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JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL No. 10/84

BEFORE: The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice Rowe, J.A.
The Hon. Mr. Justice Wright, J.A. (Ag.)

BETWEEN	SYDNEY YAP YOUNG	PLAINTIFF/RESPONDENT
A N D	ALTON RENNALLS	DEFENDANT/APPELLANT

H. H. Haughton-Gayle for Defendant/Appellant.

Mrs. M.E. Forte for Plaintiff/Respondent.

October 1 & 2; 1984 & January 29, 1985

ROWE, P.:

By an agreement in writing made between appellant and the respondent, the respondent leased premises No. 207 Constant Spring Road, St. Andrew, to the appellant to be operated as a shop for a period of three years to commence on February 1, 1980 and to expire at 4.00 p.m. on February 1, 1983, at the monthly rental of \$400.00. On August 10, 1982, the respondent's attorney-at-law wrote to the appellant reminding him that his lease would expire on February 1, 1983 and advising him that he would be expected to vacate the premises on or before that date as the landlord required the premises for his own use. The appellant did not vacate the premises and on April 19, 1983, the respondent commenced proceedings for recovery of possession in the Resident Magistrate's Court, St. Andrew, and in due time an order was made for recovery of possession by January 31, 1984.

The tenant appealed and although he vacated the premises before the hearing ^{of the appeal,} /Mr. Haughton-Gayle submitted that the issues raised on appeal were sufficiently important to warrant its continued prosecution. In the course of the appeal Mr. Haughton-Gayle submitted that the notice to quit was invalid as it related to controlled premises under the Rent Restriction Act and did not specify any of the statutory grounds upon which a landlord may seek recovery of possession and he relied upon section 25 of the Rent Restriction Act. One of the grounds upon which a landlord may seek to recover possession of commercial premises is that they are reasonably required by him for use by him for business, trade or professional purposes. There was no dispute as to the nature of the premises. The respondent had previously operated a shop at the premises, it was described in the Lease Agreement as a shop and the appellant operated a supermarket/grocery thereon. An allegation in the notice to quit that the landlord required the premises for his own use is sufficiently informative to a litigant in the Resident Magistrate's Court which is not a court of strict pleading. If at trial, the landlord fails to prove his allegation within the meaning of the Statute then that is an end of his action.

The appellant further submitted that notwithstanding that in the instant case there was a fixed term lease, the tenant who remained in possession of the premises at the expiration of the lease became a statutory tenant entitled to all the benefits of the contract of tenancy. We did not think that section 28 of the Rent Restriction Act which provides for the statutory tenancy of a tenant who holds over is relevant to the instant circumstances having regard to the specific provisions of section 26 and 27 of the Act which are concerned with the determination of tenancies of public and commercial buildings.

Section 26 (1) empowers a landlord to terminate by notice to quit, the tenancy of any public or commercial buildings. But by sub-section (2) of section 26 limitations are placed upon the

landlord's right so to do. Where the tenancy of the commercial building is for an indefinite period, the landlord must give at least 12 months notice to quit. But where the tenancy is for a fixed term, by section 26 (2)(B) the landlord's notice must be given "not more than twelve months" before the date of expiration of the lease. This means not earlier than 12 months before the date fixed for expiry of the lease. The import of this restriction appears to ensure that the fixed term shall last for at least 12 months. It prevents the transparent device of giving the notice of termination as instant with the making of the lease. But nothing is said as to the length of such notice in case of a fixed term, save that it must presumably having regard to section 27 (3) be more than 3 months, as we suggest below.

A tenant who receives a notice determining his public or commercial tenancy may decline to give up possession but if he so decides he must take the statutory route to protect his tenancy. In the case of an indeterminate tenancy not more than nine months after the giving of the 12 months notice, i.e. at any time between the receipt of the notice and not earlier than 3 months before the date of termination, the tenant may give the landlord a notice stating that he proposes to retain possession after the date of termination and to protect this claim for an extension the tenant must make an application by complaint and summons returnable before a Resident Magistrate. In the case of a fixed term of years, applying the same reasoning, the tenant may give his counter-notice between the receiving of the termination notice and 3 months from the terminal date.

The powers of the Resident Magistrate upon such an application are circumscribed. He may substitute a new or "substituted date of termination" for that contained in the notice of determination of the tenancy but this date shall not

be more than twelve months later than the original date of termination and unless the tenant satisfies the stringent conditions set forth in section 26 (7) the Court has no power to make an order extending the time set by the landlord for the termination of the lease. These conditions vary the general position under the Rent Restriction Act by putting the onus of showing reasonableness and greater hardships on the tenant rather than the landlord.

Mr. Haughton-Gayle sought to argue that a tenant who holds a fixed-term lease is entitled to at least 9 months notice of the landlord's intention to terminate that lease. As we have said this contention is not properly founded upon an interpretation of section 26 (3) of the Rent Restriction Act. It is already clear from section 26 (1) that a person who has an indefinite tenancy of a public or commercial building must be given not less than 12 months notice but that is quite unnecessary for one who knows from day one the date on which his tenancy will determine. There is no requirement in the statute for this notice to be of any particular duration, save, by implication that it must give sufficient time for the tenant to give his counter-notice and make his application to the Court and this must be at least three months before the terminal date.

At common law there was no requirement for a notice to quit in relation to fixed term leases: (see Woodfall, Landlord and Tenant, Twenty-Seventh Edition, at paragraph 1993 and the cases there cited). Sections 26 and 27 of the Rent Restriction Act have modified the common law position but only to the extent contained in that section, and section 26 (2)(b) as presently worded, using the words "not more than 12 months" fixes an outer limit for the length of notice but does not fix any minimum length of notice.

The appellant received notice from the respondent some five and a half months before the date of termination of his fixed term lease. He took no action whatsoever. No counter-notice was served in accordance with section 26 (3) and no application was made to the Court to substitute a later date for the date of termination stated in the notice.

We were able to answer the questions raised on this appeal without calling upon the respondent. No issue could possibly be taken as the question of hardship and alternative accommodation on the evidence was all in favour of the respondent. We are of the view that where there is a tenancy of a commercial building for a fixed term of years, a notice is required under the Act to determine that tenancy, but such a notice need not be of any prescribed period of time, save that it must not be given earlier than 12 months from the terminal date and in sufficient time for the tenant to exercise his right to serve a counter-notice and subject to the overriding principle of reasonableness. Upon the receipt of such a notice a tenant who does not intend to comply must give notice of this intention to the landlord and seek an extension of time from the Court. The appellant not having availed himself of these procedures, the grounds of appeal proffered on his behalf were found to be without merit. It was for these reasons that we dismissed the appeal and ordered that the appellant pay the costs of appeal which were fixed at \$50.00.