

1959

Present : Basnayake, C.J.

ADAMJEE LUKMANJEE & SONS, LTD., Appellant, and A. PONNIAH
PILLAI, Respondent

S. C. 73—C. R. Colombo, 66,760

Landlord and tenant—Monthly tenancy—Date when rent must be paid—Rent Restriction Act, No. 29 of 1948—Section 13 (a)—Arrears of rent—Practice of landlord to accept late payments of rent—Effect on right of landlord to eject tenant—Prevention of Frauds Ordinance, s: 2.

In the case of a monthly tenancy the rent must be paid monthly either at the beginning of the month, when there is a stipulation to that effect, or at the end of it, when there is no stipulation that the rent should be paid in advance.

For the purpose of section 13 (1) (a) of the Rent Restriction Act, No. 29 of 1948, a tenant would be liable to be ejected if the rent is in arrear for one month after the due date, although it has been the practice for the landlord to accept the rent once in several months.

Suppiak v. Kundiah (1957) 58 N. L. R. 479, not followed.

¹ 43 C. W. N. 669 P. C.

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

H. W. Jayewardene, Q.C., with B. S. C. Ratwatte, for Plaintiff-Appellant.

Clarence de Silva, with R. D. B. Jayasekera, for Defendant-Respondent.

April 24, 1959. BASNAYAKE, C.J.—

The plaintiff is a limited liability company which owns a number of houses in a place known as Lukmanjee Square. The defendant has been a tenant for a number of years in house No. 14 owned by the plaintiff in that Square. The monthly rent was Rs. 25/28. It would appear from documents P1 to P11 that the defendant did not pay his rent monthly, but had got into the habit of paying the overdue rent once in three or four months, whenever reminded by the plaintiff that he was in arrear. From October 1951 till November 1955 the plaintiff had from time to time sent eleven notices drawing the attention of the defendant to the fact that he was in arrear. The plaintiff seeks to come within the ambit of proviso (a) of section 13 (1) of the Rent Restriction Act, No. 29 of 1948, which enables a landlord, without the authorisation of the Board, to institute an action for the ejectment of a tenant, where the rent has been in arrear for one month after it has become due. The plaintiff states that the defendant had been in arrear in respect of the rent for each of the months April, May, June, August and September 1956 for more than a month after it became due. The overdue rent was paid after the notice terminating the contract of tenancy was given. The defendant claimed that the rent was payable by him not monthly, but at irregular intervals; once in three or four months or even once a year. The Secretary and Accountant of the plaintiff stated that under the contract of tenancy the defendant was obliged to pay rent every month at the plaintiff's office at Grandpass, but that though the defendant was irregular in his payments, the plaintiff was indulgent, and sent reminders to him to pay the rent whenever it fell into arrear.

The learned trial Judge seems to have wrongly inferred that there was no obligation to pay rent monthly from the fact that the plaintiff was indulgent and permitted the defendant to fall into arrear and pay his rent whenever demanded. It is not denied that the tenancy was a monthly tenancy, and in the case of a monthly tenancy the rent must be paid monthly either at the beginning of the month, when there is a stipulation to that effect, or at the end of it, where payment of rent in advance is not stipulated. In the instant case there was no stipulation that the rent should be paid in advance; the defendant was therefore in law bound to pay the rent immediately upon the termination of each month (Pothier, *Letting and Hiring*, Part III s. 134 p. 55, Mulligan's Translation). Admittedly he did not do so and was therefore in arrear for one month after the rent had become due. The plaintiff was therefore entitled to bring this action to have him ejected.

Learned counsel for the respondent relies on the case of *Suppiah v. Kandiah*¹. In that case my brother H. N. G. Fernando held that where the practice had been for the landlord to accept the rent once in several months, the question whether the tenant is in arrear must be considered in terms of that practice. With great respect to my brother I find myself unable to agree with that decision. As stated above it is settled law that in the case of a monthly tenancy the rent becomes due immediately upon the expiration of a month unless there is an agreement to pay monthly in advance. Payment of rent at greater intervals than a month is inconsistent with a contract of monthly tenancy. A contract which provides for payment of rent at greater intervals than a month would be of no avail in law unless it is in writing and signed by the party making it in the presence of a notary and two witnesses (s. 2 Prevention of Frauds Ordinance). Such a contract cannot be implied. The indulgence of the landlord does not have the effect of altering the law, nor is the tenant entitled to claim any benefit from his own laches to the prejudice of the landlord. For the purpose of section 13 (1) (a) of the Rent Restriction Act, No. 29 of 1948, the rent would be in arrear if it is not paid on the due date, and if it is in arrear for one month after the due date, the landlord becomes entitled to institute an action in ejectment.

I think the learned trial Judge is wrong in holding that the plaintiff has failed to establish that the rent had been in arrear for one month after it had become due. I accordingly allow the appeal with costs, and declare the plaintiff entitled to an order as prayed for in the plaint.

Appeal allowed.
