

1973

Present : Wimalaratne, J.

H. A. MOHIDEEN, Appellant, and M. S. MOHIDEEN,
Respondent

S. C. 23/72—C. R. Colombo, 1980/R.E.

*Rent Restriction Act (Cap. 274), as amended by Act No. 12 of 1966—
Section 12A (1) (a)—Notice of termination of tenancy—
Requirement that it should be given after rent is in arrear for
three months.*

When a landlord seeks to eject his tenant under the provisions of section 12A (1) (a) of the Rent Restriction Act, notice of termination of tenancy, in order to be valid, must be given only after the tenant has been in arrear of rent for, at least, three months, without a valid claim by him for any set-off.

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

A. A. M. Marleen, for the plaintiff-appellant.

A. Sivagurunathan, for the defendant-respondent.

Cur. adv. vult.

July 12, 1973. WIMALARATNE, J.—

The plaintiff instituted this action on 19.10.70 for ejectment of the defendant on the ground of arrears of rent from 1.10.68, and for the recovery of arrears which the plaintiff restricted to Rs. 750 in order to bring the action within the jurisdiction of the Court of Requests.

The plaintiff had earlier, by letter P1 of 29.7.70, given the defendant notice of termination of tenancy as from the end of August 1970 and also demanded arrears of rent at Rs. 85 per month from 1.10.68.

The defendant averred that the authorised rent was only Rs. 35 per month, denied that he was in arrears of rent, and claimed in reconvention the excess rent paid plus an advance of Rs. 1,500 paid by him at the commencement of the tenancy.

At the trial it was agreed that the premises were governed by the Rent Restriction Act, and that the authorised rent was Rs. 85. The only question for determination was as to whether the defendant was in arrears of rent for three months or more within the meaning of Section 12A (1) (a) of the Rent Restriction Act as amended by Act No. 12 of 1966.

The learned Commissioner of Requests disbelieved the plaintiff's evidence that the defendant had paid rent only up to the end of September 1968. He believed the defendant's evidence of payment up to the end of April 1970. Although the defendant was in arrears for more than three months on the date of institution of action, he took the view that as the defendant was not three months in arrears on the date the notice P1 was sent, the action must fail. He held that the decisions in *Samaraweera v. Ranasinghe*¹ 59 New Law Reports 395 and *Abdul Hassan v. Calideen*² 74 New Law Reports 21 were not applicable, because in those cases the tenants were clearly in arrears of rent for the requisite periods when the notices terminating tenancy were given.

In *Samaraweera's* case the tenant was more than one month in arrears when action was filed and also when notice was given, and there was no dispute about that.

In *Abdul Hassen's* case the tenant was more than three months in arrears when notice was given. Although the tenant paid the arrears after receipt of notice, he was still in arrears for more than three months when action was filed. There, too, no dispute was raised as to the period of arrears.

In the present case there was clearly a dispute as to the period of arrears of rent; the landlord claimed that the tenant was 22 months in arrears on the date of notice, whereas the tenant by reply P2 denied being in arrears at all. The Court found as a fact that the tenant was only two months in arrears on that date. Under these circumstances the learned Commissioner was right in the view he took.

I may state that the law as interpreted in the two decisions referred to above will hereafter be of only academic interest as the Rent Act No. 7 of 1972 has removed all difficulties. In terms of Section 22 (3) of this Act, notice of termination of tenancy, in order to be valid, can be given only after the tenant has been in arrears for the requisite period. Three months' notice has to be given if it is on the first occasion on which rent has been in arrear, two months' notice if it is the second occasion on which rent has been in arrear, and one month's notice if it is in the third or subsequent occasion on which rent has been in arrear.

The appeal is dismissed with costs.

Appeal dismissed.

¹ (1958) 59 N. L. R. 395.

² (1970) 74 N. L. R. 21.