AUSTRALIAN CAPITAL TERRITORY RESIDENTIAL TENANCIES TRIBUNAL

CITATION: Claire HARRIS –v- S. PELLE PTY LTD [2009] ACTRTT (5)

RT 939 of 2008

Catchwords: Prescribed terms 35 and 37; periodic rent increases through successive tenancies; the power of the Tribunal to issue purely declaratory orders.

Tribunal: A. Anforth, Member

Date: 12 February 2009

AUSTRALIAN CAPITAL TERRITORY)
RESIDENTIAL TENANCIES TRIBUNAL) NO: RT 939 of 2008

CLAIRE HARRIS
(Applicant/Tenants)

AND:

S. PELLE P/L
(Respondent/Landlord)

DECISION

The application is dismissed.

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Member
A. Anforth
12th February 2009

AUSTRALIAN CAPITAL TERRITORY)
RESIDENTIAL TENANCIES TRIBUNAL) NO: RT 939 of 2008

CAIRE HARRIS
(Applicant/Tenant)

S. PELLE P/L
(Respondent/Landlord)

REASONS FOR DECISION

1. The Applicant was originally one of three tenants of residential premises at Braddon in the ACT. The tenancy commenced on 3 November 2007 for an initial fixed term of 12 months at a rent of $465.00 per week. The other two tenants are designed A and B.

2. This tenancy was surrendered on 9 June 2008 and a new fixed term tenancy commenced on that date until 9 November 2008 at a rent of $485.00. The new constitution of tenants were the Applicant, previous tenant A and new tenant C.

3. On 10 November 2008 the tenancy was surrendered and new fixed term tenancy for 12 months was entered between the landlord and a combination of three tenants composed of the Applicant, previous tenant C and new tenant D at a rent of $510.00 per week.

4. The Applicant has filed an application in the Tribunal on 25 November 2008 seeking an order that the rent of $510.00 per week under the new tenancy was unlawful by reason of prescribed term 37 *Residential Tenancies Act 1997* (the Act).

5. The Applicant appended the following to her application:

> **Issues in Dispute**
> - Sections 35 and 37 of the Residential Tenancy Act 1997: Schedule 1, Standard residential tenancy terms (prescribed terms under the Residential Tenancies Act) Namely that rental increases are limited to 12 month intervals (s35) and this rule applies despite a new lease agreement where at least one tenant is continuing (s37).
> - Section 38 regarding notice required of rental increases.
>
> **Nature of relief sought**
> - Clarification of the application of the above sections to this case
> - Publication of the determination or interpretation of the sections noted above on the Residential Tenancy Tribunal website.
> - Reimbursement of out-of-pocket expenses including lodgement fee.
> - Relief as and if deemed suitable by the Tribunal.
>
> **Brief History of the dispute**
>
> I write to the Tribunal to clarify, as a priority, the application of the sections 35 and 37 of the Standard Residential Tenancy Terms. These sections refer to raising rents and the restriction in the ACT that

rent cannot be increased more frequently than in 12 month periods. Section 37 emphasises the additional stipulation that s35 applies despite a new lease being signed where at least one tenant is continuing from the previous lease on to the new lease.

I was one of three tenants who signed a 12 month lease in November 2007 for 1/19 Wise Street with the Standard Residential Tenancy Terms (with one exception regarding keeping pets). I was a new tenant at this property, managed by LJ Hooker Dickson, but the other two tenants had been in residence on prior leases. Under item 9 of the Schedule, rent was to be paid at $465 commencing on 10 November 2007. On insistence from the agent, a rent increase was written into the tenancy agreement for $485 per week commencing on 10th June 2008.

With one of the tenants moving out in June 2007, the remaining two tenants got in a replacement and the agent arranged a 5 month lease to November 2008. With the end of this lease, I and another tenant notified the agent that we would opt for a new 12 month lease from November 2008, and planned for this by advertising for a new tenant A tenant application form was submitted, as per the agent's requirements, to LJ Hooker on 27th September.

With only a short period of time to go before the old lease expired on 9th November 2008, the tenants were notified (in separate phone calls and an email to one tenant) that a new rental amount was to be proposed. I followed this up with Residential Tenancy Tribunal staff (Jenny and Stephanie) and was told that rent cannot be raised more frequently than in 12 month intervals where at least one tenant is the same. This was also my understanding from researching the Tribunal website, cases on AUSTLII (such as: Parker v Woodham [2008] ACTRTT 2 (28 February 2008), the Tenant's Union website (eg. http://www.tenantsact.org.au/Advice/pdftips/rent.pdf) and Rental Agreements DIY website (http://www.rentalagreementsdiy.com.au/tenancy_laws in_australia.php).

I discussed my interpretation of the stipulations around raising the rent prematurely with the agent, following information from the Residential Tenancy Tribunal and the other sources listed above; the agent provided a lease with a new rental amount of $510 per week.

Since becoming a tenant in November 2007 I have experienced a rent increase in June 2008 and an additional increase in November 2008. Given that the latest rental increase (in Nov 08) was applied to two tenants from the previous lease, I seek interpretation of the applicability of this latest increase in November 2008. 1 believe this increase to be in effect 7 months premature - before the end of the 12 month period from the last increase that occurred in June 2008.

My interpretation of sections 35 and 37 to mean that rent increases can only occur every 12 months was discussed with the real estate agent acting as property manager. He stated that on attending a seminar run by the Residential Tenancy Tribunal he understood that this rule does not apply when a new lease is starting.

I seek clarification of the application of these sections to the rent increase in this case.

I am also aware of another tenant in a property in Braddon with the same agent who has received more than one rent increase in recent months with the same situation of at least one tenant remaining in residence. This occurrence provides additional impetus for me to clarify this rent increase activity.

Also, a notice of a rent increase was not provided in writing as required under section 38 of the Standard Residential Tenancy Terms. Should this have been provided in this case?

I am not disputing the rental amount in itself or the treatment of the tenants by the agent or the lessor. All in all, the relationship has been positive and the agent has told me on more than one occasion that he considers us good tenants.

I am seeking clarity about the interpretation of the prescribed terms and the Act with the second rent increase less than 12 months after the previous one. I also seek clarification on the correct procedures that tenants should expect for implementing rent increases. I wish to have these sections of the Standard Residential Tenancy Terms examined with regards to this case to address any misinformation and for the clear communication of the correct interpretation to tenants, agents and lessors in the ACT.

Below I include a timeline and additional detail on the leases signed and the discussions with the property manager and the Tribunal.

Timeline and more notes regarding this application

(Please note: Tenants names have been replaced with 'A', 'B' 'C' etc. to protect privacy in the event any of this information is referred to outside this particular application In this case, the applicant is referred to as tenant B.)

On 25 October 2007 a new 12month lease was signed to begin 3 November 2007 with tenants A, B, C with an end date of 2 November 2008. From the previous lease both tenants A and C were continuing on with one being in residence for at least a year already by this time (November 2007). Under item 9 of the Schedule, rent was to be paid at $465 commencing on 10th November 2007. A rent increase was written into the tenancy agreement for $485 per week commencing on 10th June 2008.

As of June 2008, tenant A advised she would move out and a replacement tenant was found. On request from the agent, a new lease was signed by tenants: D, B and C on 21 May 2008 for a 5 month lease from 10th June to 9th November 2008. Rent was payable at the rate of $485 per week.

Prior to the 29 October 2008 signing of the most recent lease, the agent was advised in writing that tenant E would be replacing tenant C and a tenant application form was submitted to the real estate office on 27 September 2008, as per the agent's requirements.

I followed up on this application via email, dated 14 October 2008, to seek confirmation that tenant E was to be accepted and to book in a new lease-signing time. I received an out-of-office email and called the agency office where another agent at the real estate office notified me that the applicable agent was not back into the office until the following week. I asked if it was possible for the person on the phone to check the file. I was advised this was not possible.

On 20 October 2008 I received an email from the agent for 1/19 Wise Street saying that he would get back to me about the new lease.

On 22 October 2008, I received a phone call from the agent to confirm the application from the new tenant (E) was approved. The agent then brought up the issue of a rent saying "we need to do something about your rent as you're paying under market-.value'. Among other points of discussion, I questioned the option for a rent increase stating that as we had had an increase in rent in June 2008 and that 2 of the tenants (B and .D) were staying on - I believed that increases in rent amounts could only be incorporated every 12 months.

The agent responded that he was familiar with the Residential Tenancy Act and that the stipulations mentioned (ie. sections 35 and 37 of the prescribed terms) were not applicable in this situation. I disagreed but asked about the option to write a rent increase into the new 12 month lease to come into effect in 6 months time (ie. June 2009). The agent expressed he did not feel this was adequate.

On 22 October 2008, the agent sent me an email proposing the rent increase to $510 per week. I am also under the impression that rent increases should be notified in writing as per s38 of the prescribed terms - is this the case?

A subsequent phone call from the agent to tenant D occurred and tenant D was told that if the $510 amount was not accepted the current tenants could provide 21 days notice and move out. This was a shock to the tenants who had planned to stay on and had notified the agent of such in September.

On 28 October 2008, I sent an email advising the understanding that the rent increase was premature as the last rent increase had been in June 2008, however that as advised in September 2008, tenants B, D and E wished to stay on.

On 29 October 2008, I received an email from the agent confirming a time for the lease-signing. Regarding the question about the increase, the agent stated (in the email):

> I understand what you are saying about increases, but it does not apply in this case. In this situation, one agreement is being ended. We will conduct a final inspection. A completely new agreement is being started. I attended a seminar on just this situation, run by the tribunal member Alan Anforth, about 12 months ago. His seminar confirmed this to be the case.
>
> It was clear to the tenants that there was no scope to negotiate the rent increase, or to avoid it apart from moving out (in a very short timeframe) of our loved home; where in general the relationship between tenants and lessor has been extremely positive.
>
> This lease for the period 10 November 2008 until 9 November 2009 had rent designated under item 9 to be $510 per week.
>
> For my own understanding and to try and identify where the disconnect in interpretation of the Standard Residential Tenancy Terms lay, I sent an email to the Residential Tenancy Tribunal, on 29 October 2008, seeking clarification of this issue and asking for a copy of the information that is provided to agents at seminars. I received confirmation from Stephanie White, from the Tribunal, on 30 October 2008 that my email had been passed on to the relevant person and that a response would be provided to me in due course. This response came via a phone call from the Tribunal advising me to submit an application to the Tribunal as rent increases cannot occur more frequently than every 12 months where tenants are continuing onto a new lease Thus I have submitted this application. Ultimately I seek to ensure that clear information be provided to the general public regarding the allowances for timing and procedures around rental increases.
>
> Thank you for your time considering this application.

6. The matter was listed before the Tribunal on 16 January 2009. The Applicant appeared in person and Ms Byrne, real estate agent, appeared on behalf of the landlord. The Tribunal made procedural orders for the filing of evidence and submissions after which the Tribunal would deliver a decision in writing.

7. On 2 February the landlord's agent filed their response to the procedural orders. Those submissions attached the tenancy agreement for the premises which predated the tenancy of November 07 referred to at para 1 above. These earlier tenancies were as follows (adopting the nomenclature of paras 1-3 above):

(1) 12/9/05-11/9/06	rent of $435pw	The tenants were M, N and P
(2) 31/3/07-2/11/07	rent of $435pw	The tenants were N, A and B
(3) 3/11/07-9/6/08	rent of $465pw	The tenants were A. B and the Applicant
(4) 10/6/08-9/11/08	rent of $485pw	The tenants were B, D and the Applicant
(5) 10/11/08-9/11/09	rent of $510pw	The tenants are D, E and the Applicant.

8. On 23 January 2009 the Applicant filed her submissions which were in the following terms:

> Firstly, I thank you and the Tribunal staff for your time on Friday 16th January at the hearing. I write this letter to clarify a few important points that I believe were not covered at the Tribunal hearing on Friday, and to further explain my motivation for the application.

Regarding my application, I note it seemed you did not have it in front of you on Friday. Were you in fact provided with my documentation? If you have not read the application fully, I encourage a thorough read through, as although I acknowledge this may be an unusual case, I believe the clarification on the points of law is important.

Clarification is what I am seeking and what I had hoped to receive on Friday. I am not particularly interested in "who was right or wrong", or who should pay back money to who, more so I am interested in getting some clear answers about interpreting the specific terms I mentioned in my application and what should be done about these sections in the future. I had hoped that this 'fact-finding mission' was clearly stated in my application. I was not (and still am not) aiming for antagonism — something that I explained to Tribunal staff many times and their acknowledgement of this meant I put in my submission. I have brought up the questions about points 35, 37 and 38 of the Standard Residential Tenancy Terms as there is clearly confusion at many levels about their application.

From the discussion on Friday it seems apparent that no one has asked the RTT to clarify the application of terms 35 and 37 before — particularly with regards to new leases being written up with majorities of tenants staying the same (versus individuals being substituted onto existing leases). I feel the timing of rent increases an important area to clarify as coverage of this is part of the standard terms of tenancy agreements. I would have thought that the intention of 37 is to protect tenant groups with a consistent majority from frequent rental increases.

I do see that in 'turnover' households, perhaps properties could come with a notification that rental increases may occur every year at a fixed month so that all tenants are aware and protected in the broad scheme of things but also so landlords can seek rent increases if they desire, and they are justified, no matter the turnover of tenants. What do you see as fair interpretation of these terms of the standard tenancy agreements?

If there are no clear guidelines on the rules and if the law cannot be interpreted clearly — or as you put it 'literally" — how can people comprehend the law, abide by it, and feel protected by it?

Regarding term 38, thank you for confirming that email communication constitutes 'written notice'. As tenants we did not receive notice of the proposed rent increase via email until 22 October (as covered in my application) prior to the 9 November lease end date. Also, this email was only sent to me, not all tenants, even though our contact details were on file. As two of us were existing tenants we didn't think we would need to negotiate a new rent amount, so we were a bit shocked when we were notified so late in the process of the new amount. This was also a significant amount of time after the new tenant application form, for the third person, had been submitted on September 27 2008.

I also wished to ask a question on Friday regarding the letter handed to you by the agent, but I was not able to. The letter from the tenant leaving at the time made reference to an email she sent the agent on the 2nd September; a fact the agent seemed to not discuss. The written notification that she was going to vacate the property was sent to the agent more than 2 months before the end of the lease. I didn't get a chance to question this fact as evidence of written notice in light of the agent's comments on Friday.

Mr Anforth, I wish for the RTT to have on record that I seek clarification about the law — not restitution for any actions in the past. I want the interpretation of the terms I ask about so as to improve the general knowledge about these tenancy agreements for the future, for all parties. (As a future landlord I have a keen interest in this area.) I also encourage the goal for more information to be freely available on the RTT's website. I would like to see that more information is provided relating to the timing of rent increases and also regarding the communication paths that should occur prior to rent increases. The pursuit of more available information has been prompted through advice from the RTT, general research and also from learning that information distributed at seminars is not freely available to the public.

> If I cannot receive clarification of the points highlighted by my questions as outlined in my application and briefly covered above, then I wish to withdraw my application under s74 of the Residential Tenancy Act.

The issue for the Tribunal:

9. In the application filed by the Applicant, and set out in full above, she sought clarification of the application of prescribed terms 35 and 37 of the Act to the case to her rent increases, reimbursement of her lodgement fee and "relief as and if deemed suitable by the Tribunal". The clarification sought in respect of the application of prescribed terms 35 and 37 is clear enough. However it seems that the Tribunal has operated on the mistaken understanding that the "relief as and if deemed suitable by the Tribunal" was ever intended to extend to any decision by the Tribunal concerning any outcome that may arise from the clarification of the application of prescribed term 35 and 37. In short it now seems that the Applicant seeks only an order in the nature of a declaration of rights with no consequential relief sought.

The jurisdiction of the Tribunal:

10. Notwithstanding the demise of the Residential Tenancies Tribunal on 2 February 2009 following the coming into existence of the A.C.T. Civil and Administrative Tribunal (ACAT), regulation 48 *ACT Civil and Administrative Tribunal (Transitional Provisions) Regulations 2009* provides that the resolution of matters commenced and heard under the former Residential Tenancies Tribunal are to finalised by that Tribunal with its former powers.

11. The Tribunal has jurisdiction to hear "a tenancy dispute". A dispute over whether a rent increase was validly imposed is a "tenancy dispute" within the meaning of section 71H of the Act as it stood prior to the amendments brought about by the inception of the ACAT.

The power of the Tribunal to made purely declaratory orders:

12. Once seized of jurisdiction the orders that the Tribunal can make are set out in section 104 of the Act. Each of the enumerated orders in section 104 are in the nature of an order that has some practical effect on the resolution of the tenancy dispute. Nowhere in that section is there any explicit power to make an order simply declaring the rights inter-party without any order consequential to that declaration. It may be that such a power can be read into the generality of para 104(l) which provides that the Tribunal may make "such other orders as the tribunal considers appropriate".

13. For present purposes, and without the benefit of argument on the point, I am prepared to accept that the Tribunal does have the power to make bare declaratory orders. I arrive at this conclusion from the fact that the ascertainment of rights is an integral part of the process required for the operation of any of the other powers conferred in section 104. The mere fact that the parties may wish their tenancy dispute dealt with by the Tribunal only to the point of declaring their respective rights is a matter for the parties. It may be that a bare declaration is all that is needed for the parties to resolve their own dispute, in which case in could

not be said that the bare declaration was not legitimately part of the dispute resolution.

14. The use of a declaration in this matter is to be distinguished from the proffering of an advisory opinion per see. The Tribunal's jurisdiction is limited to "tenancy disputes" and unless there is a genuine dispute between the parties then the Tribunal's jurisdiction is not lawfully attracted. In the present case the Applicant does not seek a purely advisory opinion. The clarification of the law she seeks is specifically in the context of her own tenancy dispute albeit she is not seeking any retrospective financial adjustment.

15. The point raised by the Applicant is one of considerable public importance to tenancy law in the ACT.

The relevant statutory provisions:

16. Prescribed terms 34,35 and 37 of the Act provide:

> 34 The amount of rent must not vary from period to period except as provided by this tenancy agreement and the Residential Tenancies Act.
>
> 35 The rent may not be increased at intervals of less than 12 months from either the beginning of the tenancy agreement for the first increase, or after that, from the date of the last increase.
>
> 36 Despite clause 35, if the commissioner for housing is the lessor under this tenancy agreement and the commissioner—
> (a)undertakes a review of rent in accordance with the *Housing Assistance Act 1987*, section 15 (3); and
> (b)as a result of the review, decides to increase the rent;
> then—
> (c)if a previous review of rent has been undertaken—the increase must not take effect less than 1 year after the date of the last increase of rent in relation to the premises; or
> (d)if no previous review of rent has been undertaken—the commissioner may increase the rent.
>
> 37. The restriction on increase in rent applies provided the identity of at least 1 of the tenants who occupy the premises remains the same as at the time of the last increase.

The Applicant's contention:

17. The identity of the tenant is a fundamental term of a tenancy agreement and (apart from the possibility of an assignment of interests by a tenant) a change in the constitution of the tenants constitutes a termination of the existing tenancy and the commencement of a new tenancy. The Tribunal adopts in full the rationale for the above from *Baird v Campbell & Ors* [2005] ACTRTT 8. Thus in the present case there were five relevant successive tenancies set out in paragraph 7 above.

18. The Applicant's case is that prescribed term 35 prohibits a rent increase within the period of 12 months from the beginning of a tenancy and that prescribed term 37 continues the effect of this prohibition even into a new lease if at least one of the tenants from the former lease is a tenant in the new lease.

19. In the context of her case the Applicant contends that because she was a tenant in the tenancy that commenced on 3 November 2007 there could be no permissible rent increase until at least 3 November 2008 (prescribed term 35). The fact that the Applicant and B were also tenants in the succeeding tenancy of 10 June 2008 meant that the 12 months prohibition on rent increases from 3 November 2007 continued into the tenancy commencing 10 June 2008 (prescribed term 37). Therefore the rent increase at the commencement of the tenancy of 10 June 2008 was invalid for being within the 12 months prohibition.

20. But that rent increase did in fact occur and so the Applicant then contends that a new period of 12 months prohibition on rent increases took effect from 10 June 2008 (prescribed term 35). Because the Applicant and D continued as tenants under the successive tenancy commencing 10 November 2008 the rent increase at the commencement of that tenancy was invalid (prescribed term 37).

21. If the Applicant's construction of prescribed terms 35 and 37 is adopted then her conclusion above follow, but so also does a far more draconian consequence for landlords which the Applicant has not developed in her submissions but which was put to her by the Tribunal at the hearing.

22. Prescribed 35, read literally, prohibits rent increases for 12 month from the commencement of a tenancy. Thus whatever the rent is at the commencement of a tenancy it is frozen at that level for the next 12 months. If an original tenancy is terminated within 12 months and a new tenancy created with at least one tenant common to both, then the rent at the commencement of the new tenancy should be frozen at the same level as the rent at the commencement of the original tenancy per prescribed term 37. Then, the rent at the commencement of the new tenancy (which is the same as that at the commencement of the original tenancy) is frozen for 12 months by reason of prescribed term 35. If a further new tenancy is created within 12 months of the second tenancy with at least one tenant in common, the rent at the commencement of the further new tenancy is frozen for 12 months at the level of the rent at the commencement of the original tenancy. And so the process could recycle in perpetuity with the effect that as long as no tenancy was longer than 12 months and one tenant (although not necessarily the same tenant) carried between successive tenancies, the rent would remain frozen in perpetuity.

23. In the present case, and referring to paragraph 7 above, the lease of 31 March 2007 was for less than 12 months and there was a common carry over tenant into the tenancy of 3 November 2007, therefore on the Applicant's contentions, the commencement rent for the tenancy of 3 November 2007 should have remained at $435pw and the increase to $465pw was unlawful.

24. The tenancy of 3 November 2007 was for less than 12 months and there was a common carry over tenant, therefore on the Applicant's contentions the commencement rent for the tenancy of 10 June 2008 should have remained at $435pw and the increase to $485pw was unlawful.

25. The tenancy of 10 June 2008 was for less than 12 months and there was a common carry over tenant, there fore on the Applicant's contentions the

commencement rent for the tenancy of 10 November 2008 should have remained at $435pw and the increase to $510pw was unlawful.

26. Admittedly the Applicant did not herself argue these extended consequences of the statutory construction she propounded. But in order to test the validity of any statutory construction it is necessary to explore the consequences of the proposed construction (Statutory Interpretation in Australia 6th ed at [2.34]-[2.35]) and to avoid as far as possible a construction that produces an apparently absurd result (Statutory Interpretation in Australia 6th ed at [2.4]).

27. Without proposing to delve into the extrinsic material relevant to the enactment of the Act, the Tribunal takes it to be self evident that the Legislative Assembly did not intend to provide a regime in which rent could be frozen in perpetuity or at least for years on end. The Tribunal is of the view that the legislative intent was simply that rent should be fixed for 12 months from the commencement of a tenancy and no more.

28. The role of prescribed term 37 in this context is unclear. It presumably was not intended to be limited to the narrow context of an assignment within a continuing tenancy and so must be given a scope of operation within the context of successive tenancies.

29. The problem outlined above arises if prescribed terms 35 and 37 are both apply literally. This leads the Tribunal to the conclusion that either:
    (a) either prescribed term 35 or prescribed term 37 must be read down; or
    (b) the absurd result outlined above must be allowed to stand.

30. This is a matter which requires legislative intervention to resolve the consequences of the literal application of both prescribed terms.

31. The choices appear to be:
    (a) to read down prescribed term 35 such that the 12 months prohibition on rent increases does not apply from the commencement of a successive tenancy in which the rent at the commencement of that tenancy is still frozen from the previous tenancy by reason of prescribed term 37. Under this reading a landlord may increase the rent part way through the successive tenancy upon the effluxion of 12 months since the last rent increase occurring during the prior tenancy, and is not required to defer a rent increase under the successive tenancy to 12 months after the commencement of the successive tenancy. In the context of this case this would mean that the rent could be increased each year on the 12 September, being the date of the commencement of the first of the linked tenancies, irrespective of the period that had elapsed under each relevant successive tenancy as at 12 September each year; or
    (b) to read down prescribed term 37 to circumstances where the successive tenancy contains the same constitution of tenants as the prior tenancy.

32. The problem with option (a) is that it lacks clarity and an incoming tenant may be mislead into thinking that the rent at the commencement of their tenancy will

remain fixed for 12 months when in fact the rent freeze may be due to expire part way through the 12 months.

33. If prescribed term 37 is simply repealed then it may encourage landlords to coerce tenants into a serious of short term tenancies so that the rent can be increased at the commencement of each. Thus if tenants were to enter four tenancies of three months duration each rather than one tenancy of 12 months, the landlord could increase the rent three times in the year rather than only at the commencement of the 12 months tenancy.

34. If prescribed term 37 is limited to circumstances where there is an identical constitution of tenants in the successive tenancy rather than just one common carry over tenant, then the potential evil referred to immediately above would be avoided but it would allow negotiations of a new rent for each genuinely new tenancy.

35. Faced with the above choices the presently constituted Tribunal adopts the later course of reading down prescribed term 37 as being the course that does the least violence to the wording of the statute and which appears to best achieve the intended legislative policy.

36. The consequence of the construction preferred by the Tribunal is that the landlords were entitled to negotiate a new rent with the tenants for each of the five successive tenancies of paragraph 7 because the constitution of tenants changed on each occasion bringing into existence a genuinely new tenancy.

37. Given that the Applicant only sought a declaration of the unlawfulness of the rent increases in question to clarify the law, and consequential upon the Tribunal's tentative finding that the rent increases were not unlawful, the application is dismissed.

A. Anforth
12th February 2009