1951 — 1955

THE

JAMAICA LAW REPORTS

[6 J.L.R.]

DECISIONS

OF

THE HIGH COURT

AND OF

THE COURT OF APPEAL

PUBLISHED BY THE AUTHORITY OF THE SUPREME COURT
OF JUDICATURE OF JAMAICA

Editor — MR. JUSTICE MACGREGOR

PRINTED BY
THE GOVERNMENT PRINTER,
DUKE STREET, KINGSTON.

1956

COURT OF APPEAL 1953

BIGGS v. BARRETT

MACGREGOR, J.

The sections of the Rent Restriction Law, (Law 17 of 1944) dealing with the standard rent are sections 9, 10 and 11. Section 10 sub-sections (1) and (2) provide:

(1) Where any premises are intended to be let.....it shall be lawful for any person proposing to let the same to apply to the Board to fix, provisionally, the rent which will be the standard rent of the premises when they are so let and the Board may fix such provisional standard rent accordingly. The applicant shall disclose to the Board the terms and conditions of the proposed letting and all circumstances which will affect the standard rent of the premises.....

(2) Where any premises are intended to be let..... without having previously been let in the same category of letting, it shall be the duty of the person proposing to let the same to apply to the Board under the preceding sub-section, before the commencement of the tenancy, to fix the provisional standard rent. If any person shall fail to comply with the provisions of this sub-section, he shall be guilty of an offence against this Law.

Section 11 provides:

(1) When the standard rent of any premises in relation to any category of letting is determined by the Board, it shall be determined on the principles of section 9 of this Law, modified as follows—

(a) where the premises were not let in the same category of letting on or before the prescribed date, the standard rent shall be the rent which, in the opinion of the Board, might reasonably have been expected in respect of a similar letting of similar premises in the same locality on the prescribed date (regard being had when practicable to the rents actually obtained from any such similar lettings) with an addition, in the case of a dwelling house or public or commercial building erected after the prescribed date, of such amount as the Board may think reasonable on account of increased amenities of the locality, or increased cost of building, between the prescribed date and the date of completion of the building.

Section 9 provides:

Until the standard rent of any premises in relation to any category of letting has been determined by the Board under section 11 of this Law, the standard rent of the premises in relation to that category of letting shall be the rent at which they were let in the same category of letting on the prescribed date or, where the premises were not so let on that date, the rent at which they were last so let before that date, or, in the case of premises first so let after the prescribed date, the rent at which they were, or are hereafter first so let.

COURT OF APPEAL 1953

BIGGS v. BARRETT

MACGREGOR, J.

It was admitted by counsel for the parties, during the argument, that the alteration of the premises by Kates and by the respondent, was to make them new premises for the purpose of the Law, and that the letting to Kates by the respondent was the first letting of them after alteration. They were, therefore, not only premises which had not previously been let, but also premises which had not previously been let in the same category of letting. It, therefore, became the duty of the respondent, who was proposing to let them under section 10 (2) to apply to the Board under section 10 (1) to fix the provisional standard rent. Had that application been made, the Board would have had to consider first, the provisions of section 9. But as there would have been no previous letting the Board could not have applied section 9. It would then have had to apply the principles set out in section 11 (1) (a), and the standard rent would have been the rent "which, in the opinion of the Board, might reasonably have been expected in respect of a similar letting of similar premises in the same locality on the prescribed date."

But the respondent did not make the application that he should have made, and, therefore, committed a breach of section 10 (2). The Board, in arriving at its decision, completely ignored the provisions of section 11 (1) (a) and fixed as the standard rent, the figure at which the premises were first rented in 1948. We are of opinion that it was wrong for the Board to have accepted this figure as the standard rent, as it had no relationship to "a similar letting of similar premises in the same locality on the prescribed date". The respondent cannot take advantage of his own wrongful omission, so as to obtain a standard rent which may well be higher than the proper figure.

For this reason we are of opinion that that portion of the order of the Board dealing with Building No. 1, and in particular with the tenancies of the applicant and of Agatha O'Connor, Adassa Clarke, Rupert Grant and R. McNeil should be set aside and a new hearing ordered. The question of costs is reserved for further consideration.

Solicitor for the appellant: Cawley.

Solicitors for the respondent: Brandon and Bolton.

---

3 C.A.J.B. 232.

COURT OF APPEAL 1953

March 9, 10, 27

COUCH v. MORRISON

Landlord and tenant—Rent restriction—Standard rent—Permitted increases—Statutory percentage—Improvements—Reduced amenities.

On an application to fix the standard rent of controlled premises, the Rent

Restriction Board permitted increases of ten percent of the standard rent, and an amount for improvements, and then reduced the rent by £1 "for reduced amenities".

HELD: (i) sec. 14 (1) of the Rent Restriction Law, 1944, which restricts the recovery of the standard percentage increase until after the expiry of four weeks from the date of service by the landlord on the tenant of a notice to increase the rent, applies only when the landlord proposes to increase the rent without reference to the Board;

(ii) the replacing of a shingle roof by a zinc roof, was not, in the circumstances, an improvement, but ordinary and necessary repair;

(iii) the Board had no power to reduce the permitted rent "for reduced amenities".

APPEAL from the order of the Rent Restriction Board for the Corporate Area of Kingston and St. Andrew.

Order varied.

Manley, Q.C., for the appellant:
Rowe for the respondent.

Cur. adv. vult.

1953. March 27: The judgment of the Court (O'Connor, C.J., Carberry and Cluer, JJ.) was read by the Chief Justice.

O'CONNOR, C.J. O'CONNOR, C.J.: The appellant, a dentist, has occupied 70 East Street, Kingston, a two storey building, as tenant of the respondent for upwards of twenty years. He used the lower floor as his dental surgery and sublet the two rooms on the upper floor. On the prescribed date he was paying a monthly rental of £7.

In 1944 the jalousie shutters on the lower floor were in disrepair, and, instead of repairing them, the landlord removed them and boarded up the spaces at a smaller cost than would have been entailed by repairing the jalousie shutters. This alteration made the building more secure, but reduced the passage of light and air into the lower floor. When this alteration was completed the Solicitors for the landlord and the tenant conferred and it was agreed that the monthly rental should be increased to £9 10/- from September, 1944. The appellant has been paying that sum since that date.

In the hurricane of 1944 the premises suffered considerable damage; the roof of the main building, which was not water tight before, was blown off; it has since been replaced with zinc, the previous roof was of shingles. The outbuildings, which were also badly damaged by the hurricane, have not yet been repaired. The tenant has, therefore, adopted the attitude that he is not morally or legally bound by the agreement to pay £9 10/- per month, which was reached by his Solicitor and the Solicitor for the landlord. The tenant, accordingly, asked the Rent Restriction Board to fix the rent which he is liable to pay.

The Board made the following order:

Standard rent	£7	0 0
Statutory 10%	14	0
Increase for improvements ...	2	10 0
Increased Rates & Taxes	14	8
	£10	18 8

and then proceeded to order that this sum be reduced by £1 "for reduced amenities".

We are unable to find any evidence which would support the Board's finding that there were improvements within section 13 (1) (e) of the Rent Restriction Law. Apparently, the Board thought that the substitution of zinc for shingles on the roof of the main building reduced the fire hazard of the premises, but the sub-section under consideration specifically excludes "ordinary or necessary repairs" from the definition of substantial improvements, and, certainly, the supplying of a roof to a building is a necessary repair. We do not see that the fact that it was of zinc makes it an "improvement". Zinc might have been used because it was cheaper and there was some evidence that the Kingston and St. Andrew Corporation Building Authority required a zinc roof to replace the destroyed shingle roof.

It is also observed that the Board ordered a reduction in the monthly rent by £1 "for reduced amenities". We are not aware of any authority under which the Board can make such an order, and it appears to us that the condition of the outbuildings, which, apparently, was what the Board meant by "reduced amenities", could only justify the Board in refusing to make an order sanctioning an increase in rent in excess of the standard rent if there had been substantial improvements.

The proviso to the paragraph of the section in question (section 13 (1) (e)) reads:—

> "Provided that the Board may decline to make an order under this paragraph in respect of premises which, in the opinion of the Board, are not in tenantable repair, unless such condition is due to the tenant's neglect or default."

In this case the Board is, in effect, saying that the premises (i.e. the outbuildings) are in such bad condition that the standard rent must be reduced, but there are nevertheless improvements in the premises which justify an increased rent. We are of the opinion that this order cannot stand.

It was further argued for the appellant that the Board had no authority to order the statutory increase of ten per centum in the

COURT OF APPEAL 1953

COUCH v. MORRISON

O'CONNOR, C.J.

rent to be effective from the date of the order, as section 14 (1) (a) provides that:

> "no such increase shall be due or recoverable—
>
> (a) until the expiry of four clear weeks after the landlord has served on the tenant a valid notice in the form set out in the second schedule to this Law of his intention to increase the rent."

This permitted increase in the standard rent is set out in section 13 (1) in these terms:

> "The amounts by which the rent of any controlled premises may exceed the standard rent shall, subject to the provisions of this Law, be—
>
> (a) the amount of any increase in rent which a landlord has made, or could lawfully have made, after the prescribed date by virtue of the statutory ten per centum increase permitted by section 2 of the Rent Restriction Law 1941:"

It is to be observed that the sub-section has reference to the authority of a landlord to increase the standard rent without reference to the Board. Section 2 of the 1941 Law to which reference is made emphasizes this. It reads:

> " 'Standard percentage increase' means that percentage by which the standard rent may be exceeded without application to a Resident Magistrate."

Moreover, the section on which appellant's Counsel relied also indicates that the notice is to be given when the landlord is himself exercising his right to demand the additional ten per centum increase in the final words in the clause which read "of his intention to increase the rent".

We are, therefore, of opinion that the notice specified in sub-section 1 (a) of section 14 is only to be given when the landlord is himself seeking to exercise this right without the intervention of the Board.

Sub-section (3) of section 13 provides that—

> "The Board may, at any time, on the application of the landlord or the tenant, determine, in relation to any premises, the amount by which the rent may exceed the standard rent in any of the circumstances contemplated by paragraphs (a) (b) or (c) of sub-section (1) of this Section."

The enactment is that the Board "may *at any time*" determine this permitted increase and sub-section (8) of section 6 reads—

> "An order of the Board shall operate from such date, whether before or after the date on which the order is made, as may be specified in the order, or if no such date be specified, from the date of the order....."

COURT OF APPEAL 1953

COUCH v. MORRISON

O'CONNOR, C.J.

We are consequently of opinion that the order of the Board in this case permitting an increase of ten per centum in the rent from the date of the order was valid and that the provision as to notice is only applicable when the landlord is enforcing his statutory right without the intervention of the Board.

The order of the Board in this case will be varied to read thus:

Standard Rent	£7	0	0
10% increase		14	0
Increase for Rates & Taxes ...		14	8
Total monthly rent	£8	8	8

The respondent must pay the costs of this appeal which are fixed at £12.

Solicitors for the appellant: Livingston, Alexander and Levy.

Solicitor for the respondent: Forrest.

---

3 C.A.J.B. 205.

COURT OF APPEAL 1953

Feb. 3
March 17

R. v. HUGH POW AND OTHERS

Criminal Law—Gambling Law—Common gaming house—Unlawful gaming—Public, class of.

The appellants were playing the Chinese game of Mah Jong in a hall above a grocery shop, when the police entered and executed a search warrant issued under the Gambling Law, Cap. 425. It was admitted that the appellants were playing for stakes. The learned Resident Magistrate found as facts that the premises were not kept for habitual gambling and that the premises were used for playing Mah Jong by the more favoured or closely connected good customers and friends of the occupier of the premises. He held, as a matter of law, that such persons constituted a class of the public and, as a class of the public had, or might have had, access to the premises, and as the premises were used for gambling, they were a common gaming house as defined by sec. 2 of the Gambling Law. Accordingly, he convicted the appellants of an offence of committing an act of unlawful gaming, that is, playing a game for a stake in a common gaming house.

HELD: Although the learned Resident Magistrate was right in holding that the premises were a place used for gambling, he was wrong in holding, as a matter of law, that the more favoured or closely connected good customers and friends of the occupier constituted a class of the public, so as to make