[TRIANTAFYLLIDES, LOIZOU & HADJIANASTASSIOU JJ.]

FRIXOS KATSIKIDES,

Appellant—Defendant,

v.

MICHAEL CONSTANTINIDES AS AGENT OF HIS WIFE AGNI M. CONSTANTINIDOU,

Respondent—Plaintiff.

(*Civil Appeal No.* 4630).

Landlord and Tenant—Rent Control—Rent (Control) Law, Cap. 86—*Standard rent—Increase of—Contractual tenancy converted on its expiration into a statutory tenancy—Contractual tenancy at the agreed rent of* £15 *per month—Clause in the said tenancy agreement providing for payment of an increased amount viz.* 750 *mils (equivalent to* 15 *shillings) "daily rent" in case the tenant would continue in occupation of the premises after the expiration of the said contractual tenancy and as long as he remains in such occupation—Such clause is inconsistent with the provisions of the Rent (Control) Law, Cap.* 86—*The tenant, therefore, who continued in occupation as statutory tenant, continues also to be liable to pay only the standard rent of* £15 *per month—The landlord remaining free to increase the standard rent in any legitimate way that may be open to him under the said Law Cap.* 86—*Such clause fixing* 750 *mils as "daily rent" contravenes the rule that it is not legally possible to contract out of the rent control legislation unless there is express provision therein to the contrary—Because the said clause would defeat the object of such legislation by forcing the tenant to pay more by way of rent than the standard rent if he chooses, as he did in this case, to take advantage of the protection of the said legislation by continuing in occupation of the premises—Whether the said amount of* 750 *mils "daily rent" provided in the original tenancy agreement is not really rent, but damages or penalty becoming payable in case of non-delivery of possession at the expiry of the contractual tenancy—The Rent (Control) Law, Cap.* 86, *sections* 4, 7(2), 8(1) *and* (2), 23(1) (*now section* 21 *as renumbered by Law* 8/68)—*Cf. The English Increase of Rent and Mortgage Interest (Restrictions) Act,* 1920, *sections* 1, 3 *and* 15(1).

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FRIXOS KATSIKIDES
v.
MICHAEL CONSTANTINIDES AS AGENT OF HIS WIFE AGNI M. CONSTANTINIDOU

Rent control—Rent Restriction—Contractual Tenancy—Statutory Tenancy—Standard Rent—Increase of—Clause in the tenancy agreement for the payment of an increased amount as daily rent in case the tenant continues in occupation as statutory tenant—Clause inconsistent with the provisions of the Rent (Control) Law, Cap. 86—Such clause would defeat the object of the rent control legislation—Whether it amounts to liquidated damages or penalty—Contracting out of the rent control legislation, not permissible—See above.

Contracting out of the rent control legislation—See above.

Penalty or liquidated damages—Whether increased amount clothed as "daily rent" is in reality penalty (or damages) for non-delivery of possession of the controlled premises at the expiration of the contractual tenancy—See above.

Rent—Increase of—See above.

Standard rent—Increase of—See above.

Rent Control Legislation—Contracting out—See above.

Statutory Tenancy—Standard rent—Increase of—See above.

Words and Phrases—"Terms and conditions of the original Contract of tenancy, so far as the same are consistent with the provisions of this Law" in section 23(1) (now renumbered section 21 by Law 8/68) of the Rent (Control) Law, Cap. 86, corresponding to section 15(1) of the English Increase of Rent and Mortgage Interest (Restrictions) Act, 1920—The said phrase is not so framed as to extend to the case of the payment of rent.

Terms and Conditions of the original contract of tenancy—Meaning and effect—See immediately above.

This appeal is taken by the tenant-defendant against a judgment of the District Court of Nicosia dated April 22, 1967, awarding to the landlord-plaintiff (respondent in the appeal) the sum of £22.500 mils being arrears of agreed rent for the months of October, November and December 1966. The facts are shortly as follows:

By an agreement dated September 30, 1965, the respondent (plaintiff) let to the appellant (defendant) a house situate at Nicosia for the term of one year ending on September 30, 1966 at a rent of £15 per month payable in advance at the beginning

of each month. At the end of the agreement, clause 10 thereof provided that a breach by the tenant of any one of the terms of the tenancy gives the right to the tenant to determine the tenancy. It was further agreed under the same clause 10 that in case the tenant does not wish to deliver up the premises at the expiration or determination of the tenancy, he will be bound to pay to the landlord the amount of £0.750 mils (i.e. 15 shillings) rent per day for as long as he would remain in possession of the premises.

It is not disputed: (1) that the house in question is covered by the provisions of the Rent (Control) Law, Cap. 86; (2) that the tenant (appellant) continued in occupation of the said house after the expiration of the contractual tenancy on September 30, 1966, as a statutory tenant and that he was still in occupation as such at the time of these civil proceedings; and (3) that he (the tenant – appellant) refused to pay the aforesaid increase of rent such increase amounting for the three months October to December, 1966 to £22.500 mils at £0.250 mils daily or £7.500 mils monthly (*supra*), which is the sum awarded to the landlord (plaintiff – respondent) by the judgment appealed from.

The short question in this case is whether or not that part of clause 10 of the agreement of tenancy of the 30th September, 1965 charging the tenant with the sum of £0.750 mils daily in the events of this case is consistent with the statutory provisions.

Section 23 of the Rent (Control) Law Cap. 86 (now section 21 as renumbered by Law 8/68) provides in subsection (1):

> "A tenant who, under the provisions of this Law, retains possession, of any premises shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Law.....".

This sub – section reproduces the provisions of section 15(1) of the English Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, except the last seventeen words.

Section 4 of our Law (Cap. 86, *supra*), corresponding to section 1 of the English Act, restricts any increase of rent, beyond the standard rent with the exception of increases which the law specifically permits, and it says that the amount of an unauthorised increase shall be irrecoverable.

On the other hand, in case of contracts of tenancy entered into on or after June 6, 1946, the second proviso to section 7(2) of the Rent (Control) Law, Cap. 86 provides that where the rent to be paid under section 7(2) of the Law by the statutory tenant is less than the rent stipulated in the original contract of tenancy, such tenant shall pay the rent as agreed under such contract. It should be noted that the said sub-section (2) deals with the permitted increases.

Section 8 of our Law Cap. 86 (*supra*) corresponds to section 3 of the aforesaid English Act. Section 8(1) provides that "nothing in this Law shall be taken to authorise any increase of rent except in respect of a period during which, but for the provisions of this law the landlord would be entitled to obtain possession". Sub-section (2) of the said section 8 requires a valid notice of increase to be served on the tenant, notwithstanding any agreement to the contrary, where the rent is to be increased.

The Supreme Court, allowing the appeal and reversing the judgment of the District Court of Nicosia,--

Held, per Hadjianastassiou J.:

(1) I am of the opinion that the phrase in section 23(1) of our Rent (Control) Law Cap. 86 (now renumbered as section 21 by Law 8/68) to the effect that a statutory tenant "shall so long as he retains possession observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Law.....",—"is not so framed as to extend to the case of the payment of rent. It is not dealing with rent". (See *Philips* v. *Copping* [1935] 1 K.B. 15, at p. 24, per Maugham L.J., as he then was. See, also, *Regional Properties Ltd.* - v. *Oxley* [1945] A.C. 347, at p. 355 per Lord Macmillan).

(2) It follows that the provision for the payment of the amount of £0.750 mils per day contained in clause 10 of the original contract of tenancy (*supra*), is not within section 21 of our law and, therefore, it is not incorporated or carried forward into the statutory tenancy by that same section.

(3) In my view, in this case, a valid notice of increase was necessary which had to comply with section 8 of the Law, Cap. 86 (*supra*). But it is not disputed that the landlord (respondent) has failed to follow the provisions of the said

section 8 and that he only relies on clause 10 of the original agreement (*supra*) i.e. on something done before the creation of a statutory tenancy.

(4) Even assuming the view taken that the said amount of £0.750 was not daily rent, but agreed liquidated damages, then again in my opinion, that part of clause 10 (*supra*) could not survive, because the contractual tenancy ceased on the 30th September, 1966. Thereafter a statutory tenancy came to existence, which cannot be determined save for one of the reasons mentioned in the statute; and because clause 10 (*supra*) is not consistent with the provisions of section 21 of our law (*supra*).

Held, per Triantafyllides J.:

(1) In my view, looking at the substance and the reality of the matter, the amount of 750 mils per day in clause 10 of the tenancy agreement was not rent, but damages or penalty becoming payable in case of non-delivery of possession at the expiry of the contractual tenancy. Therefore, this amount of 750 mils per day cannot be treated, at all, as being relevant to the issue of what was the standard rent payable by the statutory tenant.

(2) For this reason I have to conclude that the landlord (respondent) was not entitled to £22.500 per month for the months of October—December 1966 and that he was entitled only to £15 rent per month, as alleged all along, and paid already, by the tenant (appellant).

(3) But there is another cognate reason why the judgment of the lower Court should be set aside: In law, it is not possible to contract out of the provisions of the rent control legislation—unless there is express provision for the purpose therein (see *Schmit* v. *Christy* [1922] 2 K.B. 60; cf. *Woods* v. *Wise* [1955] 2 Q.B. 29, at p. 51 per Birkett L.J.). In my view the provision in clause 10 of the agreement fixing 750 mils as "daily rent" would result, in this case, in defeating the scheme of the rent control legislation and, therefore, it was inconsistent with the provisions of the Rent (Control) Law, Cap. 86; it would, indeed, defeat the object of such legislation by forcing the appellant to pay more by way of "rent" than the standard rent (which in this case was the rent really provided for under the expired contractual tenancy i.e. £15 monthly),

if he chose, as he did, to take advantage of the protection of the said legislation by continuing in occupation of the premises.

(4) Such provisions in clause 10 of the tenancy agreement (*supra*) cannot, be treated, either, as an agreement—for the increase of the rent of premises subject to a statutory tenancy—envisaged under section 7 of Cap. 86, nor can it be held to be a valid mode of permitted unilateral increase of the standard rent, provided for, again, under such section.

Held, per Loizou J.:

(1) For the reasons stated in the judgments of my learned brothers I agree that the said provision in clause 10 (*supra*) is inconsistent with the provisions of the Rent (Control) Law Cap. 86, in the sense that the obvious object in importing it in the original tenancy agreement was to secure for the landlord in case of statutory tenancy, rent at a rate higher than the standard rent and in a manner incompatible with the provisions of the said Law relating to permitted increase of rent.

(2) In the circumstances, I am of the view that the said provision in clause 10 regarding the payment of 750 mils "daily rent" did not continue in force under the statutory tenancy and that the tenant (appellant) was not bound to pay more than the standard rent which was admittedly £15 per month.

Appeal allowed with costs here and in the Court below.

Cases referred to:

Philips v. *Copping* [1935] 1 K.B. 15, at pp. 24—25 per Maugham L.J.;

Regional Properties Ltd. v. *Oxley* [1944] 2 All E.R. 510 C.A.;

Regional Properties Ltd. v. *Oxley* [1945] A.C. 347, at pp. 354 and 355, per Lord Russell of Killowen and Lord Macmillan respectivelly;

Cumming v. *Danson* (1942) 112 L.J. K.B. 145 at p. 146 per Lord Greene M.R.;

Remon v. *City of London Real Property Ltd.* [1921] 1 K.B. 49 at p. 55 per Bankes L.J.;

Kerr v. *Bryde* [1923] A.C. 16;

Penfold v. *Newman* [1922] 1 K.B. 645, at p. 654 per Salter J.;

Property Holding Co. Ltd. v. *Clark* [1948] 1 All E.R. 165 at pp. 173—174;

Alliance Property Company Ltd. v. *Shaffer* [1949] 1 K.B. 367 at p. 373;

Sidney Trading Co. Ltd. v. *Finsbury Borough Council* [1952] 1 All E.R. 460, at pp. 461—462;

Woods v. *Wise* [1955] 2 Q.B. 29, at p. 51 per Birkett L.J.;

Schmit v. *Christy* [1922] 2 K.B. 60;

Dean v. *Bruce* [1951] 2 All E.R. 926.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (A. HadjiConstantinou Ag. D.J.) dated the 22nd April, 1967, (Action No. 4328/66) whereby he was adjudged to pay to the plaintiff the sum of £22.500 mils by way of arrears of agreed rent.

P. Frakalas, for the appellant.

G. Ladas, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES, J.: The first judgment will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU, J.: In this appeal, the appellant–defendant appeals from the judgment of the District Court of Nicosia dated April 22, 1967, awarding to the respondent–plaintiff the sum of £22.500 mils being arrears of agreed rent for the months of October, November and December 1966.

The undisputed facts are in brief as follows:

By an agreement dated September, 30, 1965, *exhibit* 1, the plaintiff who was acting as the representative of his wife Agni M. Constantinides, of Nicosia, let to the defendant Frixos Katsikides, a house situated at No. 12 Crete Street, Nicosia.

The agreement provided, that the tenancy was to be for the term of one year from October 1, 1965, till September 30, 1966, at a rent of £15 per month, payable in advance at the beginning of each month. And if the premises would be held thereafter the tenancy would be continued as tenancy from year to year under the same terms and conditions determinable by two months notice in writing by registered letter, given by either party to the other prior to the expiration of the continued tenancy. Clause 10 of the agreement, so far as relevant, provided that a breach by the tenant of anyone of the terms of the tenancy gives the right to the landlord, if he so wishes, to determine the tenancy and to demand the immediate evacuation of the property.....In case the tenant does not wish to deliver the premises at the expiration or determination of the tenancy, the tenant will be bound to pay to the landlord the amount of £0.750 mils rent per day for such a period he continues in possession of the premises.

On July 23, 1966, the plaintiff addressed a registered letter to the defendant, *exhibit* 2, determining the said tenancy on September 30, 1966. As there was no reply, on August 6, 1966, the plaintiff through his advocate addressed another registered letter to the defendant, inviting his attention to clause 10 of their agreement that he had to pay after September 30, 1966, the amount of £0.750 mils rent per day. The defendant failed to reply to counsel for the plaintiff, but on October 29, 1966, through his counsel remitted a money order for £15, in payment of rent for the month of October, 1966. Counsel for the plaintiff replied by a letter dated November 3, 1966, returning the said money order, claiming the amount of £45 as arrears of rent for the months of October and November, being the agreed amount of £22.500 mils (i.e. £0.750 mils daily) per month as from October 1, 1966.

On December 9, 1966, counsel for the defendant replied to that letter enclosing two money orders of £15 each for the payment of rent for the months of October and November, for the house which his client was in possession as a statutory tenant. The respondent–plaintiff feeling aggrieved filed action No. 4328/66 dated December 3, 1966.

. It is evident that the notice served on the defendant on July 23, 1966, operated as a notice to quit and on its expiry a statutory tenancy came into existence which is more parti-

cularly regulated by section 21 of the Rent (Control) Law, Cap. 86, (as amended by Law 8/68) the material portion of which provides:–

> "A tenant who, under the provisions of this Law, retains possession of any premises shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Law....."

It would be noted that our section reproduces verbatim the material provisions of section 15(1) of the English Increase of Rent and Mortgage Interest (Restrictions) Act 1920, except the last seventeen words.

It is not in dispute that the defendant continued in possession of the premises after October 1, 1966, as a statutory tenant and was still in possession at the time of the civil proceedings. Furthermore the parties during the hearing of the case have agreed that the house was within the provisions of the Rent (Control) Law (*supra*).

The short question between the parties is whether the part in clause 10 of the original contract of tenancy charging the tenant with the sum of £0.750 mils rent per day, is consistent with the statutory provisions.

The appeal was argued before us on the following two main grounds:

(1) That the trial Judge was wrong in law in deciding that the plaintiff–respondent was entitled to collect an increased rent after he had terminated the contractual tenancy and the defendant–appellant remained in occupation as a statutory tenant under the provisions of the Rent (Control) Law;

(2) that the trial Judge was wrong in law in deciding that the provisions in clause 10, of *exhibit* 1 was agreed rent and not stipulated damages or penalty.

The learned trial Judge found that as from October 1, 1966, the defendant held over the premises as a statutory tenant and that the provisions of the Rent (Control) Law, (*supra*) are applicable to this case. He then went on to say at p. 15:

"Thus, in this case, the original contract of tenancy is *exhibit* 1, and in accordance with the provisions of section 21(1) of our law, the defendant–tenant is bound to observe all the terms and conditions of the original contract of tenancy i.e. *Exhibit* 1 amongst which terms, clause 10 is included. In accordance with this clause the defendant, so long as he retains possession is bound to pay £0.750 as agreed daily rent for as much period after the 1.10.66 as the premises remain in his possession".

Later on he says:

"On the other hand the second Proviso to sub–section 2 of section 7 of the Rent (Control) Law, provides that where the rent to be paid under sub–section 2 of section 7 by the statutory tenant under the contract of tenancy entered into on or after the 6.6.46 is less than the rent provided by such contract, such tenant shall pay the rent provided by such contract....."

With due respect, to the learned trial Judge, with regard to the construction placed upon the provisions of section 21(1) of the Rent (Control) Law (*supra*) and his reasoning, I hold a different view. It is evident that he has failed to consider the whole of this section, particularly the words "terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this law". The words terms and conditions.....so far as consistent, were considered by Maugham, L.J. in *Philips* v. *Copping* [1935] 1 K.B. 15, at p. 24. Maugham L.J. had this to say:

".....Then comes s. 15 as to the effect of which different opinions have been expressed. The section created a statutory tenancy and defends the possession of the statutory tenants, saying that he shall 'so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act'. What does that mean? To my mind the phrase is not so framed as to extend to the case of the payment of rent. It is not dealing with rent. The tenant is to observe and to be entitled to the benefit of certain terms and conditions. It does not say that he will observe the covenant to pay the rent, and the words are not apt to describe the events which have happened since the Act came into force,

for example, an increase of rent permitted by s. 2, nor does it say anything about the landlord's right to recover rent. However that may be, and whatever may be the solution of the doubtful questions as to the original tenancy which are to apply by virtue of that section to the statutory tenancy, the argument based upon the first three sections of the Act is unaffected by it. They cannot mean that a tenant is entitled to hold the premises at a rent lower than the standard rent. If that had been intended it would have been easy to express it in clear terms, and I think ss. 1, 2 and 3 indicate the contrary. In my opinion this right of a landlord on the expiration of a legal tenancy to raise the rent to the standard rate was his right at common law and it has not been interfered with by the Act".

This view was supported by Lord Macmillan in *Regional Properties Ltd.* v. *Oxley* [1945] A.C. 347 at 355, where the House of Lords held that a proviso in a lease, which provided a bonus payment to the tenant on punctual payment of rent, was inconsistent with the provisions of this Act and not incorporated into the statutory tenancy by sub–section (1) of this section. Lord Macmillan had this to say at p. 355:

".....But in any case the provision for a rebate contained in the original contract of tenancy is not in my opinion a term or condition of the original contract which is consistent with the provisions of the Act. Under the Act the landlord is entitled to increase the rent up to any figure which does not exceed the standard rent plus the permitted statutory increases. When he gives a valid notice of increase of rent, the rent from the date when the notice takes effect is the rent specified in the notice. It becomes the statutory rent of the premises and all previous stipulations as to the amount payable cease to have any effect. So far as the monetary position is concerned, the liability of the statutory tenant is fixed and fixed exclusively at the figure stated in the notice which brings the statutory tenancy into existence. I am disposed to agree with the view expressed by Maugham L.J., as he then was, in *Philips* v. *Copping* [1935] 1 K.B. 15, 24, 25, where he says of s. 15, sub–s. 1, of the Act of 1920 that the phrase as to the statutory tenant being entitled to the benefits of all the terms and conditions of the original tenancy so far as consistent with the provisions of the

Act 'is not so framed as to extend to the case of the payment of rent. It is not dealing with rent' "

In my view, the Rent (Control) Law, 1954 does not interfere with leases and tenancy agreements more than is necessary to carry out its purpose. As was aptly said by Lord Greene M.R. in *Cumming* v. *Danson*, [1942] 112 L.J. K.B. 145 at p. 146 "The Rent Restrictions Acts are for the protection of the tenant and not for the penalizing of landlords".

It appears, therefore, that the essence of a statutory tenancy is that the tenant is holding over the premises after the expiration of the contractual tenancy against the will of the landlord in reliance upon the statutory right to retain possession and section 21 of the Rent (Control) Law.

As I have said earlier, our section reproduces verbatim section 15(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 and "is intended to supply something that was wanting in the previous Acts, namely, an indication as to the legal position of a person who continued in occupation of premises merely by reason of the protection afforded by those acts", per Bankes L.J. in *Remon* v. *City of London Real Property Co. Ltd.* [1921] 1 K.B. C.A. 49, at p. 55.

By section 21 of our Law such a person "shall so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy so far as the same are consistent with the provisions of this Law". The "original contract of tenancy" means the tenancy under which the tenant held immediately before his statutory tenancy began. See *Oxley* v. *Regional Properties Ltd.*, [1944] 2 All E.R. 510 C.A.

Now section 4 of our law corresponding to section 1 of the English Act, restricts any increase of rent beyond the standard rent, or in excess of the rent fixed by an order of the board, except as to increases which the law specifically permits and it says that the amount of an unauthorized increase shall be irrecoverable from the tenant. The section says nothing about the rent actually payable and it contains nothing to suggest that the landlord may not increase that rent up to the standard rent.

Section 7(a) which should be read in conjunction with section 4(1), deals with permitted increases and then again there is

nothing to suggest that the increases are limited to increases by reference to the rent actually payable at the date of the notice. Since the permitted increases are additions to the standard rent there is nothing to show that the common law right of the landlord to terminate an existing tenancy and fix the rent for the new tenancy to the standard rent is taken away.

Section 8 of our law corresponds to section 3 of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 which limits the permitted increases. Sub–section (1) which says that "Nothing in this law shall be taken to authorize any increase of rent except in respect of a period during which, but for the provisions of this law the landlord would be entitled to obtain possession" gave rise to considerable differences of judicial opinion, and when the question was ultimately dealt with in the House of Lords in *Kerr* v. *Bryde*, [1923] A.C. 16, the decision of the majority was that the sub–section in the English Act imposes a condition precedent on the right of the landlord to make a permitted increase, the condition, namely, that he had terminated the tenancy by notice. The sub–section however, does not touch the present question as the increases mentioned in such sub–section must be thus referred and limited by section 7(2). Sub–section (2) of section 8 requires a valid notice to be served on the tenant, notwithstanding any agreement to the contrary where the rent of the house to which the Act applies is increased; to my mind sub–section (2) is dealing only with increases permitted by the law in section 7 and it does not apply to the case in hand where all that the landlord is doing is saying, before the creation of a statutory tenancy, in clause 10 of the original contract, "In case the tenant does not wish to deliver the premises at the expiration or termination of the tenancy the tenant would be bound to pay to the landlord the amount of £0.750 mils per day for such a period he continues in possession of the premises. In my view, in this case, a valid notice was necessary and it had to comply with the law. The notice to be valid must be "correct in substance as well as form and should accurately state all material facts". *Penfold* v. *Newman*, [1922] 1 K.B. 645, per Salter, J. at p. 654. It is not in dispute that the landlord has failed to follow the provisions of section 8 of our law and that he only relies on the provisions of clause 10 of the original agreement of tenancy.

In my view the provision for the payment of the amount of £0.750 mils per day contained in clause 10 of the original

contract of tenancy, is not a term or condition of the original contract which is consistent with the provisions of the law; and it is not incorporated or carried forward into the statutory tenancy by section 21 of our law. I would, therefore, accept the submission of counsel for the appellant, as I am disposed to agree with the view expressed by Maugham L.J., as he then was, in *Philips* v. *Copping* (*supra*), where he says of s. 15, sub–s. 1 of the Act of 1920 that the phrase as to the statutory tenant being entitled to the benefits of all the terms and conditions of the original tenancy so far as consistent with the provisions of the Act "is not so framed as to extend to the case of the payment of rent. It is not dealing with rent".

In view of the result I have reached, I am not proposing to deal with the rest of the arguments of counsel except to say that even assuming the view taken that the amount of £0.750 was not daily rent, but agreed liquidated damages, then again in my opinion, that part of clause 10, could not survive, because the contractual tenancy ceased on the expiration of the notice terminating the tenancy. Thereafter there existed a new statutory tenancy, which cannot be determined save for one of the reasons mentioned in our law; and because clause 10 is not consistent with the provisions of section 21 of our law.

In the circumstances, and for the reasons I have advanced I would, accordingly, allow the appeal; the judgment of the trial Court is set aside with costs here and in the Court below.

TRIANTAFYLLIDES, J.: In this case I agree with my learned brother, Mr. Justice HadjiAnastassiou, that this appeal should be allowed.

My reasons for doing so are as follows:–

It is well settled that when one looks at the provisions of a tenancy agreement, in order to find out what has been the rent for the premises, for the purpose of ascertaining the standard rent payable under a statutory tenancy of such premises, the substance and the reality of the matter must be looked at as distinct from the form and precise language used (see *Property Holding Co. Ltd.* v. *Clark* [1948] 1 All E.R. 165, at pp. 173–174; *Alliance Property Company Ltd.* v. *Shaffer* [1949] 1 K.B. 367, at p. 373; and *Sidney Trading Co. Ltd.* v. *Finsbury Borough Council* [1952] 1 All E.R. 460, at pp. 461–462).

In my opinion, the amount of 750 mils per day, specified as "daily rent" in clause 10 of the tenancy agreement between the parties—(at the expiry of the duration of which the appellant became a statutory tenant)—was not, in substance and in reality, rent, but damages or penalty becoming payable in case of non–delivery of possession of the premises by the appellant to the respondent.

In this connection it is particularly significant to note that though the monthly rent of the premises was fixed at £15 per month in the proper for the purpose part of the tenancy agreement, no mention was made therein about increased monthly rent after the expiry of the period of the tenancy, which was for one year; but, at the very end of such agreement, in clause 10, wherein provision was made about, *inter alia*, the right of the respondent to terminate the tenancy in case of breach of any term of the agreement by the appellant, there was stipulated that in case of non–delivery of possession of the premises by the appellant "at the end or on termination of the tenancy" he would pay as "daily rent" 750 mils for as long as he would remain in possession.

In the circumstances, I cannot agree with the learned trial Judge that the said amount of 750 mils per day was, in substance and in reality, rent payable under the agreement of tenancy, so that it could be treated, at all, as being relevant to the issue of what was the standard rent payable by virtue of the statutory tenancy of the premises in question.

For this reason I have to conclude that the respondent was not entitled to £22.500 rent per month for the months of October–December, 1966 (as found by the Court below) and that he was entitled only to £15 rent per month, as alleged all along, and paid already, by the appellant; therefore, the order of the trial Court to the effect that the appellant should pay to the respondent the difference between £15 and £22.500 for three months, has to be set aside.

In any case the said order has, also, to be set aside for another, and cognate, reason:

The trial Court has treated the provision about 750 mils "daily rent", in clause 10, as a term of the tenancy which continued in force for the purposes of the statutory tenancy, by virtue, then, of section 23(1) of the Rent (Control) Law,

Cap. 86 —(now section21 (1) of Cap. 86, as amended since) — which, in this respect, is similar to section 15(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, in England.

As it was stated in *Woods* v. *Wise* [1955] 2 Q.B. 29, by Birkett L.J. (at p. 51): "The history of the Rent Act legislation shows that one of the primary purposes was to make sure that the landlord could not wreck the whole design by obtaining in one way or another sums of money from the tenant in addition to the permitted or standard rent".

A natural corollary of the above is that it is not possible to contract out of the provisions of rent control legislation — unless there is express provision for the purpose therein, as is the position in Cyprus under section 7(2) of Cap. 86. In particular, it is not possible to contract out of such legislation by a provision in a tenancy agreement (see *Schmit* v. *Christy* [1922] 2 K.B. 60).

Actually, the trial Judge, in finding that the provision in clause 10 about 750 mils "daily rent" was part of the terms of the statutory tenancy, relied on the case of *Oxley* v. *Regional Properties Ltd.* [1944] 2 All E.R. 510. It is unfortunate that he was, apparently, referred to the Court of Appeal decision in that case, and not the subsequent House of Lords decision, in the same matter, which reversed the Court of Appeal decision; because it is clear from the judgments delivered in the House of Lords (see *Regional Properties Ltd.* v. *Oxley* [1945] A.C. 347) that a contractual term relating to rent cannot be regarded as being one of the terms of a statutory tenancy so as to exclude the rent regulating scheme contained in the rent control legislation; as put by Lord Russell of Killowen in his judgment (at p. 354): ".....I am of the opinion that any term of the original tenancy which, if imported into the statutory tenancy, would or might in any way affect the amount of the standard rent which is fixed by the Act, cannot be treated as a term which is consistent with the provisions of the Act". (See also *Dean* v. *Bruce* [1951] 2 All E.R. 926).

I am of the view that the provision in clause 10 fixing 750 mils as "daily rent" —while not being, in reality, rent at all — did result, in this case, in defeating the scheme of the rent control legislation and, therefore, it was inconsistent with the provisions of Cap. 86; it entailed defeating the object of such

legislation by forcing the appellant to pay more by way of "rent", than the rent really provided for under the expired contractual tenancy (i.e. the standard rent), if he chose, as he did, to take advantage of the protection of the said legislation and continue in occupation of the premises. Thus, the provision concerned in clause 10 could not be treated as continuing in force under section 23(1) – now section 21(1) – of such Law.

Such provision in clause 10 cannot in my opinion be treated as an agreement – for the increase of the rent of premises subject to a statutory tenancy – envisaged under section 7 of Cap. 86, nor can it be held to be a valid mode of permitted unilateral increase of the standard rent, provided for, again, under such section 7; that this is not so is too obvious to need any further elaboration.

Of course, the respondent remains free to increase the standard rent of the premises in any legitimate way that may be open to her under Cap. 86.

For the foregoing reasons I am of the view that this appeal should be allowed with costs here and in the court below.

LOIZOU, J.: I agree with the judgments which have just been delivered that this appeal should be allowed; I would like to add only a few words.

The point in this appeal is susceptible of being stated quite shortly: Is clause 10 of the original contract of tenancy, and particularly that part thereof which provides for the payment of £0.750 mils "daily rent" in case the tenant retains possession of the premises at the expiration or determination of the term, to be treated as part of the terms and conditions of the original contract of tenancy which the tenant, under the provisions of what was then section 23 (and has now, by Law 8 of 1968, been renumbered section 21) of the Rent (Control) Law, (Cap. 86), has to observe and be entitled to the benefit thereof, so long as he retains possession as a statutory tenant?

It seems to me that the answer must clearly be in the negative and with all respect to the learned trial Judge, I disagree with the contrary conclusion reached by him.

For the reasons stated in the judgments just delivered by my learned brothers, which I need not repeat, I agree that the said provision in clause 10 is inconsistent with the provisions

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of the Rent (Control) Law, in the sense that the obvious object in importing it in the original contract of tenancy was to secure for the landlord, in case of statutory tenancy, rent at a rate higher than the standard rent and in a manner incompatible with the provisions of the said Law relating to permitted increase of rent. In the circumstances, I am of the view that the provision in clause 10 of the original contract of tenancy regarding the payment of £0.750 mils "daily rent" did not continue in force under the statutory tenancy and that the tenant, the appellant in these proceedings, was not bound to pay more than the standard rent which was admittedly £15.– per month.

In the result I would allow the appeal with costs here and in the Court below.

TRIANTAFYLLIDES, J.: This appeal, therefore, is allowed, unanimously, with costs here and in the Court below.

Appeal allowed with costs here and in the Court below.