1958 *Present :* Basnayake, C.J., de Silva, J., and Sinnetamby, J.

SAMARAWEERA, Appellant, *and* RANASINGHE, Respondent

S. C. 270—D. C. Colombo, 33,371/M

Rent Restriction Act, No. 29 of 1948—Notice to quit—Duty of tenant to pay rent thereafter—Sections 13 (1) and 11.

The Rent Restriction Act imposes on a monthly tenant the obligation of paying rent even after the contract of tenancy has been determined by notice to quit. Proceedings, therefore, for his ejectment can be instituted if his rent is in arrear at any time thereafter for one month after it has become due.

Per BASNAYAKE, C.J.—The tenant is bound to pay the rent even if the landlord informs him or indicates to him that he is not prepared to receive it.

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *M. L. de Silva* and *Miss Maureen Seneviratne*, for Defendant-Appellant.

D. S. Jayawickrema, Q.C., with *E. Gooneratne*, for Plaintiff-Respondent.

Cur. adv. vult.

April 2, 1958. BASNAYAKE, C.J.—

The main question for determination on this appeal is whether proceedings for the ejectment of a monthly tenant who does not pay rent after his contract of tenancy has been determined can be instituted on the ground that his rent is in arrear for one month after it has become due.

Shortly the facts are as follows : The appellant became the tenant of the respondent's premises No. 236 Dam Street, Pettah, on 1st March 1953 on a monthly rental of Rs. 160. On 21st April 1953 the respondent gave notice terminating the appellant's tenancy on 31st May 1953 and on 12th June 1953 instituted an action in the Court of Requests of Colombo to have him ejected on the ground that the premises were reasonably

required by him for his own use and occupation. On 21st July 1953 this action was withdrawn of consent. On 4th December 1953 the respondent once more instituted an action for the ejectment of the appellant. This action was instituted in the District Court of Colombo. On 2nd August 1954 it was withdrawn of consent with liberty to file a fresh action and reserving to the defendant, in any subsequent action against him by the respondent, the right to interpose the claim in reconvention preferred in the action. On 6th October 1954 the present action was instituted and ejectment was sought on the ground that the rent was in arrear for one month after it had become due. The respondent claimed a sum of Rs. 820 being rent for April, May, June, July, August and September 1954. It is common ground that the rent for April, May and June 1954 was paid to the respondent's Proctor on 2nd August 1954, the day on which the previous District Court action was withdrawn, and that he returned the money to the appellant a few days later.

Learned counsel for the appellant submitted that once the contract of tenancy is terminated by a landlord he is not entitled to claim rent from the overholding tenant but only damages, and that the tenant is also under no obligation to pay rent but his liability is to pay damages. He further submitted that a tenant whose tenancy has been terminated cannot therefore be said to be in arrear in regard to his rent after it has become due. He contended that what a tenant is under no legal obligation to pay cannot be said to be due.

If we were considering only the common law rights of landlord and tenant learned counsel's contentions would be unexceptionable. But here we are dealing with a statute upon the true construction of which depends the answer to his submissions.

Section 13 (1) of the Rent Restriction Act, No. 29 of 1948, curtails the common law rights of the landlord to institute proceedings in ejectment against his tenant and enlarges the rights of the tenant against whom proceedings in ejectment cannot be instituted except in the cases in which the statute permits it. In fact the section affords protection to the tenant against the landlord's exercise of his common law remedies. Once a tenant loses this protection the landlord is free to institute legal proceedings in ejectment. One of the ways in which this protection can be lost is by allowing the rent to be in arrear for one month after it has become due. While protecting the tenant against ejectment except in certain circumstances the statute has by implication imposed on him the obligation of paying rent even after the contract of tenancy is determined if he is to continue to receive the protection. The obligation is that he must pay the rent on the due date. Now what is the due date once the contract has been terminated ? At common law rent becomes due on the date agreed on as the date on which it should be paid. As the statute does not prescribe a date as the due date it must be presumed that the Legislature had the contractual date in contemplation.

Learned counsel also submitted that the tenant is not bound to pay the rent if the landlord informs him or indicates to him that he is not prepared to receive it. I do not think the tenant can refrain from paying the rent on that ground and claim the protection of the Act. If he is to avoid an action in ejectment he must fulfil his statutory obligation, viz.,

pay his rent on the due date to the landlord. Learned counsel for the appellant relied on the case of *Vadivel Chetty v. Abdu*.[1] With respect I find myself unable to agree with the view expressed by my brother Weerasooriya in that case that the tenant cannot be said to be in default if as a result of the landlord's conduct in refusing acceptance of the rent for a previous month the tenant does not tender the rent for a subsequent month on the ground that the tender would be useless. The statutory obligation must be fulfilled if the statutory protection is to be claimed. The tenant is not entitled to say that he did not pay the rent because of the landlord's attitude (*vide* my judgment in *Razik v. Esufally* [2]).

The tenant cannot avoid the consequences of his rent being in arrear for more than a month after it has become due by tendering the arrears in a lump sum. The moment the rent falls into arrear for more than a month he forfeits the protection afforded by the Act and the landlord becomes free to proceed against him in ejectment and there is nothing the tenant can do thereafter to prevent it. (*M. M. Dias v. P. Vincent Gomes* [3]; *Fernando v. Samaraweera* [4]).

The appeal is dismissed with costs.

DE SILVA, J.—I agree.

SINNETAMBY, J.—

This is an action in which the purchaser of a property seeks to eject a tenant who was in possession and who had attorned to him. Shortly after his purchase the plaintiff gave the defendant notice to quit on 21/4/1953 requiring defendant to quit and deliver possession on 31/5/1953. He filed C. R. Case No. 46181 on 12/6/1953 and, in order to dispense with the authorisation of the Rent Restriction Board, stated that the premises were reasonably required for his own use. That action was withdrawn on 21/7/1953 : it is not known for what reason.

The plaintiff gave another notice on 7/10/1953 requiring possession on 30/11/1953 and followed it up by instituting action No. 30633 in the District Court on 4/12/1953. Once again the ground on which dispensation of the Board's permission was sought was the reasonable requirement of the premises by the plaintiff. There seem to have been some negotiations for a settlement between the parties and this action was by consent withdrawn by the plaintiff on 2/8/1954 with liberty reserved to plaintiff to institute a fresh action. The trial judge has found that on the same day but after the withdrawal of the action a sum of Rs. 480 was tendered by money order to the plaintiff's proctor in plaintiff's presence. Subsequently on 3/8/1954 a money order for Rs. 55 and a cheque for Rs. 105 were sent to plaintiff's proctor. These sums were returned on 6/8/1954.

While D. C. Case No. 30633 was pending the defendant from time to time sent the plaintiff sums of money equivalent to the rent of the premises but fell into arrears for the months of April, May and June, 1954.

[1] *(1953) 55 N. L. R. 67.*
[2] *(1957) 58 N. L. R. 469.*
[3] *(1954) 55 N. L. R. 337.*
[4] *(1952) 53 N. L. R. 382.*

The cheque for Rs. 480 which was tendered on 2/8/1954 along with excess rent would have covered the "rent" for these three months had the tenancy been in existence, but it would nevertheless have been in arrears for more than one month after it became due.

On 20/8/1954 the plaintiff gave defendant a fresh notice to quit and deliver possession on the 30th September, 1954, and when defendant failed to do so instituted the present action on 6/10/1954. On this occasion the plaintiff sought to dispense with the authorisation of the Rent Restriction Board on the ground that defendant had been in arrears of rent for more than one month after it had become due. The learned trial Judge held with the plaintiff and the appeal is against that decision.

Mr. H. V. Perera's contention was that by instituting action No. 30633 the plaintiff intimated to the defendant that he was repudiating the contract of tenancy and that he would not accept *rent* in respect of the premises—indeed in the action he claimed *damages*: the defendant was in the circumstances not liable to pay any rent: that if he did pay any sum of money as *rent* it was not open to the plaintiff to accept it as *damages*. His contention was that a tender of money on one basis by a debtor to his creditor must be accepted by the creditor on the basis on which it is tendered and that it was not open to the creditor to accept it on any other basis: if the creditor sought to accept it on any other basis it amounted to a refusal to accept and thereafter it was not obligatory on the part of the debtor to make a tender in respect of a future payment unless the creditor intimated his willingness to accept the tender on the basis on which it was offered.

Applying his argument to the facts of the present case Mr. Perera contended that by instituting D. C. Case No. 30633 the plaintiff in unequivocal terms intimated to the defendant that he was not willing to accept *rent* but demanded *damages*. The effect of this refusal to accept rent made it unnecessary to make any payment until the plaintiff later demanded it—in the present case the withdrawal of the action may be regarded as a demand when the defendant may pay within a reasonable time. In support of his latter argument he relied on the case of *Vadivel Chetty v. Abdu* [1].

Section 14 of the Act on which the learned Judge relied, he contended, does not apply to the facts of this case for two reasons: first, the District Court case was withdrawn reserving to the plaintiff the liberty to institute a fresh action and not dismissed and secondly, it was not dismissed *by reason of the provisions of the Act*. With this contention I agree: it cannot be said that the withdrawal even if it amounted to a dismissal was *by reason of the provisions of the Act*. The reason for the withdrawal was manifestly not because any of the provisions of the Act had been infringed but because of an undisclosed agreement reached by the parties.

Mr. Perera's attractive argument as a pure matter of law certainly did commend itself to me and might well have formed the basis of my judgment but for the existence of certain earlier decisions of this Court taken in conjunction with the object which the legislation in question intended to achieve. Taken to its legical conclusion Mr. Perera's

[1] *(1953) 55 N. L. R. 67.*

argument amounted to this : once the landlord repudiates the contract of tenancy by notice to quit he refuses to accept rent and the tenant is under no obligation to tender the rent until the landlord changes his mind and expresses his willingness to accept it ; a notice to quit is a repudiation ; thereafter, in order to keep the " statutory " tenancy alive, a tenant need not pay at all until the notice is withdrawn. This places a tenant in a position of undue advantage. On notice being given he need not pay rent but is entitled to occupy the premises till the action which is instituted is disposed of. The final decision may take several years particularly if there is an appeal, and if the landlord fails he still has a reasonable time in which to pay the arrears. This was clearly not the intention of the legislature. The one cardinal principle which forms the basis of the entire Act is that the tenant's possession must be preserved so long and only so long as he pays *rent* regularly. In England this difficulty does not arise in view of the provisions of section 15 of the English Act which imposes on the " statutory tenant " all the obligations of the original tenancy. It may be contended that it is not the function of the Courts to give effect to the intention of the legislature unless such intention is clear from the terms of the enactment but in regard to the Rent Acts both in England and here the intention of the legislature has largely influenced the decisions of the Courts.

In *Premalhiratne v. Elo Fernando* [1] this Court held that " so long as a tenant enjoys a statutory right of occupation notwithstanding the termination of the earlier contract, a statutory obligation is imposed on him to pay monthly ' rent ' at the original contractual rate ". This was followed by *Vincent v. Sumarasena* [2] wherein it extended the rule to cover the period of the pending of an action brought by the landlord to eject the tenant. This latter case is a complete answer to Mr. Perera's argument and we are asked in effect to over-rule it. It is to be noted that Mr. Perera eventually did not ask us to hold that a notice to quit rendered it unnecessary for a tenant to pay " rent " regularly in order to preserve his statutory protection, but only that the institution of an action had that effect.

To hold that a " statutory tenant " must pay " rent " after notice but need not do so after institution of action in order to prevent the operation of section 13 of the Act would be to make the situation still more illogical.

The best solution to the problem would no doubt be by legislation but until such time I would prefer to follow the trend of judicial decisions in this country and not disturb the basis on which tenants have thus far conducted themselves in an attempt to fulfil their contractual and legal obligations as " statutory tenants ". To do otherwise would be to create a situation which from the point of view of the landlord might well prove to be disastrous.

I agree with my Lord the Chief Justice that the appeal should be dismissed with costs.

Appeal dismissed.

[1] *(1954) 55 N. L. R. 369.* [2] *(1954) 55 N. L. R. 478.*