

1954

Present : Gratiaen J.

A. H. M. SIDEEK, Appellant, and A. R. M. SAINAMBU
NATCHIYA, Respondent

S. C. 87—C. R. Kalutara, 1,604

Lessor and lessee—Expiration of notarial lease—Right of lessee to continue in occupation as statutory tenant—Duty to pay rent as it falls due—Tender of rent—Instancy when it is not necessary—Rent Restriction Act, No. 29 of 1948, ss. 13 (1) (a) and 14.

A tenant who enjoys, under the Rent Restriction Act, a statutory right of occupation notwithstanding the termination of the earlier contract of tenancy must continue to pay "rent" at the original monthly rate; if he fails to honour this obligation and is in arrear of "rent" for one month after it has become due, section 13 (1) (a) may be brought into operation to eject him.

A tenant need not formally tender payment of rent due when the landlord has in anticipation refused to accept it.

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

H. W. Jayewardene, with *A. C. M. Uvais*, for the defendant appellant.

H. W. Tambiah, with *S. Sharvananda* and *A. M. Ameen*, for the plaintiff respondent.

Cur. adv. vult.

April 8, 1954. GRATIAEN J.—

This is an action for the ejection of a tenant from premises to which the Rent Restriction Act, No. 29 of 1948, applies.

The plaintiff had placed the defendant in occupation of the premises as her tenant under the terms of a notarial lease for a period of three years commencing on 1st February, 1949. The agreed rent of Rs. 1,000 for the entire period of three years was paid in advance.

Under the general law, the lease automatically expired by effluxion of time on 31st January, 1952, and the plaintiff had taken the additional precaution of serving a notice on the defendant calling upon him to quit on that date because "she required the premises thereafter *for the use of her sons*". Nevertheless, the plaintiff's cause of action was postponed until she could prove that one or other of the conditions laid down by section 13 of the Act had been satisfied.

A Divisional Bench of this Court has authoritatively decided (1) that the protection of the Act is equally applicable where the tenant's contractual rights of occupation, having been created *under a notarial lease*, come to an end, and (2) that in rent restriction legislation the word "tenant" must generally be construed as including "a person who has at one time occupied the position of a tenant, even though at the time of action the tenancy was no longer in existence"—*Guneratne v. Thelenis*¹.

¹ (1946) 47 N. L. R. 433.

The present action was instituted on 5th April, 1952, i.e., two months and six days after the termination of the notarial lease. The plaintiff claimed that the provisions of section 13 were satisfied because :

- (1) she reasonably required the premises "for her own trade and business" within the meaning of section 13 (1) (c) ; and
- (2) the rent had been "in arrears for one month after it had become due" within the meaning of section 13 (1) (a).

On both these grounds she asked for a decree of ejection, and for damages from 1st February, 1952, at the rate of Rs. 27·69 *per mensem*.

With regard to the first ground relied on by the plaintiff, the evidence clearly established that she required the premises for a proposed trade or business *on behalf of her sons and not for her own purposes*. Section 13 (1) (c) does not work a forfeiture of the statutory rights of the tenant in such a case.

As for the second ground relied on by the plaintiff, the learned Commissioner held that the defendant had lost his statutory protection by (at the latest) the end of March, 1952, because he had neither paid nor tendered the "rent" for the previous month—i.e., after the contract had been terminated. He accordingly ordered a decree for ejection.

It is a nice question whether a so-called "statutory tenant" whose contractual rights have come to an end can fairly be said to be under an obligation to pay "rent" within the meaning of section 13 (1) (a). As it is now settled law that in many contexts the word "tenant" in the Act includes a statutory tenant, I certainly find it difficult to imagine that Parliament could have intended to place such a protected person (in regard to the making of regular payments for his continued occupation of the premises) in a more favourable position than he had previously enjoyed under the terms of the contract. It is for this reason that in England section 15 of the corresponding Act of 1920 provides that a statutory tenant must, in order to retain his statutory protection, observe all the terms of the original contract. The local Act is, however, silent on this all-important point, although section 14 expressly provides for a revival (both prospectively and retrospectively) of the earlier contractual rights and occupation *after an action for ejection has been dismissed*. Possibly, the remedy lies in a "broad, practical common-sense interpretation so as to effect the intention of the legislature"—*Read v. Goater*¹.

It seems to me implicit in the Act 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* ; and if he fails to honour this obligation, section 13 (1) (a) may be brought into operation to deprive him of the protection which he had previously enjoyed. In the case of an ordinary monthly tenancy, the amount payable as monthly "rent" and the date it falls due can be ascertained without much difficulty. In a case such as the present, however, the problem is less easily solved, but is not incapable of a reasonable judicial solution should the parties fail to agree as to the measure of their mutual rights and obligations.

¹ (1921) 1 K. B. 611 at 615.

I am satisfied that the defendant was liable to pay or at least to tender to the plaintiff statutory "rent" for February 1952, and succeeding months at the rate of Rs. 27·77 *per mensem* (i.e., calculated by dividing the previous contractual rent of Rs. 1,000 for three years by 36) in order to keep his statutory protection intact. Although no such payments were actually made even at the end of the relevant month, I have come to the conclusion that, upon the evidence, the defendant was still entitled to claim his statutory protection. Let me explain why.

During the months of February and March, 1952, frequent discussions took place at which the defendant consistently asked to be permitted to remain in occupation on payment of the original rental or an even higher rental, but the plaintiff's husband (who was acting on her behalf) made it clear that she insisted on being restored to possession immediately for the benefit of her sons.

Having examined the evidence, I am perfectly satisfied that the defendant had expressed his willingness to pay the rental for February, 1952, and for succeeding months, and that he would have done so except for the fact that the plaintiff's husband made it clear that no payment of any kind would be accepted (for fear, no doubt, that acceptance might prejudice the result of the contemplated proceedings for ejection). After the action commenced, the defendant has regularly brought into Court the amounts which the plaintiff claims as "rent" for each month.

A formal tender of payment is not necessary where the creditor in anticipation refuses to accept it—*Wessels : Law of Contract, Vol. 1, p. 706, para. 2341*. A "refusal in anticipation" is the only reasonable inference which can be drawn from the attitude adopted by the plaintiff's husband during his negotiations with the defendant who, to his knowledge, was perfectly willing and able to pay Rs. 27·77 *per mensem* (or even more) for his continued occupation either as contractual tenant under a fresh agreement or in the alternative as a statutory tenant protected by the Rent Restriction Act.

I allow the appeal and dismiss the plaintiff's action with costs in both Courts. The plaintiff is however entitled to a payment order for all sums deposited as "rent" by the defendant during the progress of the action.

Appeal allowed.
