

1970

Present : Weeramantry, J.

M. C. ABDUL HASSAN, Appellant, and S. M. CALIDEEN, Respondent

S. C. 11/69—C. R. Colombo, 9573S/R. E.

Rent Restriction Act, as amended by Acts Nos. 10 of 1961 and 12 of 1966—Sections 12A, 13 (1A), 13 (1B)—Notice to quit—Subsequent default in payment of rent—Claim for ejectment of tenant on that ground—Validity of the notice to quit.

Where a landlord institutes action claiming ejectment of his tenant on the ground that the tenant has been in arrears of rent for a period of three months or more after it became due, the notice given by the landlord requiring the tenant to quit after a specified date is valid even if a second default in payment of rent occurred after payment of the arrears of rent referred to in the notice to quit was made on a date subsequent to the date of termination of tenancy

¹ (1940) 42 N. L. R. 136.

specified in the notice to quit. In such a case it cannot be contended by the tenant that, inasmuch as the period of arrears referred to in the notice to quit is not the period relied upon as being the period of arrears at the time of the plaint, the landlord cannot have and maintain his action. The ground on which an action in ejectment is filed need not necessarily be the ground set out in the notice determining the tenancy.

On 2nd May 1966, plaintiff (landlord) served notice on the defendant (tenant) requiring him to quit the rented premises by end of August 1966 on the ground that defendant was in arrears of rent for more than three months. On 4th May 1967 defendant paid all rents due up to end of December 1966. No rent was paid thereafter. On 1st June 1967 the present action in ejectment was filed.

Held, that the notice to quit that was given on 2nd May 1966 was a valid notice for the purposes of the present action and that the plaintiff satisfied the requirements of the law, as contained in the Rent Restriction (Amendment) Act No. 12 of 1966, namely that the rent had been in arrears for three months or more after it had become due.

APPEAL from a judgment of the Court of Requests, Colombo.

Siva Rajaratnam, for the defendant-appellant.

M. T. M. Sivardeen, for the plaintiff-respondent.

September 12, 1970. WEERAMANTRY, J.—

In this case the plaintiff comes into Court claiming the ejectment of the defendant on the ground that the defendant has been in arrears of rent for a period of three months or more after it became due. The premises in suit are governed by the Rent Restriction Act.

It would appear that all rents had been paid up to the 30th of April 1965 and that thereafter at the instance of the defendant the Rent Control Board made order on the 15th of October 1965 fixing the authorised rent at Rs. 55/- per month. On the basis of this fixation of the rent the tenant filed action against the landlord on 29th October 1965 to recover excess rent that had been paid. He claimed a sum of Rs. 534.48. The landlord filed answer admitting that he had recovered a sum of Rs. 430.68 in excess of the authorised rent. However, having regard to the fact that no rent had been paid after 30th April 1965, he made a claim in reconvention on the basis that the excess sum of Rs. 430.68 was exhausted on account of rent due subsequent to 30th April 1965, and that over and above this sum there was due to him a sum of Rs. 9.32 on account of rent for December 1965 and Rs. 55/- on account of rent for January 1966, totalling a claim in reconvention of Rs. 64.32.

On 2nd May 1966 the plaintiff served the defendant with notice to quit by the end of August, and on 4th May 1967 the defendant paid a sum of Rs. 669.32 to the plaintiff. This sum of Rs. 669.32 covered all rent due up to the end of December 1966.

Action was filed on 1st June 1967.

It will be seen that at the date of filing of plaint rent had not been paid for any period subsequent to 31st December 1966. Even if, as the defendant states, the rent for each month became payable only on the 10th day of the succeeding month, the defendant was therefore over three months in arrears of rent at the time when action was filed.

It will be seen also that the period for which the defendant was in arrears at the time of the action was not covered by the payment of Rs. 669.32 in May 1967. This sum covered rents due only up to 31st December 1966 whereas on the date of the filing of action on 1st June 1967 rent was in arrear from January 1967.

At the argument in appeal the defendant-appellant urges that inasmuch as the period of arrears referred to in the notice to quit is not the period relied upon as being the period of arrears at the time of the plaint, the plaintiff cannot have and maintain his action. It is submitted that since the sum due in respect of the period referred to in the notice had been paid prior to the institution of action, it is not competent to the plaintiff to maintain the action upon the basis of a period of arrears other than that referred to in the notice to quit. I am afraid this submission cannot succeed as it is well established that the ground on which an action is filed need not necessarily be the ground set out in the notice determining the tenancy.

In this case the learned judge has held that the defendant has failed to bring himself within the provisions of section 13 (1B) of the Rent Restriction Act as amended by Act No. 10 of 1961 inasmuch as he has failed to prove to the learned judge's satisfaction that he had fallen into arrears in consequence of illness, unemployment or other sufficient cause. While not contesting the correctness of this finding, learned counsel for the defendant-appellant seeks to draw some support from the judgment of Samerawickrame, J. in *Mohamed v. Wahab*¹. In that case Samerawickrame, J. drew attention to the fact that although Act No. 10 of 1961 contained two provisions 1A and 1B which gave certain rights to the tenant which had not existed before, Act 12 of 1966 made that provision inapplicable to premises where the standard rent did not exceed Rs. 100/- per month, and introduced in its place a new section 12A. That provision reproduced the advantages given to the tenant by the former sub-section 1B but did not give to the tenant the privileges he had enjoyed by virtue of the former sub-section 1A. Samerawickrame J. took the view that it was unlikely that the privileges conferred by sub-section 1A would continue to be applicable to the tenants of premises over Rs. 100/- in value but should be denied to tenants of premises below Rs. 100/- in value. On this basis he held that the privilege formerly available to all classes of tenants under the provisions of sub-section 1A of tendering to the landlord all arrears of rent before the

¹ (1969) 72 N. L. R. 333.

date of termination of the tenancy as specified in the notice of termination was applicable to tenants of premises whose rent was below Rs. 100/- per month.

This decision does not avail the appellant in the present case for it is not his position that the rent which was in arrears at the date of the notice was tendered by him before the date of termination of tenancy as specified in that notice. The date of termination of tenancy set out in that notice is the end of August 1966. No payment of rent was made between the date of that notice and August 1966, for the next payment was made only in May 1967. The judgment referred to will therefore not avail the defendant.

Apart from these two provisions I have not been referred to any other provision of the Statute which produces such a result.

Consequently I hold that the notice which had been given on 2nd May 1966 was a valid notice and that the landlord satisfied the requirements of the law, as contained in the Act of 1966, namely that the rent had been in arrears for three months or more after it had become due. For these reasons I affirm the correctness of the learned Judge's findings and dismiss the appeal with costs.

Appeal dismissed.
