

1952

Present: Nagalingam A.C.J.

KADIBHOY, Appellant, and KESEYANU, Respondent

*S. C. 154—C. R. Colombo, 27,784**Rent Restriction Act—Notice to quit—Effect of acceptance of rent thereafter—
“ Waiver of notice ”.*

Where a “ statutory landlord ” governed by the Rent Restriction Act accepts the rent paid to him by a “ statutory tenant ” even after termination of the tenancy by a proper notice to quit, the plea of waiver of notice is not entitled to succeed.

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

C. Thiagalingam, Q.C., with *N. Nadarasa*, for the plaintiff appellant.

H. W. Tambiah, for the defendant respondent.

Cur. adv. vult.

April 8, 1952. NAGALINGAM A.C.J.—

The landlord who has been refused a decree for ejectment of his tenant appeals from the judgment which was delivered by the learned Commissioner of Requests of Colombo.

The only ground upon which the appellant, the landlord, sought to eject his tenant from the premises was that the latter had sublet the premises to certain third parties. The tenant, while joining issue with the landlord upon the ground for ejectment set out by the landlord, set up a plea that in any event the landlord had, as a result of his accepting payment of the rents that accrued subsequent to the date on which the tenancy had terminated, waived the notice by which he purported to terminate the tenancy.

The first question is entirely a question of fact. [His Lordship then discussed the evidence, and continued:—]

The conclusion I reach on a survey of the entire evidence is that the defendant has sublet the premises to the Tamil persons in May, 1950, prior to the institution of the action. The plaintiff, on this finding, is entitled to a writ of ejectment.

The next question for determination is whether the defendant's plea that the plaintiff had waived the notice to quit is entitled to succeed. Whatever may have been the position prior to the enactment of the Rent Restriction Act in regard to the question of waiver of notice by acceptance of rent for a period subsequent to the determination of tenancy, the law subsequent to its enactment is set out in the case of *Fernando v. Samara-weera*¹ where it is indicated that a "statutory landlord" has no option but to receive the rent paid to him by a "statutory tenant" even after termination of the tenancy by a proper notice to quit. This question is therefore concluded by authority, and I do not think that the plea of waiver of notice is entitled to succeed.

In the result, I set aside the judgment of the learned Commissioner and enter judgment for the plaintiff as prayed for with costs both in this Court and in the Court below.

Appeal allowed.
