JAMAICA

IN THE COURT OF APPEAL

R.M. CIVIL APPEAL NO: 23/82

BEFORE: The Hon. Mr. Justice Rowe, J.A.
The Hon. Mr. Justice White, J.A.
The Hon. Mr. Justice Campbell, J.A. (Ag.)

BETWEEN	SYLVIA RICHARDS	PLAINTIFF/RESPONDENT
A N D	THOMAS WALKER	DEFENDANT/APPELLANT

Mr. H. Edwards, Q.C., instructed by Mr. Gresford Jones for Appellant

Mrs. Dela Wilson for Respondent

June 14 & July 9, 1982

ROWE J.A.

Mr. Walker, a retired teacher, lives in a self-contained apartment at 23 Hagley Park Road owned by Mrs. Richards. In 1981 he had been a tenant there for twelve years. He has been a most unsatisfactory tenant yet all Mrs. Richards attempts to get him out of her premises have failed. She brought the present action for recovery of possession in 1980 and it was heard by the learned resident magistrate at Half-Way-Tree on February 19, 1981. He made an order for possession. Against this order, Mr. Walker appealed and at the end of the arguments on June 14, we allowed the appeal and promised to put our reasons in writing.

Act 36 of 1979, amended the Rent Restriction Act in a number of important respects. For the purposes of this appeal, we are concerned with section 13 of that Act which amended section 31 of the Principal Act and provided that:

> "No notice given by a landlord to quit any controlled premises shall be valid unless it states the reason for the requirement to quit."

When Mrs. Richards gave notice to quit to Mr. Walker she did not know of this statutory provision and did not include in her notice the reason for requiring him to quit. Therefore the learned resident magistrate quite correctly held that the notice was invalid. There are other persons, apart from Mrs. Richards who are unaware of the provisions of section 31 of the Rent Restriction Act and these include the proprietors of stationery stores who still offer for sale forms of "Notice to Quit" without making provision for the inclusion of the ground on which the notice is given. We hope that these misleading Notices will soon be withdrawn from the shelves of those shops.

Because the Notice to Quit was invalid one would have thought that that would have been an end of the case. However, the learned resident magistrate found another route which gave him the power to make an order for possession. He had a good reason to think that Mr. Walker was a totally unsatisfactory tenant. He had not paid any rent for over one year and eight months and what payments he had made before that time were only made when he was in arrears for a year and more notwithstanding that the rental fixed by the Rent Board at that time was so minimal, a mere $18.00 per month.

Be that as it may, the question which we were asked to decide on this appeal, is whether the learned resident magistrate was correct in determining the case in favour of the respondent on the following bases:

(i) "I hold that immediately prior to the coming into effect of Act 36. 79 a landlord utilising section 25 (1) (a) of the Rent Restriction Act was not legally required to give notice to the tenant."

(ii) "In my opinion the Plaintiff can rely on sections 83 and 85 of the Judicature (Resident Magistrates) Act to found Jurisdiction. Section 85 commences thus:

"When the term and interest of any lands or hereditaments shall have expired". The tenancy herein is a monthly tenancy rent payable in advance. The tenant's term and interest in the lands last for one month. The renewal of the end of the month creates a new term and interest. The payment of the 'new month's rent is a vital ingredient in such renewal. The term and interest of a tenant such as the

"Defendant can properly be said to have expired and I so hold."

Sad to say, the latter opinion quoted above, so forthrightly expressed by the learned resident magistrate, does not accord with the views of the textbook writers or with the decisions in the decided cases. In the Twenty-Seventh Edition of Woodfall's Law of Landlord and Tenant Volume 1 at page 277, the nature of a monthly or weekly tenancy is reflected upon. It is there said that:

> "Monthly and weekly tenancies are similar to tenancies from year to year in that they do not expire at the end of each month or week, but continue for a period of time until determined by due notice to quit."

There is a statement in Hill and Redman's Law of Landlord and Tenant to the same effect. The author states in the Sixteenth Edition of that work at page 51 under the caption "Nature of Tenancy" that:

> "A weekly or other periodic tenancy is a continuing tenancy by the week or other period and does not expire without notice at the end of the first week or period or at the end of each succeeding week or period, there being not a reletting at the beginning of each week or period but a springing interest which arises and which is only determined by a proper notice to quit."

The quotations from the two leading text-books on the subject of the Law of Landlord and Tenant set out above derive their authority, inter alia, from the decision of Wills J. in Bowen v. Anderson (1894) 1 Q.B. 164. It was there held that a weekly tenancy does not determine without notice but that some notice was required to terminate it. McCardie J. applied the same principle in Mellow v. Low (1923) 1 K.B. 522 at page 525 when he said:

> "In Grandy v. Jubber (1865) 9 B & S 15 the Court of Exchequer Chamber pointed out that in the case of a tenancy from year to year there is not a reletting at the commencement of every year but there is a springing interest which arises and which is only determined by a proper notice to quit. Bowen v. Anderson (supra) applied the same principle to a weekly tenancy, the head-note to that case correctly stating that: 'a weekly tenancy does not determine without notice at the end of each week, but some notice is required to determine such a tenancy.' "

For completeness, I will mention that Halsbury's Laws, Third Edition Volume 23 at page 529 states the principle in language almost word for wrod as does Hill and Redman.

The position, then, at common law is that an appropriate period of notice is required to determine a monthly tenancy. My next concern is whether there is anything in the Rent Restriction Act which abrogates that common law rule. Section 27 of the Rent Restriction Act was considerably amended by Act 36/79 which came into effect on December 4, 1979. Whatever powers a landlord may have had to resort to self-help to obtain possession of controlled premises prior to December 4, 1979 such powers were comprehensively swept away by that Act. At present section 27 (1) of the Rent Restriction Act reads:

> "Except under an order or judgment of a competent court for the recovery of possession of any controlled premises, no person shall forcibly remove the tenant from those premises or do any act, whether in relation to the premises or otherwise, calculated to interfere with the quiet enjoyment of the premises by the tenant or to compel him to deliver up possession of the premises."

That section cannot by any process of reasoning be relied upon to say that a monthly tenancy of controlled premises can be determined without a notice to quit. Its purpose was to restrict the powers of landlords in relation to their tenants and to compel them to seek the assistance of the Court. In the absence of self-help, a landlord of any controlled premises can only obtain possession from an unwilling tenant through an order of the Court. When the landlord approaches the Court for an order for the recovery of possession, he may act under section 25(1)(a) of the Act. In this event he must prove that:

> "Some rent lawfully due from the tenant has not been paid for at least thirty days after it became due."

This provision by itself might lead the unwary to conclude that the landlord need not give notice to terminate the tenancy before he seeks the assistance of the Court for recovery of possession. But a proper

construction of the Act as a whole shows clearly that when the rent is due, what the landlord must first do, is to serve notice to quit on the tenant. Let us look again at section 31. It says in subsection (1):

> "No notice given by a landlord to quit any controlled premises shall be valid unless it states the reason for the requirement to quit."

If the argument was valid that no notice was required when the landlord was relying on section 25 (1) (a) how then would one account for subsection (2) of section 31. That subsection says:

> "Where the reason given in any notice referred to in subsection (1) is that some rent lawfully due from the tenant has not be paid, the notice shall, if the rent is paid before the date of expiry of the notice, cease to have effect on the date of the payment."

A delinquent tenant when presented with a notice to quit for non-payment of rent, has the better part of 30 days within which to pay up all his arrears. Only if he neglects to do so during the currency of a notice under section 31 (1) can the landlord rely on that notice for its validity in terminating the tenancy.

In the light of these statutory provisions it would be ridiculous to assert that a different regime exists under section 25 (1) (a) whereby, without the necessity for any notice whatever, a court would have jurisdiction to hear and determine a complaint from a landlord for the recovery of the tenancy of any controlled premises, once it is proven that at the date of the complaint, rent was due in excess of thirty days.

I am of the opinion that a landlord who has not given a proper notice to quit and deliver up the premises to a monthly tenant who has not paid his rent has no right of re-entry. This is so because at common law it is only upon the determination of the tenancy whether by effluxion of time, forfeiture, or otherwise, that the landlords right to peaceable re-entry arises. In the instant case Mr. Walker owed an inordiante amount of rent but his tenancy was not determined because the

Notice to Quit given by Mrs. Richards was defective. As I have demonstrated above, the tenancy did not expire on the bases set out in the Reasons for Judgment of the learned resident magistrate. Section 85 of the Judicature (Resident Magistrates) Act can only be invoked "when the term and interest of the tenant of any lands or hereditaments shall have expired, or shall have been determined either by the landlord or the tenant, by a notice to quit ....." The learned resident magistrate correctly found that there was no valid notice to quit, and he erred in law when he held that the monthly tenancy expired at the end of each month and when he found that section 25 (1) (a) of the Rent Restriction Act gave a charter to a landlord to apply to the court for recovery of possession if the tenant was in arrears of rent for more than 30 days without having given him an effective notice to quit.

For these reasons the appeal was allowed and judgment was entered for the defendant with costs fixed at $30.00