IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO: 22/80

BEFORE: The Hon. President,
The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice Rowe, J.A.

BETWEEN	DONHEAD COURT LIMITED (landlord)	APPELLANT
A N D	RENT ASSESSMENT BOARD FOR THE CORPORATE AREA	RESPONDENT

In the matter of 10 Donhead Avenue (Donhead Court) St. Andrew

AND

In the matter of the Rent Restriction Act, 1979

Mr. Howard A. Fraser for the Appellant

January 21 and 30, 1981

ROWE J.A.

Donhead Court situate at 10 Donhead Avenue, Kingston 6, in the parish of St. Andrew is comprised of two apartment buildings containing 2 studio apartments and 12 one bedroom apartments. These 14 apartments were let to separate tenants. Proceedings were instituted by Mr. Edmond Gordon one of the tenants, on October 3, 1979 before the Rent Assessment Board for the Corporate Area, to have the standard rent of his apartment determined. On October 23, 1979 the Secretary of the Rent Assessment Board by notice required the landlord to apply under Section 18 (4) of the Rent Restriction Act (hereunder called the Act) to have the premises assessed. The records do not disclose whether the landlord complied with this request.

The application proceeded in a normal way. Mr. Stanley Cook, a realtor visited the premises on two occasions and on the hearing of the application gave evidence as to his valuation of the land at

$62,643.00 of the two buildings at $87,329.00 and $15,356.00 respectively and of the furnishings of each apartment according to its own appointments. Landlord and tenants were eminently satisfied with each and every assessment of Mr. Cook as to the valuation of the land, the valuation of the buildings and the valuation of the furniture. One would have thought that with this happy co-incidence of circumstances there could be no room for dissent as to the true standard rent for each of those apartments. But this application had its own inherent problem.

It was the landlord's evidence that the rental for each apartment included an element for maintenance. What that maintenance element represented in money was never disclosed to any tenant at the time when he entered upon the tenancy nor was this done subsequently. Whatever calculations the landlord made to arrive at his maintenance figure, whatever he wished to provide and to place to the account of the tenant, he kept that information locked in his breast. It was little wonder then that at the hearing of the application for the fixing of the standard rent when the landlord began to expand upon the multiplicity of costly services that he provided, that he met strong resistance from the complaining tenant. There was a dispute between these parties as to who provided garbage collection services, the K.S.A.C. or a private contractor; as to whether the gardner was a $50.00 per week full time employee equipped with lawn-mower, wheel-barrow, ladders and brooms or only a once a month machete chopping man. All these questions as to maintenance services the Board resolved and made an assessment as to the value of the services.

Enough has been said to indicate that an unreal situation can be created when a landlord fixes upon a single sum for the rental of premises which sum is inclusive of a maintenance element without disclosing to the tenant the amount for such maintenance. Such a practice places the tenant unnecessarily at the mercy of the landlord as no one but the landlord can in those circumstances determine whether

the sums being demanded for maintenance services are reasonable. This unreality is compounded when there is no written or oral agreement, as in this case, between landlord and tenant as to what services the landlord will provide for which the tenant must bear the whole cost. A landlord should find no shelter in this rolled up procedure. On his application to the Board under Section 18 (4) of the Act, the landlord should be obliged to disclose what amount of the rental is being allocated to maintenance services.

In the instant case the application which was before the Board was founded under Section 18 (3) of the Act in respect of the tenant's application and Section 18 (4) in respect of the request to the landlord to make an application. The principles on which the Board can assess the standard rent are those set out in Section 19 of the Act. Parliament has given fixed percentages for the calculation of the standard rent and it may be reasonable to expect that a prudent and business-like landlord may be expected to service his capital investment, keep the premises in tenantable repair and even make a modest profit out of the proceeds of this standard rent.

There are, however, some exceptional circumstances where a landlord is permitted under the Act to demand of a tenant a sum in excess of the standard rent fixed in accordance with Section 19. Such are the circumstances provided for in Section 24 (3) of the Act:

> "Nothing in subsection (1) shall prevent a landlord from requiring from a tenant reimbursement of any sum paid by the landlord for water, electricity, gas, attendance or any other service supplied to the tenant on premises let to him by the landlord, landlord, being sums in respect of such service aforesaid known or reasonably ~~esti~~ estimated by the landlord to have been used or enjoyed by the tenant."

This provision is only fair. A landlord is not required to maintain his tenant or to subsidize his tenant's household expenses. But equally a landlord is not permitted to make a secret profit or to enrich himself out of his tenant by inflating charges for services or

charging for unnecessary services or unperformed services. Section 24 (4) protects the tenant from these or similar landlord excesses by providing that a landlord who wishes reimbursement for services under Section 24 (3) shall produce to the tenant any bills he has received for the services he claims to have supplied. If there is agreement between the landlord and tenant as to the level of reimbursement, that is an end of the matter. If a dispute arises, then either landlord or tenant may make an application to the appropriate Rent Board to have the question settled - see Section 24 (4) of the Act.

The procedure under the Act for the determination of the amount which a landlord can claim for reimbursement for services rendered to a tenant is tolerably clear. Firstly, it is unrelated to the procedure for the fixing of the standard rent which depends so much upon the intrinsic value of the land, buildings and furniture, if any, supplied by the landlord and to the formula to be applied thereto as fixed by Parliament. Secondly, it is open to the parties to agree as to the sum to be paid for the services supplied and as to this there should be no element of profit for the landlord. Thirdly, it is only when the landlord and tenant have a dispute as to the amount of reimbursement to which the landlord is entitled that that specific question can be submitted to and determined by the Board.

In the instant case the landlord had no notice that the tenant would seek to question his charges for reimbursement. The notice sent to the landlord by the Rent Board on October 23, 1979 specifically referred to Section 18 (4) of the Act and made no mention of Section 24 (4) of the said Act. We readily understand that the Board was anxious to deal with all the questions which arose on the evidence especially having regard to the unorthodox manner in which the landlord calculated his rent for each apartment, but we have no hesitation in deciding that the Board had no jurisdiction to determine the question of reimbursement for services on the instant application.

It was for these reasons that we allowed the appeal and

granted the appellant's prayer that the Board's Order be varied. We quashed that portion of the Board's decision which purported to make an award for services in the sum of $32.00 per month in respect of each of the 14 apartments.

We are not unmindful of the fact that by virtue of our decision in this appeal, further proceedings in respect of these premises may come before the Board but we wish to stress that if the proper procedure is adhered to at all times that that is the surest way to avoid delays and expense and eventually to lead to the advancement of the course of justice.