

1953

Present : Pulle J.

E. DAVID APPUHAMY, Appellant, *and* K. SUBRAMANIAM,
Respondent

S. C. 46—C. R. Gampaha, 5,446

Rent Restriction Act—Deposit held by landlord—Right of tenant to set off monthly rent against the deposit.

Where a monthly tenant deposits a sum of money with the landlord on the agreement that it is to be held by the landlord and paid back to the tenant when the premises are handed over to him, it is not open to the tenant to set off the rent, as it falls due each month, against the deposit held by the landlord. If he does so set off, he is liable to be held to be in arrears of rent.

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

H. W. Jayewardene, with *D. R. P. Goonetilleke*, for the plaintiff appellant.

Frederick W. Obeyesekere, with *Felix Dias*, for the defendant respondent.

Cur. adv. vult.

November 23, 1953. PULLE J.—

The appellant in this case is the landlord who sought to eject his tenant on the ground that he required the premises for the purposes of his trade and business and on the further ground that the tenant was in arrears of rent. The landlord failed before the Commissioner on both grounds and the only question which has to be decided in this appeal is whether the decision that the tenant was not in arrears of rent was wrong in law.

The premises were taken on rent in 1947 at a monthly rental of Rs. 45. The tenant paid to the landlord two months' rent in advance and also deposited a sum of Rs. 500 on the agreement that it was to be held by the landlord and paid back to the tenant when the premises are handed over to him.

The present action was instituted on the 21st April, 1952. The Commissioner having found on the evidence that the tenant had paid rent up to the end of April, 1951, proceeded to hold that he was not in arrears because the advance for two months together with the deposit of Rs. 500 was well within the sum required to liquidate the rent due from 1st May, 1951, up to date of action.

Leaving aside for the moment that the tenant, in an answer filed by him in person, admitted that he was in arrears, it seems to me that the Commissioner was wrong in setting off the rent as it fell due each month after 30th April, 1951, against the deposit held by the landlord. There was no extinguishment of the obligation to pay rent as it fell due because the holding of the deposit by the landlord to be returned in terms of the tenancy agreement did not constitute a debt which could be set off against the rent.

The decree appealed from is set aside and the case will go back for a decree of ejectment to be entered up against the tenant, writ not to issue till 31st December, 1953. The decree will also embody the amount of damages, if any, that the tenant is liable to pay till 31st December, 1953.

The landlord will be entitled to the costs of appeal but each party will bear his own costs in the court below.

Appeal allowed.