

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

GLORIA MORALES Appellant

- and -

LUCILLE BIRCHWOOD Respondent

CASE FOR THE APPELLANT

- | | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| | | <u>Record</u> |
| 10 | 1. This is an appeal, by the grant of special leave, from the Judgment of the Court of Appeal of Trinidad and Tobago (Kelsick, J.A., Cross, J.A., Corbin, J.A., dissenting) dated 5th May 1981 which dismissed the Appellant's appeal against the refusal by a Magistrate to make an Order in favour of the Appellant on a complaint brought against the Respondent seeking possession of premises at Carrington Street, Scarborough, Tobago. | p.22
p.13-21 |
| 20 | 2. The only issue which arise on this appeal is the proper construction of the Rent Restriction Ordinance (Ch. 27. No. 18) and in particular Section 7 of that Ordinance, and consequently a determination as to whether the premises at Carrington Street were excluded from the <u>Rent Restriction Ordinance</u> by the <u>Rent Restriction (Exclusion of Premises) Order 1969</u> . | p.6
p.9 |
| 30 | 3. The undisputed facts appear in the Judgment of the Court of Appeal and the dissenting Judgment of Corbin, J.A., as do the most relevant parts of the sections of legislation for consideration. For convenience the sections of legislation considered relevant to this appeal comprise Appendix A to this case. | p.13-21 |
| | 4. The basic facts (which are set out so far as necessary to make the arguments) are:- | |

- (i) The Appellant is owner of commercial premises let to the Respondent. The premises were originally let to the Respondent's husband in 1949 at a monthly rent of \$40.
- (ii) On the death of her husband the Respondent succeeded as a tenant and until 1972, when the rent was increased to \$55 a month, the rent remained unchanged.
- (iii) On 8th June 1978 the Rent Assessment Board determined the standard rent of the premises to be \$55 per month. 10
- (iv) A notice terminating the tenancy was given by the Appellant which expired on 28th February 1979, but the Respondent remained in possession and on 7th May 1979 the Appellant filed a complaint in Scarborough Magistrate's Court.

5. It is acknowledged that unless the Appellant is right in contending that the premises were excluded from the operation of the Rent Restriction Ordinance by The Rent Restriction (Exclusion of Premises) Order 1969, there was no case for possession to be granted by the Magistrate. It is respectfully submitted that Cross, J.A. posed the correct question when he stated:- 20

p.19 1.35 "The question which this appeal poses is what was the standard rent of the premises on 11th February 1969?" 30

Such is the consequence of the 1969 Order reproduced in full on page 1 of the Appendix A.

6. It is respectfully submitted that the starting point for consideration is the definition of "standard rent" contained in the Ordinance. Section 2(1) of the Ordinance (pages 3 and 4 Appendix A) defines it as follows:-

"Standard rent in relation to premises let at the commencement of this Ordinance, or hereafter let, means the standard rent of such premises ascertained in accordance with this Ordinance and appropriate to the category of letting in which the same are let." 40

The primary method for the ascertainment of a standard rent under the Ordinance is by determination by the Rent Assessment Board upon

application to the Board (Section 8 page 6 of Appendix A). Once such an application has been made and determined the standard rent has been ascertained in accordance with the Ordinance. Section 7 of the Ordinance (page 5 of Appendix A) provides for the position pending such determination, but the method of ascertaining the standard rent pending a Board determination is not available once there has been a determination by the Board. The section states:-

10

"Until the standard rent of any premises ... has been determined by the Board under Section 9, the standard rent ... shall be ..."

Once there has been a determination, that, it is submitted, is the standard rent for all purposes.

7. It is respectfully submitted that such a construction is entirely consistent with the concept of and machinery employed for determining the standard rent. The scheme of the Ordinance is to describe and categorise premises from the "prescribed date". The prescribed date means 11th February 1954 (S.2(1) on page 3 of Appendix A). Whenever an application is made to the Board to determine the standard rent of premises the Board is concerned to determine the same by reference to the prescribed date - the 11th February 1954. (Section 9 of the Ordinance, page 8 of Appendix A). Further S.7 so provides as well. Thus it is submitted that by definition the standard rent is the rent which either in fact prevailed on the prescribed date (S.7), or the rent which in fact prevailed and which under S.9 the Board determined to be the standard rent or where no rent actually prevailed that which in the opinion of the Board might reasonably have been expected in respect of a similar letting (S.9(1)(a)) at the prescribed date, or where there was a rent prevailing at the prescribed date but in the opinion of the Board at that date such rent was substantially higher or lower than might reasonably have been expected, such rent as the Board then determined under S.9(1)(b). In all cases the standard rent constitutes a part of the description of the property which according to the Ordinance existed on 11th February 1954. For all the above reasons (and in addition those set out in the dissenting judgment of Corbin, J.A.) it is respectfully submitted that the majority of the Court of Appeal erred.

20

30

40

50

8. It is respectfully submitted that the order of the Court of Appeal was wrong and should be set aside and that a warrant for possession should be

Record

issued, for the following, among other

R E A S O N S

- (1) BECAUSE the premises at Carrington Street, Scarborough, Tobago were excluded from the operation of the Rent Restriction Ordinance by the Rent Restriction (Exclusion of Premises) Order 1969.

GEORGE NEWMAN Q.C.

APPENDIX A

Rent Restriction (Exclusion of Premises) Order, 1969.

GOVERNMENT NOTICE NO. 43

TRINIDAD AND TOBAGO

THE RENT RESTRICTION ORDINANCE, CH.27 NO. 18

ORDER

MADE BY THE GOVERNOR-GENERAL UNDER SECTION

4(1)(d) OF THE RENT RESTRICTION ORDINANCE

10 THE RENT RESTRICTION (EXCLUSION OF PREMISES) ORDER,
1969.

1. This Order may be cited as the Rent Restriction (Exclusion of Premises) Order, 1969.

2. In this Order -

"the appointed date" means the date on which this Order comes into operation;

"the Ordinance" means the Rent Restriction Ordinance.

20 3. There shall be excluded from the operation of the Ordinance with effect from the dates respectively specified in paragraph 4 in relation thereto the following classes of premises -

(a) all dwelling houses erected before the 12th day of February, 1954, which on the appointed date are in actual occupation of the owner thereof;

30 (b) all dwelling houses, the standard rent of which on the appointed date is or exceeds the rate of three hundred and sixty dollars per annum;

(c) all public and commercial buildings, the standard rent of which on the appointed date is or exceeds the rate of six hundred dollars per annum.

4. The provisions of paragraph 3 shall have effect -

(a) in relation to the class of premises

described in sub-paragraph (a)
thereof, on the appointed date;

- (b) in relation to the class of premises
described in sub-paragraphs (b) and
(c) thereof, on the 12th June, 1970.

Dated this 10th day of January, 1969.

K. BOSWELL-INNISS

Secretary to the Cabinet

Passed in the House of Representatives this 24th
day of January, 1969.

10

G.R. LATOUR

Clerk of the House

Passed in the Senate this 11th day of February,
1969.

J.E. CARTER

Clerk of the Senate

CHAPTER 27. No. 18

RENT RESTRICTION

AN ORDINANCE TO RESTRICT THE RENTS OF CERTAIN PREMISES AND THE RIGHT TO RECOVER POSSESSION OF SUCH PREMISES.

(9th October, 1941)

1. (1) This Ordinance may be cited as the Rent Restriction Ordinance.

10 (2) This Ordinance shall continue in force until the 23rd February, 1951, and may be continued in force for a further period of twelve months at a time by resolution of the Legislative Council.

20 (3) The expiration of this Ordinance shall not render recoverable by a landlord any rent or sum which, during the continuance of this Ordinance, was not recoverable by such landlord, or affect the right of a landlord to recover any arrears of rent which, during the continuance of this Ordinance, were recoverable by such landlord, or affect the right of a tenant to recover any rent or sum which, during the continuance of this Ordinance was recoverable by such tenant, or prevent or affect the prosecution, conviction, or punishment of any person for anything done or omitted during the continuance of this Ordinance.

30 2. (1) In this Ordinance -

"agricultural land" does not include the garden of a house or building, or land within the curtilage of a house or building;

"Board" means a Rent Assessment Board constituted under section 5 of this Ordinance for the area in which any premises in question are situated;

40 "building land" means land let to a tenant for the purpose of the erection thereon by the tenant of a building used, or to be used, as a dwelling or for the public service or for business, trade or professional purposes, or for any combination of such purposes, or land on which the tenant has lawfully erected

such a building, but does not include any such land when let with agricultural land;

"dwelling-house" means a building, a part of a building separately let, or a room separately let, which at the material date was or is used mainly as a dwelling or place of residence, and includes land occupied with the premises under the tenancy, but does not include a building, part of a building, or room when let with agricultural land; 10

"furniture" includes fittings, machinery and other articles used in premises but not forming part thereof;

"landlord" includes any person deriving title under the original landlord and any person who is, or would but for the provisions of this Ordinance, be entitled to the possession of the premises; 20

"let" includes "sub-let";

"let furnished" means let at a rent which includes payment for the use of furniture and "let unfurnished" shall be construed accordingly;

"prescribed date" means the 11th February, 1954;

"public or commercial building" means a building, or a part of a building separately let, or a room separately let, which at the material date was or is used mainly for the public service or for business, trade or professional purposes, and includes land occupied therewith under the tenancy but does not include a building, part of a building or room when let with agricultural land; 30

"the Rent Restriction Ordinance" means the Rent Restriction Ordinance (Ch. 27 No. 18-1940); 40

"standard rent" in relation to premises let at the commencement of this Ordinance, or hereafter let, means the standard rent of such premises ascertained in accordance with this Ordinance and appropriate to the category of letting in which the same are let;

"tenant" includes -

- (a) a sub-tenant and any person deriving title from the original tenant or sub-tenant, as the case may be;
- (b) the widow of a tenant who was residing with him at the time of his death, or, where a tenant leaves no widow or is a woman, such member of the tenant's family as was residing with the tenant for not less than six months immediately before the death of the tenant as may be decided in default of agreement by a court or by a Board;

"tenancy" includes "sub-tenancy".

- (2) For the purposes of this Ordinance one letting of premises shall be deemed to be in the same category as another letting of the premises if both lettings are of -

- (a) building land; or
- (b) a dwelling-house let unfurnished; or
- (c) a dwelling-house let furnished; or
- (d) a public or commercial building let unfurnished; or
- (e) a public or commercial building let furnished;

and if, in the case of two lettings of furnished premises, the furniture is of approximately the same quality and quantity on each letting.

- 3. (1) This Ordinance shall apply, subject to the provisions of sections 4 and 20 thereof, to all land which is building land at the commencement of this Ordinance or becomes building land thereafter, and to all dwelling-houses and public or commercial buildings whether in existence or let at the commencement of this Ordinance or erected or let thereafter and whether let furnished or unfurnished, being building land, dwelling-houses and public or commercial buildings situate in the areas described in the Schedule hereto: accordance with any scale of costs fixed by rules made under subsection (11) of this section.

- (10) When an application has been made to a Board under this Ordinance, the Board may make an order on such application notwithstanding the non-attendance of the applicant or any person interested before the Board.
- (11) The Chairman of the Board for the City of Port-of-Spain, or for an area including the City of Port-of-Spain, may, with the approval of the Governor in Council, make rules, not inconsistent with this Ordinance, as to the form and manner of applications to the Boards, the fees to be paid on such applications the scale of costs applicable to proceedings before the Boards, the procedure of the Boards, the form of documents to be issued by the Boards and the manner in which they are to be certified or served. All fees shall be paid into the general revenues of the Colony. With regard to any matter on which rules under this subsection have not been made, each Board may give such directions, and regulate its procedure in such manner, as may seem just: Provided that no fees shall be taken except in accordance with rules made under this subsection. 10
- (12) An appeal shall lie to the Full Court from any order of a Board and the procedure in respect of any such appeal shall be such as is laid down in the Summary Courts Ordinance. 20 30
7. Until the standard rent of any premises in relation to any category of letting has been determined by the Board under section 9, 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: 40
- Provided that
- (a) premises shall not, for the purposes of this section, be regarded as having been let in the same category of letting on or before the prescribed date if they 50

were so let under a tenancy agreement or lease providing for a progressive rent;

10 (b) where the standard rent of premises is determinable under this section by reference to the rent at which they were let on or before the prescribed date, and that rent exceeded the rent which was permissible under the Rent Restriction Ordinance, the standard rent shall be the rent which was permissible under the Rent Restriction Ordinance;

(c) in the case of premises let at a progressive rent payable under a tenancy agreement or lease, the standard rent shall, until the tenancy is determined, by the maximum rent payable under the tenancy agreement or lease.

20 8. (1) Where any premises are intended to be let as a dwelling-house or as a public or commercial building or as building land in any category of letting, it shall be lawful for any person proposing to let the same to apply to the Board to fix provisionally the rent which is to be the standard rent of the premises when they are so let and the Board may, after due enquiry fix such provisional standard rent accordingly; and if the premises are later let in the same category of letting and substantially on such terms and conditions and in such circumstances affecting the rent as have been disclosed to the Board, such provisional standard rent so fixed by the Board shall be deemed to be the standard rent of the premises appropriate to that category of letting.

40 (2) Where any premises are intended to be let as a dwelling-house or as a public or commercial building or as building land, 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 subsection before the commencement of the tenancy to fix the provisional standard rent. If such person shall fail to comply with the provisions of this subsection, he shall be guilty of an offence against the Ordinance.

50 (3) The landlord or the tenant of any premises

to which this Ordinance applies may at any time apply to the Board to determine the standard rent thereof appropriate to the category of letting in which they are let: Provided that where the standard rent of the premises appropriate to the category of letting in which they are let has already been determined by the Board, no further application under this subsection shall be entertained unless the Board is satisfied that, since the date of such previous determination, there has been a material change in either the nature or the terms and conditions of the tenancy or in circumstances affecting the determination of the standard rent, and that no such change is due to the tenant's neglect or default. 10

(4) It shall be lawful for the Board at any time, by notice in writing served on the Landlord, to require him to apply to the Board within a time to be specified in the notice for the determination of the standard rent of premises let in any category of letting; and, if the landlord shall fail so to apply, he shall be guilty of an offence against this Ordinance; and the Board may determine such standard rent as though he had so applied. 20 30

(5) On the hearing of any application under this Ordinance (whether it be in relation to premises let or intended to be let or premises in respect of which the Board has required the landlord to apply for the determination of the standard rent thereof or otherwise) the Board shall try the whole matter of the application and shall give judgment or make any order thereon, and shall give any direction it may consider necessary to enable it to give a final judgment or to make an order, and may from time to time adjourn the hearing of the application. 40

(6) Without prejudice to the generality of the provisions of the preceding subsection, the Board shall have and shall be deemed always to have had jurisdiction to enquire into and, where necessary, to determine - 50

- (a) whether the relationship of landlord and tenant exists;
- (b) the nature, terms and conditions of every tenancy or proposed tenancy (whether the contract of tenancy is wholly or partly under seal or wholly or partly in writing or wholly or partly verbal) and the category of letting or proposed letting;
- 10 (c) the extent of the premises let or intended to be let by the tenant; and the facilities and amenities granted to or enjoyed by the tenant or intended to be granted to or enjoyed by the tenant.
- (7) Every person examined by the Board shall make full disclosure to the Board of all matters relating to the terms and conditions of the letting or proposed letting, or affecting the relationship of landlord and tenant, where such relationship is in dispute, or the standard rent of the premises, in order to enable the Board to exercise its functions under this section.
- 20
9. (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 7, modified as follows -
- 30
- (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;
- 40
- 50

- (b) where the premises were let in the same category of letting on or before the prescribed date, and the standard rent ascertained in accordance with the provisions of section 7 would, in the opinion of the Board, be substantially higher or lower than the standard rent ascertained on the principles of paragraph (a) of this section, the Board may determine the standard rent on the principles of that paragraph. 10
- (2) Where, for the purpose of determining the standard rent of any premises to which this Ordinance applies, it is necessary to apportion the rent at the date in relation to which the standard rent is fixed the Board may, on the application of either party or of the superior landlord, make such apportionment as seems just and the decision of the Board as to the amount to be apportioned to the premises shall be final and conclusive. 20
10. (1) Subject to the provisions of this Ordinance, where, at any time after the commencement of this Ordinance, the rent of any premises to which this Ordinance applies exceeds the standard rent by more than the amount permitted under this Ordinance, the amount of such excess shall, notwithstanding any agreement or lease made before or after the commencement of this Ordinance to the contrary, be irrecoverable from the tenant, and if it is paid by the tenant, shall be recoverable by him, or by persons claiming through him, from the person to whom it was paid or his personal representative, and may, without prejudice to any other method of recovery, be deducted from any rent or money due or subsequently becoming due from the tenant: Provided that, in the case of premises let at the commencement of this Ordinance under a tenancy agreement or lease made before the 28th of April, 1941, this subsection shall not operate to render irrecoverable from the tenant or recoverable by the tenant or persons claiming through him, or deductible, any rent payable under the tenancy agreement or lease save and in so far as it is in excess of the rent which, immediately prior to the commencement of this Ordinance, was permissible under the Rent 30 40 50

Restriction Ordinance and the Defence
(Rent Restriction) Regulations, 1941.

10 (2) Any transfer to the tenant of any burden
or liability which, in calculating the
standard rent of any premises, is
treated as borne by the landlord, shall,
for the purposes of this Ordinance, be
treated as an alteration of rent, and
where, as a result of such a transfer,
the terms on which the premises are held
are on the whole less favourable to the
tenant, the rent shall be deemed to be
increased whether or not the sum
periodically payable by way of rent is
increased; and any increase of rent in
respect of any transfer to the landlord
of any burden or liability which, in
calculating the standard rent of any
premises, is treated as borne by the
20 tenant where as a result of such transfer,
the terms of which the premises are held
are on the whole not less favourable to
the tenant, shall be deemed not to be an
increase of rent for the purposes of this
Ordinance: Provided that, for the
purposes of this Ordinance, the rent
shall not be deemed to be increased,
where a liability for rates or taxes is
transferred by the landlord to the tenant,
30 if a corresponding reduction is made in
the rent.

40 (3) If a landlord knowingly receives, or a
tenant knowingly pays, any rent which is
by this Ordinance made irrecoverable, he
shall be guilty of an offence against
this Ordinance, and if a landlord is
convicted of any such offence the Court
in which the conviction is obtained may,
without prejudice to any other right
which the tenant may have to recover the
rent overpaid, order the landlord to
repay the same.

11. (1) The amounts by which the rent of any
premises to which this Ordinance applies
may exceed the standard rent shall,
subject to the provisions of this
Ordinance, be -

50 (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 5 of the Rent Restriction Ordinance: Provided that this paragraph shall not apply to premises first let in a category of letting after the prescribed date;

- (b) the amount of any increase in rent which a landlord has made, or could lawfully have made after the prescribed date by virtue of an order of a Magistrate under section 8 of the Rent Restriction Ordinance; 10
- (c) an amount proportionate to any increase in the amount of the rates and taxes payable by the landlord since the date by reference to which the standard rent of the premises is determinable;
- (d) the amount of any percentage increase sanctioned under subsection (2) of this section; 20
- (e) any amount sanctioned by the Board, on the application of the landlord, where the landlord has incurred expenditure in effecting -
 - (i) substantial improvements or structural alterations in the premises other than for ordinary or necessary repairs, or
 - (ii) substantial improvements to the amenities of the premises, or substantial improvements in the locality from which the tenant derives benefit, not being improvements for necessary maintenance or drainage: 30

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. 40

- (2) The Governor in Council, with the sanction of the Legislative Council, may, by order published in the Royal Gazette, sanction an increase of rents by such percentage of the standard rents as he

may think fit. Any such order may be made to apply to all premises in the areas in the Schedule hereto or in relation to all premises in any specified area in the Schedule.

- 10 (3) 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 subsection (1) of this section.
- (4) Whenever the Board may fix a provisional standard rent of any premises it may also, in an appropriate case, fix the amount by which the rent of the premises when let may exceed the provisional standard rent.
- 20 (5) The Board may revise, either by increasing or decreasing the amount, any order of a Magistrate under section 8 of the Rent Restriction Ordinance, or any order made by the Board under this section, in any case in which in the opinion of the Board, altered circumstances justify such revision and, without prejudice to the generality of this power, the Board may revise any such order if the premises are not in tenatable repair, unless
30 such condition is due to the tenant's neglect or default.
12. The landlord of any premises to which this Ordinance applies shall, on being requested in writing by the tenant thereof, supply him with a statement in writing as to what is the standard rent of such premises, and if without reasonable excuse he fails within fourteen days to do so, or supplies a statement which is false in any material particular, he shall be guilty of an offence against this Ordinance and shall be liable on summary conviction to a fine of forty-eight dollars.

No. 46 of 1981

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL OF TRINIDAD
AND TOBAGO

B E T W E E N :

GLORIA MORALES Appellant

- and -

LUCILLE BIRCHWOOD Respondent

CASE FOR THE APPELLANT

Messrs. Osmond Gaunt & Rose,
Furnival House,
14/18 High Holborn,
London WC1V 6BX.

01-349-0321

Ref: 7/489/81

Solicitors for the Appellant