

1957 *Present* : Basnayake, C.J., and Pulle, J.

M. RAZIK, Appellant, and H. ESUFALLY, Respondent

S. C. 351—D. C. Colombo, 30380/M

Rent Restriction Act—Section 13—Arrears of rent—Tender of rent—Elements necessary to constitute tender—Overholding lessee—Liability to pay rent.

Tender of money does not mean mere expression of readiness to pay the money. To constitute tender the readiness to pay must be accompanied

by production of the money that is offered in satisfaction of the debt. Therefore, mere willingness by a tenant to pay the rent due to his landlord does not discharge his obligation to pay the rent.

Under the Rent Restriction Act an overholding tenant under a notarial lease is liable to be ejected if he fails to pay rent for one month after it has become due.

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *M. Rafeek*, for Defendant-Appellant.

Walter Jayawardena, with *F. X. J. Rasanayagam*, for Plaintiff-Respondent.

Cur. adv. vult.

March 29, 1957. BASNAYAKE, C.J.—

The plaintiff seeks to have the defendant ejected from premises No. 44 (4-9) situate in Wolfendhal Street, Colombo, and also to recover damages amounting to Rs. 7,000 with further damages at Rs. 291/67 per mensem from 1st October 1953 till the plaintiff is placed in possession.

The material facts are as follows :—

Abdul Kaiyam was the tenant of the premises in question. On his death in 1949 the plaintiff asked his widow to vacate the premises ; but the defendant, her brother, appealed to him to permit the business to be carried on at least until the termination of the testamentary proceedings in respect of Abdul Kaiyam's estate. Thereupon the plaintiff leased the premises to the defendant by indenture dated 5th April 1950 for a period of 18 months. The lease was to terminate on 30th September 1951 and the annual rent of Rs. 3,500 was payable in quarterly instalments of Rs. 875 on the 15th day of the months of May, August, and November 1950, and February 1951. One of the conditions of the lease was that the lessee should yield up and deliver to the lessor or his agent vacant possession of the premises at the expiration of the period of eighteen months. On 29th June 1951 the plaintiff through his lawyers notified the defendant in writing that at the end of the term of the lease he should quit and deliver vacant possession of the premises. The defendant did not either send a reply to this notice or vacate the premises on 30th September 1951. Thereafter a second notice was sent to him on 8th October 1951. On that day the defendant saw the plaintiff and asked that he be allowed to continue as tenant. The plaintiff did not consent as the matter had been placed in the hands of his lawyers. On 6th November 1953 this action was instituted and the defendant's answer was filed on 28th June 1954. No rent had been paid between 30th September 1951 and the date of filing answer. It is on the ground that the defendant has been in arrears for one month after the rent has become due that the

plaintiff seeks to get over the bar to an action in ejection created by section 13 of the Rent Restriction Act. The defendant claims that he offered the rent to the plaintiff and that the plaintiff said that he was not worried about the money.

The learned District Judge has rejected the defendant's evidence that he offered to pay the rent and that the plaintiff declined to take it. He accepts the plaintiff's evidence that at no stage did the defendant tender to him the rent due or even make an offer of payment. We see no reason to disturb those findings of fact. The plaintiff's evidence is quite clear on the point. He says:—

“ On 8th October defendant approached me with a suggestion that he should be allowed to continue as tenant. I said the matter was in the hands of the lawyers and that he should make arrangements with the lawyers. Since then he has not seen me. My lawyers are Messrs. F. J. & G. de Saram. To my knowledge defendant did not approach my lawyers. Defendant did not at any time give me rent. Until I came to court no money was paid to me.”

The defendant's position is summed up in the following question and answer in his examination in chief:—

“ Q. Your case was that you were willing to pay but plaintiff wanted the premises back ?

A. Yes. ”

Mere willingness to pay the rent does not discharge the obligation to pay the rent. At no time did the defendant on his own showing pay the rent. The farthest he went was to take his cheque book with him and say he was “ prepared to pay ”.

It was argued that the defendant's action amounted to tender of the rent. Tender does not mean mere expression of readiness to pay. To constitute tender the readiness to pay must be accompanied by production of the money that is offered in satisfaction of the debt (Harris on Law of Tender, p. 11). In this sense the rent was never tendered by the defendant.

As the plaintiff notified the defendant three months before the expiry of the lease that he should hand over the premises at the end of September 1951 it cannot be said that there has been a tacit renewal of the lease. The contractual tenancy having expired at the end of September 1951, the defendant was able to remain in the premises merely because section 13 barred an action in ejection except on one of the grounds provided therein. The defendant is then a tenant remaining in possession of the leased premises without the lessor's consent. Under the common law such a person is deemed to hold the premises on the same terms as under the lease except that he is not entitled to go on for the term of the original lease or any shorter period and is bound to pay a proportionate rent for the period of his unauthorised occupation (Van Leeuwen *Censura Forensis*, Pt. I, Bk IV, Ch. XXII, Sec. 15—Barber). But the Rent Restriction Act

bars an action for the ejection of such a person except in circumstances prescribed by the Act. Such a person can be ejected if he fails to pay the rent for one month after it has become due. The defendant not having paid any rent for two years cannot escape the consequences of such non-payment. The lessee's obligations under our law in regard to rent is to pay the rent at the proper place and time (*Van Lecuwon's Censura Forensis*, Part I, Book IV, Ch. XXII, s. 13). It is not sufficient to express a willingness to pay the rent. The rent must be actually paid.

If he does not pay the rent and falls into arrears it is no defence to an action in ejection to say that because of the landlord's attitude he did not pay the rent.

The appeal is dismissed with costs.

PULLE, J.—I agree.

Appeal dismissed.
