

ROYAL COURT
(Samedi Division)

174,

26th September, 1996

Before: P.R. Le Cras, Esq., Lieutenant Bailiff,
Single Judge

In the matter of the Dwelling Houses (Rent Control) (Jersey) Law,
1946, as amended ("the Law")

Between: Daisy Hill Real Estates Limited Representor

And: The Rent Control Tribunal Respondent

Representation of the Representor asking the Court:

- (1) to order the Respondent Tribunal to produce to the Representor full details of its decision, taken in accordance with the powers conferred upon it by Article 4(2) of the Law fixing the rent of flats owned by the Representor;
- (2) to declare the said decision unlawful;
- (3) or in the alternative to quash the Tribunal's decision and to order the Tribunal to establish revised rentals.

Advocate W.J. Bailhache for the Representor.
Advocate P. Matthews for the Respondent.

JUDGMENT

THE LIEUTENANT BAILIFF: The present hearing arises out of a decision by the Tribunal on 23rd September, 1994, when it re-fixed rents at Marett Court.

5 The Representor was upset by the rents then fixed and commenced
proceedings, requesting an order that the Tribunal produce full and
detailed reasons for its decision, and further that the Court declare
the decision unlawful in that the Tribunal failed to take into account
relevant, and/or took into account irrelevant considerations and/or that
10 no reasonable Tribunal could have come to that decision. Alternatively,
the Representor requested that the Court quash the Tribunal's decision
and order the Tribunal to exercise its powers reasonably, taking into
account relevant and disregarding irrelevant considerations.

Following the service of the Representation, there were lengthy discussions between the parties which culminated in an agreed statement of facts and a proposed order to which the parties would assent. Although the order is a consent order, it is one which is of considerable importance in this field.

The Tribunal itself is, Mr. Matthews advised the Court, anxious for guidance, as are, doubtless, other parties with interests in this field and in view of this and notwithstanding that the order (having not been argued out) binds only the parties, counsel have been at pains to take the Court at length through paragraphs three and four of the Order, and the reasons for drafting them as they have. It is not necessary to recapitulate the submissions in detail, but the Court should say that both counsel have clearly given much thought to the form of the Order; and having, as they said, commenced at opposite ends of the spectrum, have agreed that the Order represents the proper course which the Tribunal should follow in future.

The Court accepts the submissions of counsel, and is prepared to make the Order which follows, which reads:

"Upon hearing the parties' advocates, the Court (having noted the undertakings recited in paragraphs 6 and 7 below):

1. *by consent declared the decision of the Rent Control Tribunal made on 23rd September, 1994, in the matter of the rents payable on the flats at the premises known as Marett Court ("the Flats") void;*
2. *by consent ordered the Tribunal to re-assess the rents payable on the Flats with effect from 1st October, 1994;*
3. *declared that whilst it is open to the Tribunal to consider other methods of assessment of a reasonable rental (pursuant to Article 4.2 or 4.3 of the Law), the normal method of assessment would be to establish the market rental and to deduct a figure in respect of scarcity, if any;*
4. *declared that for the purposes of assessing market rental, the following terms (which are frequently used for the review of rent in the open market) represent a fair guide for the Tribunal in the exercise of its discretion in this respect:*

The market rental shall represent the open market value of the dwelling on the date that the reference is made to the Tribunal, that is to say the annual rent at which the dwelling might reasonably be expected to be let with vacant possession, and without premium in the open market between a willing lessor and a willing lessee having regard to the terms of the tenancy, other than the then current rent payable.

In assuming the open market rental, the Tribunal shall assume that the tenant has observed and performed all his

obligations under the terms of the tenancy, and will not take account of:

- 5 (a) any of the tenant's fixtures and fittings in the dwelling;
- (b) any effect on rent of the fact that the tenant has been in occupation of the dwelling;
- 10 (c) any effect on rent of any improvements, variations or alterations in the dwelling which have been carried out by the tenant other than in pursuance of an obligation of such tenant to the landlord under the terms of the tenancy.

15 5. by consent ordered the Respondent to pay the costs of the Representor of and incidental to these proceedings on a reasonable basis in any event.

20 And the Court:

6. noted the Representor's undertaking to the Court not to collect retrospectively any increase in the rent on the Flats arising from the re-consideration by the Tribunal of the 1994 rent;

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7. noted the Respondent's undertaking to the Court that it will,

30 (i) henceforth either at the request of a landlord or a tenant, provide detailed written reasons for its decision on the question of rent either under Article 4(2) or 4(3) of the Law;

35 (ii) co-operate with the Representor in bringing on before the Court as a cause de brevété any application by the Representor for judicial review of the Tribunal's re-assessment of the rentals with effect from 1st October, 1994, should the

40 Representor be advised the same is appropriate".

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Authorities

Dwelling Houses (Rent Control) (Jersey) Law, 1946.

Dwelling Houses (Rent Control) (Jersey) Regulations, 1946.

Furnished Houses (Rent Control) Act, 1946.

Megarry: The Rent Acts (11th Ed'n) [1991] Chapter 30: Restricted Contracts: Definition & Tribunals pp.741-746.

Woodfall: Landlord and Tenant (R.30: January, 1994): paras. 23.196-23.203.

(Crofton Investment Trust Ltd -v- Greater London Rent Assessment Committee [1967] 2 QB 955.

Guppy's (Bridport) Ltd -v- Carpenter. (8th December, 1973) Estates Gazette Reports.

Metropolitan Property Holdings Ltd -v- Finegold & Ors [1975] 1 All ER 389.

Western Heritable Investments Co Ltd -v- Husband [1983] 3 All ER 65.

Spath Holme Ltd -v- Chairman of the Greater Manchester & Lancashire Rent Assessment Committee & Ors [1995] 2 EGLR.

(Tett -v- The States of Jersey and the Rent Control Tribunal [1972] JJ 2249.