SIRISENA
v.
PERERA

COURT OF APPEAL.
WIGNESWARAN, J.,
JAYAWICKREMA, J.
C.A. NO. 837/91 (F).
C.A. NO. 304/94 (REV).
D.C. COLOMBO NO. 6968/RE.
NOVEMBER 13, 1998.
DECEMBER 11, 1998.

Rent Act, No. 7 of 1972 – S. 21, s. 21 (3), s. 22 (3)c, s. 33 (2) – Arrears of rent for over 3 months – Specifying the amount of rent as arrears – Notice to quit.

The plaintiff-respondent instituted action for ejectment of the defendant-appellant from the premises in question on the ground of arrears of rent. The defendant-appellant averred that rent had been paid, and further contended that the notice to quit did not state the amount of rent due as arrears and stated that the notice of termination of tenancy must specify the amount of rent in arrears.

Held:

(1) The only requirement under s. 22 (3) (*a*) is to give the tenant 3 months' notice of termination when rent has been in arrears for 3 months or more after it has become due.

(2) Once a notice specifies the date and the months for which the tenant was in arrears, there was no further requirement that the amount of rent should also be specified in the notice. It is not necessary once the 3 months' arrears are specified to calculate the amount due further and state same in the notice.

"It is the duty of the tenant to pay the rent and if the landlord refuses to accept same section 21 provides for an alternate method of paying such rent."

APPEAL from the judgment of the District Court of Colombo.

Cases referred to:

1. *Sidebotham v. Holland* – 1985 1 QBD 378 at 383.
2. *Basnayake v. Edirisinghe* – [1989] 1 Sri L.R. 195.

A. K. Premadasa, PC with *C. E. de Silva* for appellant.

S. Gunasekera for defendant-respondent.

Cur. adv. vult.

March 26, 1999.

JAYAWICKREMA, J.

This is an appeal from a judgment dated 03. 07. 1991, entered in favour of the plaintiff by the Additional District Judge of Colombo.

The plaintiff-respondent instituted this action for the ejectment of the appellant from premises No. 846, Bandaranaike 2nd Lane, Gothatuwa, Angoda, on the grounds of arrears of rent and of damages caused to the property.

At the trial tenancy was admitted. The learned counsel for the defendant-appellant submitted that the plaintiff-respondent admitted that no receipts were issued to the appellant for payment of rent. The appellant states that even up to the date of notice to quit marked P1, rent had been paid to the respondent by the appellant, though, no receipts were issued. He contended that it should be the duty of the landlord to issue to the tenant a receipt in acknowledgment of every payment made by the tenant by way of rent, whether or not such is demanded by the tenant. He further contended that the notice to quit marked P1 does not state the amount of rent due as arrears and that the notice of termination of tenancy must specify the amount of rent as arrears. He further submitted that the words "all arrears of rent" appearing in clause (*c*) of subsection (3) of section 22 of the Rent Act, No. 7 of 1972 means only such rent specified in the notice of termination of the tenancy as being the arrears and nothing

more, nothing less. He further contended that by not issuing receipts for payment of rent, the respondent had violated section 33 (2) of the Rent Act.

The plaintiff in his evidence admitted that he did not issue receipts for payment of rent as the defendant made no request for such receipts. The defendant admitted that he was the tenant and that he paid a monthly rent of Rs. 60/- to the plaintiff. Further, the defendant-appellant admitted that he received P1, the notice of termination of tenancy. P1, which was admitted by the defendant-appellant dated 26. 06. 1987 stated that "you . . . failed and neglected to pay rent from August, 1985, up to date and thereby failing to pay rent for a period over three months".

At the trial the main question to be decided was whether the defendant-appellant was in arrears for over three months from August,1985. The defendant-appellant stated in his evidence that although, he tendered rent, the plaintiff-respondent refused to accept same and that, therefore, he paid the rent to the authorized person. But, the defendant-appellant has not tendered any documents or receipts to prove such deposit of rent. On that basis the learned trial Judge held that as the burden of proof of paying the rent was with the defendant-appellant he should prove such payment and that he had not done so. Under section 21 of the Rent Act the defendant may pay the rent to the authorized person and such payment shall be deemed to be a payment received by the landlord. But, in the instant case, the learned trial Judge has observed that the defendant-appellant had not proved such payment by producing receipts or by summoning the authorized person to prove such payment. Under section 21 (3) of the Act, the authorized person is bound to issue receipts to the tenant for such payment of rent.

In view of the above observation of the learned Additional District Judge, I am of the view that he has come to a correct finding as regards to the question of non-issue of receipts. It is the duty of the defendant to pay the rent and if the landlord refuses to accept same section 21 provides an alternative method of paying such rent.

As regards the question of specifying the amount of rent due as arrears in the notice of termination of tenancy section 22 (3) (*a*) of the Rent Act provides as follows:

> "The landlord of any premises referred to in subsection (1) or subsection (2) shall not be entitled to institute, or as the case may be, to proceed with, any action or proceedings for the ejectment of the tenant of such premises on the ground that the rent of such premises has been in arrears for three months or more after it has become due."

> (*a*) if the landlord has not given the tenant three months' notice of the termination of tenancy if it is on the first occasion on which the rent has been in arrear, etc.

The landlord has to give the tenant three months' notice of the termination of tenancy if it is on the first occasion on which the rent has been in arrear.

Thus, the only requirement under the above section is to give the tenant three months' notice of the termination of tenancy when rent of such premises have been in arrears for three months or more after it has become due. This section does not provide further that the amount due also should be specified in that notice. In any case, in the instant case, the defendant has admitted that the monthly rent is Rs. 60/- and that he had paid the rent to the authorized person. Therefore, the defendant-appellant cannot complain that he was not aware of the amount of rent due for three months. In terms of section 22 (3), a notice of termination of tenancy in order to be valid has to be given after the rent has been in arrear for three months. Under section 22 (3) (*b*) if the tenant had prior to the institution of such action tendered to the landlord all arrears of rent or according to section 22 (3) (*c*) if the tenant had on or before the date fixed in such summons as is served on him as the date on which he should appear in Court, in respect of such action or proceedings, tendered to the landlord all arrears of rent, the landlord is not entitled to institute

or proceed with the action in terms of section 22 (1) (*a*) of the Rent Act. The conditions precedent for the institution of an action on the ground of arrears of rent is that the rent of such premises had been in arrear for three months or more, after it had become due and the tenant had not prior to the institution of such action tendered all arrears of rent. The tendering of all arrears prior to the institution of the action cures all defaults. On a reading of the above sections it is clear that the requirement in respect of a notice of termination of tenancy is that the tenant was in arrears for three months or more and nothing else. Once a notice specifies the date and the months for which the tenant was in arrears, there was no further requirement that the amount of the rent should also be specified in the notice. The other requirement is that three months' notice of the termination of tenancy should be given to the tenant, if it is on the first occasion on which the rent has been in arrear.

In *Sidebotham v. Holland*[1] Lindley, LJ. formulated the following rule of interpretation : "The validity of a notice to quit ought not to turn on the splitting of a straw. Moreover, if hypercriticisms are to be indulged in, a notice to quit at the first moment of the anniversary ought to be just as good as a notice to quit on the last moment of the day before, But, such subtleties ought to be and are disregarded as out of place."

In *Basnayake v. Edirisinghe*[2] it was held that the words "all arrears of rent" appearing in clause (*c*) of subsection (3) of section 22 of the Rent Act, No. 7 1972 meant only such rent as has been specified in the notice of termination of the tenancy as being the arrears and nothing more, nothing less. In the above judgment nowhere is it stated that the notice should contain the amount of rent due as arrears, the only requirement being to specify the minimum three months which the tenant had been in arrears.

In the instant case three months which the tenant was in arrears was specified in the notice and the defendant-appellant had accepted that he received it. The notice of termination of tenancy dated

26. 06. 1987, clearly states that the tenant was in arrears of rent from August, 1985, up to date of the notice. Thus, this notice complied with section 22 (3) of the Rent Act. It is not necessary once the three months' arrears are specified, to calculate the amount due further and state same in the notice.

We have examined the evidence led in this case, the written submissions of counsel and the evaluation of the evidence by the learned District Judge carefully. We are in agreement with the view taken by the learned District Judge.

Hence, we dismiss the appeal with taxed costs and affirm the finding of the learned District Judge.

WIGNESWARAN, J. – I agree.

Appeal dismissed.