

A

MOHAN LAL

v.

DAYARAM LALLUBHAI

B

[SUPREME COURT, 1979 (Williams, J.), Lautoka, 25th May]

Civil Jurisdiction

C *Landlord and Tenant—Monthly tenancy—Notices to quit construed strictly—may not require tenant to do more than lease provides two dates for possession. Notice to quit required.*

*S. R. Shankar* for Plaintiff.

*H. C. Sharma* for Defendant.

D

Plaintiff applied for possession of premises pursuant to Land transfer Act 1971 s.169. Facts which the Court found included that the Notice to Quit duly served was defective. The Court found that there was a monthly tenancy. Paragraph 3 of the notice to Quit dated 7 November, 1978 required to defendant to give up possession on 31 December, 1978 i.e. more than month after the Notice. Paragraph 4 noted that unless possession be given up within 7 days, proceedings would be instituted".

E Paragraph 3 was consistent with there being a monthly tenancy. Paragraph 4 was not.

*Held:* Application for possession dismissed.

Paragraph 4 required possession within seven days. A Notice to Quit should require the tenant to do only what the lease provides he is to do; accordingly the requirement was beyond the lessor's power. Notices to Quit must be construed strictly; the claim of the plaintiff was dismissed with costs.

F

Cases referred to:

*Hankey v. Clavering* (1942) 2 K.B. 326.

WILLIAMS J.:

Judgment

G

This is landlord's application for possession under S.169 of the L.T.A. 1971. The tenant when he appeared to show cause contended that the notice to quit which was served on him is defective.

H The tenancy is on a monthly basis and a letter dated 7/11/78 was served on the defendant. Para 3 of that letter requires the tenant to give up possession on 31/12/78 which standing by itself would constitute a good notice to quit. Unfortunately para 4 states that unless possession is given up within 7 days of the date of the letter legal proceedings will be institute.

My attention was drawn by the tenant to the fact that a notice to quit will be strictly construed and I was referred to *Hankey v. Clavering*. (1942) 2 K.B. 326. In that case a 21 year lease was determinable under the agreement by giving 6 months notice terminating at the end of 7 years. The landlord gave notice terminating the lease on 21/

12/41. But the seven years were not completed until 25/12/41. It was obvious from the letter embodying the notice that the landlord had made an error and that the tenant was aware of it. However, the Court of Appeal, Lord Greene M.R. at p. 329 said—

“Notices of this kind are documents of a technical nature, technical because they are not consensual documents, but if they are in proper form, they have of their own force without any assent by the recipient the effect of bringing the demise to an end.”

He stated that a notice to quit must require one to do what the lease provides he is to do. At p. 328 he said any temptation to construe the date to mean what the parties know it must mean must be resisted; the desire to do what appears to be fair must not be allowed to offend the principles of construction. It was held that the notice to quit was defective and could not terminate the tenancy.

The landlord referred to “Hill & Redman,” 14th Edition, p. 540 which says that where there is an ambiguity a notice to quit will be construed so as to make it effectual. An ambiguity arises where a single statement can have two meanings, e.g. where the notice terminates the tenancy at the end of the current year and the current year ends only 2 days after service of the notice it will be construed as referring to the following year if that is clearly the intention.

But in this case there is not that kind of ambiguity. The landlord demands possession on 31/12/78 but states that if possession is not given within 7 days of the date of the notice to quit which is 14/11/78 proceedings for possession will be instituted.

Para 3 of the letter of 14/11/78 constitutes a good notice to quit. Can para 4, in saying that possession must be given up in 7 days or proceedings will be instituted be regarded as a threat which cannot be enforced and not part of the notice to quit.

Lord Greene in his judgment (*supra*) at p. 330 said—

“By the clear wording of this notice the landlord purported to bring the lease to an end on December 21st 1941. In doing so he was attempting to do something which he had no power to do and however much the recipient might guess, or however certain he might be that it was a mere slip that would not cure the defect because the document was never capable on its face of producing the necessary legal consequence.”

Para 4 of the letter requires possession within 7 days of the date of the letter. That was something the landlord had no power to do. I am inclined to the view that the letter as a whole comprises the notice to quit and has to be strictly construed. Although one can argue that the tenant must have known on which date possession was being demanded it appears that this will not cure the defect. I uphold the tenant's contention that the letter of 14/11/78 does not constitute a good notice to quit. Accordingly the plaintiff's claim is dismissed. The plaintiff will pay the defendant's costs which I fix at \$30.00.

No doubt the landlord can achieve his object by re-issuing a clearly worded notice terminating the tenancy.

*Judgment for the defendant.*