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JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S MISCELLANEOUS APPEAL NO. 2/90

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

BETWEEN	IRIS AMOS (LANDLORD)	APPELLANT
A N D	LINCOLN EDWARDS (TENANT)	RESPONDENT

Miss Leila Parker for Appellant

Respondent appeared in person

May 7 and 11, 1990

ROWE P.:

The respondent was a tenant of the appellant at premises 4A East Lane, Kingston, for a number of years. He discovered in 1988 that the portion of the premises which he occupied had been assessed under the Rent Restriction Act prior to the commencement of his tenancy at the controlled rent of $77.00 per month. Between 29th April 1986 and 28th January 1988 the respondent had been paying rent at the rate of $250.00 per month for those controlled premises. He therefore made a series of claims covering three month periods and totalling $3,972.00 for refund of rent paid in excess of the permitted rent.

L&T

Notice of all eight claims were served on the appellant personally on February 23, 1988 returnable at the Rent Assessment Board for the Corporate Area on April 20, 1988. An Affidavit of Service was sworn to by Lincoln Edwards on February 24, 1988 but it was not signed by him. The applicable rule of law is that an affidavit must be signed by the deponent and also by the person before whom it is sworn and the signature of the deponent should be written opposite to the jurat. See Down v. Yearley [1874] W.N. 158. This affidavit was therefore irregular but it appears that the irregularity was overlooked by the Rent Assessment Board. The matter is of academic importance only as Counsel for the appellant conceded that the appellant surrendered to the jurisdiction of the Board by her attendance in obedience to the Notices of Claim.

A letter dated March 15, 1988 was sent to the appellant and respondent by post advising them to attend at the Rent Assessment Board on 19th April, 1988. It is unclear whether the hearing was on the 20th April as stated in the Notice of Claim or on the 19th April as set out in the March 15 letter, but from a letter of 16th May it appears that the claims were adjourned to May 10 to enable the appellant to produce to the Board "water bill, light bill and other expenses" in connection with the tenancy. As she did not attend on May 10, a new date of June 14, 1988 was fixed and she was advised by letter of May 16 and a reminder of May 30. Nothing happened on June 14 as from the recollection of the parties the Board did not convene.

On September 5, 1988 another notice was issued by the Rent Assessment Board scheduling the hearing of the applications for October 3, 1988. In the meantime there was the devastating hurricane on September 12, 1988 and in consequence no hearing took place on October 3, 1988.

The Record of appeal contains no further notice of hearing to the appellant. We called for and examined the original files of the Rent Assessment Board and discovered no evidence that a further notice of any kind was given to the appellant of the proposed date of hearing of the applications herein. On December 7, 1989 the Rent Assessment Board met and determined all eight applications in the absence of the appellant. It is unclear how the respondent received notice of the hearing as he was indeed present, but on a matter of such importance to the landlord, we cannot permit the Orders made on December 7, 1989 to stand in the absence of evidence that she had an opportunity to attend and to be heard.

The appeal is allowed. The Orders of the Rent Assessment Board set aside and the matters are remitted to the Board for further hearing. There will be no Order as to costs.