

QUIRKE

185

THE HIGH COURT

1984 No. 621 Sp

IN THE MATTER OF THE HOUSING (PRIVATE RENTED DWELLINGS)
ACTS 1982 AND 1983

BETWEEN:-

DANIEL QUIRKE

APPELLANT

and

FOLIO HOMES LIMITED

RESPONDENT

Judgment of Mr. Justice Gannon delivered on the 4th day of March, 1985.

The appellant Daniel Quirke is the tenant of premises known as 20 Ivar Street, North Circular Road, Dublin 7 of which the respondent is the landlord. The premises is a dwelling to which the Housing (Private Rented Dwellings) Acts 1982 and 1983 apply. On the 13th July, 1984 the Tribunal established by the Housing (Private Rented Dwellings) (Amendment) Act 1983 determined the rent payable by the tenant to the landlord for that dwelling to be £16 per week. Pursuant to the provisions of section 13 (1) of the Housing (Private Rented Dwellings) (Amendment) Act 1983 the tenant appeals to this Court by Special Summons issued on the 5th of October, 1984 to have that determination of his weekly rent set aside on the grounds that it was made upon an error in law. The right of appeal conferred by section 13 (1) of the 1983 Act to this Court from a determination of the Tribunal is

limited to a question of law. The question of law submitted to this Court is expressed in the Special Summons as follows:

"3. The Tribunal erred in law in failing to have regard to the means of the landlord in setting the terms of the tenancy and misdirected itself in law in setting the terms of the said tenancy in that:

- (a) failed to give any or any proper effect to the provisions of section 13 of the Housing (Private Rented Dwellings) Act 1982 as applied by section 9 (2) of the Housing (Private Rented Dwellings) (Amendment) 1983.
- (b) failed to enquire into the means of the respondent or to make such enquiries in a suitable and sufficient manner and to take notice or any adequate notice of the means of the respondent in setting the rent to be paid by the appellant.
- (c) failed to make any enquiries or any proper enquiries into the date when and the amount for which the respondent acquired the premises for which the rent was set and to take notice of or any adequate notice of the date which and the amount for which the said premises were acquired in determining the rent to be paid by the appellant.
- (d) failed to make any enquiries or any proper enquiries into the length of the appellant's occupancy of the said premises and to take notice of the length of the said occupancy in setting the rent to be paid by the appellant.
- (e) failed to set a suitable and proper rent in the circumstances."

As so stated and as argued in Court it would seem that the question of law is essentially whether upon the allegedly inadequate evidence which was before it as to the means of the landlord the Tribunal reasonably could arrive at the rent determined by it.

The statutory requirements for the determination of the rent of a dwelling to which the Housing (Private Rented Dwellings) Acts apply are set out in section 13 of the 1982 Act. The function of making that determination was conferred upon the Tribunal by section 5 of the 1983 Act by subsection (6) whereof it is provided as follows:

"(6) No application may be made under section 12 (1) of the Act of 1982 after the commencement of this section."

Section 13 of the 1982 Act is as follows:

"13(1) Where the terms of a tenancy are fixed by the Court under section 12, the rent of the dwelling shall be the gross rent reduced by an allowance for any improvements, and any such allowance shall be such proportion of the gross rent as is, in the opinion of the Court, attributable to the improvements.

(2) For the purposes of subsection (1) the gross rent shall be the rent which, in the opinion of the Court, would be a just and proper rent having regard to the nature, character and location of the dwelling, the other terms of the tenancy, the means of the landlord and the tenant, the date of purchase of the dwelling by the landlord and the amount paid by him therefor, the length of the tenant's occupancy of the dwelling and the number and ages of the tenant's family residing in the dwelling."

That section 13 is amended by section 9 of the 1983 Act in the

following two subparagraphs of that section namely:-

"(2) Section 13 of the Act of 1982 shall have effect where the terms of a tenancy are fixed by the Tribunal or a rent officer under this Act in the same manner as it has effect where such terms are fixed by the Court under section 12 of that Act and, accordingly, the references in the said section 13 to the opinion of the Court shall be construed as including, as the case may require, references to the opinion of the Tribunal or the opinion of the rent officer.

(3) The reference in section 13 (2) of the Act of 1982 to the means of the tenant shall be taken to refer, and always to have referred, to the actual means of the tenant."

The application to the Tribunal to determine the terms of the tenancy of the appellant in the premises known as 20 Ivar Street, North Circular Road, Dublin, was made by the landlord, the respondent, on the appropriate prescribed statutory form. The information given therein by the respondent in relation to the "landlord's means" was to the effect that the respondent company had purchased on the 9th of April, 1979, 651 houses of which this premises is one at a price of £808,250 and that the current rent being received out of this dwelling was the weekly sum of 88p. The form further states that prior to the applications to the Tribunal in respect of this and other premises so purchased the respondent company were in receipt of a weekly income of £535 but incurring weekly expenses for maintenance, collection and repair of about £1,100 per week. In the appropriate prescribed form of reply thereto furnished by the tenant the information as to his means is given as £90 approximately as weekly means and he states that the length of his occupancy in the premises is

sixty-one years and he gives the names of the family residing in the dwelling with him as his daughter Mary aged 18, his brother Cornelius aged 56 and himself aged 60. In the panel for comment there is a request for information as to the price paid by the respondent for 20 Ivar Street on the 9th of April, 1979. The tenant requested an oral hearing of the respondent's application for the determination of the rent by the Tribunal and this oral hearing was held on the 5th of July, 1984. At the hearing the tenant did not himself attend but was represented by his brother. The information given to the Tribunal at that oral hearing by the landlord, the respondent, in addition to the information contained on the prescribed form was given verbally by a representative of the landlord and a valuer and their evidence was subject to cross-examination by the tenant's brother as appears from the affidavits filed. It appears from the affidavits that at the time this application came before the Tribunal there had been a number of other applications by the respondent in respect of other dwellings comprised in the single purchase on the 9th of April, 1979, and the rents thereof revised and there were others still pending, including No. 20 Ivar Street. It further appears that the Tribunal inspected the premises 20 Ivar Street before the hearing. It further appears that the Tribunal was informed at the hearing that the purchase price paid on the 9th of April, 1979, was a global price offered for the property purchased comprising 651 units and that at no time was any individual consideration apportioned to any particular residential unit. It appears from the affidavit for the respondent that the Tribunal was informed that the means of the respondent consisted solely of the rental income derived from the properties purchased and that the sum of £535 on the form submitted by the

respondent was the weekly rent being received by them prior to the applications to the Tribunal and to the District Court upon which the amounts of rents were reviewed. It is stated in the respondent's affidavit that the Tribunal were advised that the District Court had determined some 247 applications of the respondent and of these applications the average rent so determined by the District Court for each housing unit amounted to approximately £21 per week. It appears from the affidavit of the appellant that the respondent also had a valuer give evidence and the report of the valuer summarising the evidence offered by him is exhibited by the deponent in the appellant's affidavit. From this report it appears that the valuer offered evidence of a number of what he considered to be comparable premises and their rents and included amongst these were some premises the subject matter of the purchase by the respondent which had become vacant and were re-let and the rents obtained therefrom. The affidavit of the appellant further shows that his brother requested the Tribunal to obtain from the respondent the exact price paid by the respondent for the property 20 Ivar Street but that the Tribunal declined to elicit this information for him. From the respondent's evidence it appears that the appellant's brother also asked the Tribunal to find out from the witnesses giving evidence on behalf of the respondent the means of the individual shareholders of the respondent company and of the directors and other servants of the company and that this request was declined by the Tribunal. In the affidavit of the appellant the following statement appears in paragraph 3 as deposed to by him, namely

" ... The Chairman of the Tribunal informed my brother that the Tribunal intended to proceed with the matter on the

basis of the assurance given to the Tribunal by the representative of the respondent, Mr. Anderson, that the income of Folio Homes Limited, the respondent, was greater than my income."

It was suggested in the course of argument that this indicated that the Tribunal disregarded the information it had available to it and refused to obtain further information about the means of the landlord but instead adopted as a rule of thumb a comparison as to means as between the tenant and the landlord. It should be noted that the wording used by the Chairman of the Tribunal is not known, and so it is not possible to draw a reliable inference as to what the statement was intended to convey. Furthermore, as the appellant was not present at the hearing the statement in his affidavit is simply a report of what his brother told him.

The appeal before this Court can only proceed on the basis of the facts presented to the Tribunal as shown in the evidence given to this Court. As a determination of the Tribunal is essentially a matter of the opinion of the Tribunal as to what just and proper upon the information put before it this Court can only investigate whether or not the material before the Tribunal was such that the Tribunal could reasonably arrive at the opinion in respect of which this appeal has been brought. The wording of section 13 (2) of the 1982 Act as amended by section 9 (3) of the 1983 Act indicates that in relation to landlord's means the Tribunal need not have the same precision or accuracy of information as in relation to tenant's means. It follows, and was accepted in the course of argument, that the Tribunal need not require information of the complete and full means of the landlord as to all his resources or income. Consequently whatever less information the Tribunal may obtain can be described as partial

but it does not follow that it necessarily is inadequate. Upon the information before it as to the means of the landlord the Tribunal firstly could form a reasonable conclusion as to what return by way of rent would be just to the landlord in general terms. The evidence before this Court shows that the Tribunal had before it information as to the comparative financial positions of the tenant and the landlord upon which it secondly could form an opinion as to what rent might strike a just balance between them. It is not suggested that the Tribunal did not have evidence of or have regard to the actual means of the tenant. The fact that the requirement of section (3 of the Housing (Private Rented Dwellings) (Amendment) Act 1983 applies only to the means of the tenant leaves it open to the Tribunal to make a valid Order with less specific information about the means of the landlord. That is to say the term "means of the landlord" used in section 13 (2) of the 1982 Act appears to be intentionally vague, thus enabling the Tribunal to act upon evidence of approximation or estimation or some information as to means less than the total actual resources of the landlord. There is no evidence before this Court to indicate that some rent other than the £16 per week could reasonably have been determined by the Tribunal had there been more specific or more detailed information before the Tribunal in relation to the means of the landlord. Whether the information which was given to the Tribunal in relation to the means of the landlord was adequate or not for the purpose of determining the just and proper rent is very much a matter for the discretion and good sense of the Tribunal. There is no evidence put before this Court from which this Court can infer that the information put before the Tribunal as to the landlord's means

9.

in relation to 20 Ivar Street is inadequate even though it seems to be only partial, or that the Tribunal disregard all or any of it.

The evidence which has been put before this Court does not afford any support for the grounds of appeal set out in subparagraphs (c) and (d) of paragraph 3 of the claim on the Special Summons and these grounds were not relied upon in this Appeal.

In my opinion the case presented to this Court does not establish any error of law on the part of the Tribunal in its determination of a rent of £16 per week for the dwelling known as 20 Ivar Street, North Circular Road, Dublin, in the occupation of the appellant. The appeal must therefore be dismissed.

S. G.
19 Feb. 1985