

1957

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

D. SUPPIAH, Appellant, and K. KANDIAH, Respondent

*S. C. 265—C. R. Hatton, 8,134**Rent Restriction Act, No. 29 of 1948—Section 13 (a)—“ Arrears of rent ”.*

Where it has been the practice for the landlord to accept rent not in the month for which rent is payable but once in several months, the question whether the tenant is in arrears of rent within the meaning of section 13 (a) of the Rent Restriction Act must be considered in terms of that practice.

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

N. Sumarakoon, with *J. C. Thuraiyatnam*, for the defendant-appellant.

Siva Rajaratnam, for the plaintiff-respondent.

March 27, 1957. H. N. G. FERNANDO, J.—

The defendant has been the tenant of the plaintiff since 1944 on a monthly tenancy. The only question which arises is whether the defendant was in arrears of rent for the month of January, 1956, by reason of his failure to pay that rent within one month after it became due. According to the plaintiff the rent for January, 1956, became due on the 15th

January. The defence position was that it had been the practice for the plaintiff to accept rents not in the month for which rent was payable but once in three or four months. The learned Commissioner has found from the evidence of books kept by the plaintiff himself that rent was not paid on the due dates but after the rent had accumulated for about two or three months. The books show that up to the end of the year, 1955, this practice had obtained and even from the plaintiff's evidence it seems fairly clear that it had never been the practice for rent to be paid in any month for that month. Before the plaintiff can establish that the rent was in arrears he had to establish when it became due, and in the face of the documentary evidence it is in my view impossible for the plaintiff to contend that there had been any agreement to pay the rent from month to month. He attempted to allege that shortly before the alleged default now in question, he had requested the defendant to pay the rent before the 15th of the month but the vagueness and uncertainty of his evidence on this point is no doubt the reason why the Judge does not hold that such a request had been made.

The Commissioner seems to have thought that the only question was whether the indulgence granted by the plaintiff entitles the defendant to claim that indulgence as of right. It seems to me, however, that the real question is whether the practice does not show that there was an implied agreement to pay and accept rents about once in two or three months. In my opinion such a practice was established and the tender of payment in March, 1956, of the rents for January and February was in accordance with this practice. The defendant was therefore not in arrears of rent at the time of the notice.

For these reasons I set aside the decree appealed from and dismiss the plaintiff's action with costs in both courts.

Appeal allowed.

