

1959

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

T. D. M. JAYAKODY, Appellant, and D. L. F. PEDRIS, Respondent

S. C. 231—C. R. Colombo, 66,475

Rent Restriction Act.—Late payments of rent by tenant—No protest by landlord—Arrear of rent—Landlord's right to eject tenant.

When a landlord is indifferent as to late payments of rent, he cannot take advantage of such late payments in order to eject the tenant under the Rent Restriction Act when rent is in arrear for a month.

Plaintiff sought to have his tenant, the defendant, ejected on the ground that the rent due for the month of January 1957 was in arrear. The evidence showed that on at least eight occasions between 1950 and the end of 1956 (including September to December 1956) the rent for a particular month had been accepted at some time during the next month but one. The position regarding the rent for January 1957 was exactly the same as it was in those eight cases.

Held, that having regard to the very frequent occasions in the year 1956 when late payments were accepted, it became the duty of the plaintiff, if he intended to exercise his right to sue for ejection on the ground of late payment, to inform the defendant explicitly that any future delay would not be excused and that legal rights would be insisted upon.

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

D. R. P. Goonetilleke, for Defendant-Appellant.

Walter Jayawardene, with Nimal Senanayake, for Plaintiff-Respondent.

February 25, 1959. H. N. G. FERNANDO, J.—

The plaintiff has obtained a decree for the ejection of the defendant on the ground that the rent due from the defendant for the month of January, 1957, was in arrear. Notice terminating the tenancy was given on the 25th March, 1957, and offer of the January rent was made to the plaintiff but rejected on the same day. The only question I need consider is whether the conduct of the plaintiff was such that the defendant was led to believe that the kind of delay which actually occurred in regard to the January rent would not be relied on by the plaintiff to sue for ejection. The evidence shows that several letters were written to the defendant before 1950 complaining of the delay in payments of rent and also threatening action for ejection on the ground of delay, but no letter has been produced of any later date containing any such complaint or threat. On the contrary it appears from the plaintiff's own evidence which was supported by his book of account, that on at least eight occasions between 1950 and the end of 1956 the rent for a

particular month had been accepted at some time during the next month but one. The position regarding the rent for the month of January, 1957, was exactly the same as it was in those eight cases to which I have referred.

Counsel for the appellant has referred me to a South African decision of a Bench of five judges, *Garlick Ltd. v. Phillips*, where it was decided that even in a case where the date of payment of rent was fixed by a written lease the provision regarding time of payment could be altered by the conduct of the parties. Watermeyer, C.J., at page 132 makes the following observations: "But I am inclined to think that, if breach of a duty be necessary, there was a duty resting on appellant which was not performed. So long as its attitude remained one of indifference towards late payments of rent, there was of course no necessity to speak, but when appellant's state of mind changed from one of indifference to one of a desire or intention to take advantage of late payments of rent in order to obtain ejection, then I think a duty arose to make that changed attitude known to respondent. A reasonable man in appellant's position would have known that a long continued receipt by him of late payments of rent without protest such as occurred in this case, would lead respondent into the belief that he had no objection to late payments and did not treat them as breaches of contract and would not, without notice, do so in the future. A duty therefore rested on appellant if it intended to treat late payments of rent in the future as breaches of contract and to take advantage of them, to inform respondent of that change of mind."

To my mind the fact that no action was taken within a reasonable time after the plaintiff's last letter to the defendant of P24 on 19th November, 1949, justifiably caused the defendant to believe that although his late payments might be a source of inconvenience to the plaintiff, nevertheless they would not be relied on for the purposes of founding an ejection action.

Having regard to the very frequent occasions in the year 1956 when late payments were accepted it became in my opinion the duty of the plaintiff, if he intended to exercise his right to sue for ejection on the ground of late payment, to inform the defendant explicitly that any future delay would not be excused and legal rights insisted upon.

Although there is oral evidence that the plaintiff warned and "pulled up" the defendant when he made late payments, there is no express evidence that the plaintiff threatened that he would go to court in the event of a late payment. The fact that the rent for the months of September, October, November and December 1956 was always accepted in the third month must have induced the defendant to believe that he ran no risk by delaying the payment for January.

On this ground I would set aside the judgment and decree and enter decree dismissing the plaintiff's action with costs in both courts.

Appeal allowed.