statutorily clarified. It is either that it be separately stated that only the purchaser upon passing of the legal title to him can give notice to quit or it be made a ground under section 25 that the premises has been sold in a *bona fide* transaction with vacant possession.

Whenever proposals to amend social legislation are made there tends to be emotional responses to this. Persons need to realise that society is not a static entity but on the contrary a very dynamic one and that change is on going. For laws to be effective they need to reflect this.

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[1] (1987) 36 WIR 396, 397-398

[2] For a more detailed discussion see Selina Goulbourne's note in West Indian Law Journal Volume 7 May 1983 No. 1 page 140.

[3] Jerome Lee "Drafting Commercial Leases" 30th November, 1990