

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Civil Action No. 337 of 2019

IN THE MATTER of the Land Transfer Act Section 169

BETWEEN

NURUL HAK MAQBOOL as the executor and trustee of the estate of

INTAZ ALI aka INTAZ ALI MAQBOOL of Nasinu, Contractor.

PLAINTIFF

AND

IOANE RATURAGA of Lot 3 Vishnu Deo Road, Nakasi.

DEFENDANT

Counsel

:

Ms. Lutu I. for the plaintiff

Mr. O'Driscoll G. for the Defendant

Date of Hearing : 24th May 2020

Date of Ruling : 17th June 2020

JUDGMENT

- [1] The plaintiff as the executor and trustee of the estate of Intaz Ali aka Intaz Ali Maqbool filed this Originating Summons pursuant to section 169 of the Land Transfer Act 1971 seeking the following orders:
- A. That the defendant gives up immediate vacant possession to the plaintiff of the property comprised in Certificate of Title No. 27459 being Lot 3 on Deposited Plan No. 4921 of which the plaintiff is the registered proprietor of which the defendant occupies; and
 - B. That the costs of this application be paid by the defendant to the plaintiff.
- [2] The position of the plaintiff is that the defendant has been residing on this property since May 2018 and he had not paid any rent for three months prior to the service of the Notice to Vacate was served on him. The plaintiff served the notice to vacate the property on the defendant on 19th June 2019.
- [3] The defendant while admitting that he did not pay the rent as averred by the plaintiff in his statement of claim states that he raised his concern over the increase of the rental with the plaintiff. He states further the previous tenant paid \$420.00 per month and the plaintiff increased the rent to \$700.00.

[4] The defendant has complained to the Fiji commerce Competition Commission and he had been advised to pay the plaintiff the same rents paid the previous tenant which is \$420.00 a month.

[5] Section 169 of the Land Transfer Act 1971 Provides:

The following persons may summon any person in possession of land to appear before a judge in chambers to show cause why the person summoned should not give up possession to the applicant:-

(a) the last registered proprietor of the land;

(b) a lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;

(c) a lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired.

[6] It is common ground that the plaintiff instituted these proceedings in the capacity of the executor of the estate of Intaz Ali aka Intaz Ali Maqbool who was the registered proprietor of the property and the defendant is the lessee. It is a fact admitted by the defendant that the plaintiff served notice vacate the property.

[7] Section 172 of the Land transfer Act 1971 provides:

If the person summoned appears he may show cause why he refuses to give possession of such land and, if he proves to the satisfaction of the

judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgagee or lessor or he may make any order and impose any terms he may think fit;

Provided that the dismissal of the summons shall not prejudice the right of the plaintiff to take any other proceedings against the person summoned to which he may be otherwise entitled:

Provided also that in the case of a lessor against a lessee, if the lessee, before the hearing, pay or tender all rent due and all costs incurred by the lessor, the judge shall dismiss the summons.

- [8] Section 172 of the Land Transfer Act 1971 places the burden of the defendant to prove to the satisfaction of the court that he has a right to the possession of the property.
- [9] The issue to be determined here is whether the position of the defendant that the plaintiff charged a higher rent than was charged from the previous tenant contrary to section 2 of the Fijian Competition and Consumer Commission (Rent Increase Restriction on Residential and Ground Rent) Order 2018 prevents him from instituting these proceedings under section 169 of the Land Transfer Act 1971.
- [10] Section 2 of the Fijian Competition and Consumer Commission (Rent Increase Restriction on Residential and Ground Rent) Order 2018 provides:

Between the period of 1 January 2019 and 31 December 2019, a person must not charge rent in respect of the letting or continued letting of any premises under residential tenancy including ground rentals to which the

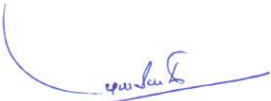
Act applies which exceeds the rent applicable to those premises as at 31 December 2018.

[11] The defendant says he has paid \$3,360.00 in excess as rent which is equivalent to eight months rental and the defendant's submission is that this is tangible evidence to show that the defendant has the right to remain in the property. Even if the court accepts that the defendant is entitled to be in possession until the amount of rent paid in excess is exhausted, he will have to leave the property thereafter. The question is for how long the plaintiff can remain in the property on this basis. Although in this matter the plaintiff has given a reason to serve notice to vacate, section 169(c) of the Land Transfer Act 1971 does not require owner to give reasons for serving notice to quit. For these reasons payment of rent in excess cannot be considered as a ground for the defendant to remain in possession.

ORDERS

1. The defendant is ordered to vacate and hand over the vacant possession of the property comprised in Certificate of Title No. 27459 being Lot 3 on Deposited Plan No. 4921 to the plaintiff on or before 17th July 2020.
2. The defendant is also ordered to pay \$1500.00 as costs of this action.




Lyone Seneviratne

JUDGE

17th June 2020.