

1957

Present: H. N. G. Fernando, J.

B. WETTASINGHE, Appellant, and N. D. J. SAMARANAYAKE,  
Respondent

S. C. 279—C. R. Colombo, 61,434

*Rent Restriction Act, No. 29 of 1948—Section 15—Recovery of payments in excess of authorised rent.*

Amounts paid in excess of the authorised rent can be recovered by the tenant under section 15 of the Rent Restriction Act even though the payments were made on the basis of an agreed rent.

**A**PPEAL from a judgment of the Court of Requests, Colombo.

*V. K. Palasuntheram*, for the defendant-appellant.

*M. M. Kumarakulasingham*, for the plaintiff-respondent.

March 28, 1957. H. N. G. FERNANDO, J.—

This tenant has conducted his own defence and in consequence certain aspects of his defence have not been appreciated by the learned Commissioner. In the answer filed by the defendant he had alleged that the agreed rental of the premises was Rs. 25 a month and that the plaintiff had charged excessive rent. The defendant had furthermore attempted a calculation of the excess and prayed for a sum in reconviction. On these averments in the answer the issues as to what was the authorised rent of the premises and whether rent had been paid in excess clearly arose, and it was the duty of the judge to frame them.

Although those issues were not framed the learned Commissioner did realise himself that one of the two defences taken by the defendant was that rent had been charged at the rate of Rs. 25 per month and not at the rate of Rs. 12 as alleged in the plaint. In dealing with this defence the Commissioner states, "there is no definite evidence which the authorised rent is" and then makes certain observations which seem to indicate that to his mind if payments are made on the basis of an agreed rent, no question of excess can arise. If that was the learned Commissioner's view, I must point out that it is wrong because the Act clearly provides that amounts paid in excess of the authorised rent may be recovered by the tenant or deducted from rent payable.

There is a further serious misdirection in that the judge thought that the absence of evidence at the trial as to the amount of authorised rent was vital. The plaintiff, however, had stated in his plaint that the agreed rent was Rs. 12 and in the absence of anything to the contrary in the evidence, that averment constitutes an admission that the authorised rent is Rs. 12.

Because of this misdirection the learned Commissioner does not appear to have realised that it is essential to determine whether the defendant had in fact paid Rs. 25 per month for a long period and whether having regard to the set off permissible by section 15 of the Act he was not in arrears for the relevant period.

I would set aside the judgment and decree and direct that a new trial be held. At this trial, however, the only questions which may be agitated are those I have dealt with in this judgment, namely, whether the tenant had paid Rs. 25 a month as rent for any period and if so, whether the set off of the excess rent has the consequence that he was not in arrears. The issue whether any further sum paid as excess rent remains due for recovery by the defendant may also be agitated. In the circumstances I would make no order as to the costs of this appeal.

*Judgment set aside.*

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