

1961

Present : H. N. G. Fernando, J.

J. K. WARAWITA APPUHAMY, Appellant, and
U. L. P. PERERA, Respondent

S. C. 159/1959—C. R. Colombo, 72222

Landlord and tenant—Acceptance of late payments of rent—Effect on landlord's right to terminate tenancy.

The written agreement for a month to month tenancy provided that the rent should be payable on or before the tenth of each month. Rent had been paid and accepted from July 1946 for a period up to and including July 1958. The rent for the month of August 1958 had not been paid by 16th October 1958, on which date the landlord issued a notice terminating the tenancy on the ground of non-payment of the August rent.

At the trial it was proved by the tenant that during the entire period between January 1957 and August 1958 the landlord accepted a particular month's rent, as a matter of regular practice, when it was tendered to him at some time during the second half of the subsequent month.

Held, that the landlord was entitled to terminate the tenancy on October 16, 1958, which was sixteen days after the termination of the period during which he had previously ignored delay.

APPEAL from a judgment of the Court of Requests, Colombo.

Colvin R. de Silva, with *D. R. P. Goonetilleke*, for defendant-appellant.

H. W. Jayewardene, Q.C., with *M. L. de Silva*, for plaintiff-respondent.

Cur. adv. vult.

March 24, 1961. H. N. G. FERNANDO, J.—

The written agreement for a month to month tenancy in this case provided that the rent should be payable on or before the tenth day of each month. Rent had been paid and accepted from July 1946 for a period upto and including July 1958. But the rent for the month of August 1958 had not been paid to the landlord by 16th October 1958, on which date he issued a notice terminating the tenancy on the ground of non-payment of the August rent. At the trial the tenant-appellant proved by the production of rent receipts for a period between January 1957 and August 1958 that during this entire period the rent due for any month was accepted by the landlord during the second half of the subsequent month. The appellant relied on my

decision in *Suppiah v. Kandiah*¹ in support of the proposition that the date on which the rent was due for any month was not the tenth day of any month but rather a date not earlier than the end of the subsequent month. I do not agree that the decision supports that proposition for in that case unlike in the present one there was no agreement fixing the date on which the rent was to be payable. In any event although I remain of opinion that the tenant in *Suppiah v. Kandiah* (*supra*) was entitled to succeed, I think the grounds on which he was so entitled are more correctly set out in my judgment in *Jayakody v. Pedris*², namely that where for a considerable period a landlord has accepted without demand late payments of rent he cannot without first informing the tenant explicitly that future delay will not be excused and that legal rights will be insisted on suddenly take advantage of one late payment in order to sue for ejection.

Where there is a written agreement specifying the date on which rent must be paid, that date remains the due date for payment unless it is altered by some new distinct agreement. Where on the other hand there is a month to month tenancy without express stipulation as to the date of payment of rent, the last date of each month must be taken to be the due date for the payment of that month's rent. This principle was recognised in the case of *Adamjee Lukmanjee & Sons Ltd. v. Ponniah Pillai*³ decided by my Lord the Chief Justice.

In the case last mentioned, however, no reference appears to have been made during the argument to my decision in *Jayakody v. Pedris* (*supra*) which dealt not so much with the question whether acceptance of late payments of rent constitutes an alteration of the due date for payment but with the quite different question whether such acceptance has the effect of qualifying the right to sue for ejection. That decision was based on the judgment of a Bench of five Judges in *Garlick, Ltd. v. Phillips*⁴, of the Appellate Division of the Supreme Court of South Africa. It may be helpful if I take this opportunity to add that the South African judgment contains references to several other decisions of the South African Courts as well as to those of English and American Courts to a similar effect. If, as the learned Commissioner of Requests in the present case thought, there is any conflict between the decisions in *Jayakody v. Pedris* (*supra*) and *Adamjee Lukmanjee & Sons Ltd. v. Ponniah Pillai* (*supra*), the other decisions which I have mentioned above will no doubt be duly considered.

In the present case the landlord did accept a particular month's rent as a matter of regular practice when it was tendered to him at some time during the second half of the subsequent month; and applying the principle of *Garlick Ltd. v. Phillips* (*supra*) he would not in my opinion have been entitled to terminate the tenancy on the ground that the tenant had failed to make payment for any month on the due date specified in the original agreement, if rent was in fact tendered in accordance with the regular practice. But the rent for August 1958 remained unpaid even at

¹ (1957) 58 N. L. R. 479.

³ (1959) 61 N. L. R. 181.

² (1959) 60 N. L. R. 422.

⁴ 1949 (1) S. A. L. R. 121.

the end of September 1958. Accordingly the delay in payment extended much beyond the period according to the regular practice had been allowed by the landlord. That being so the landlord was well within his rights in terminating the tenancy on October 16th, 1958, which was sixteen days after the termination of the period during which he had previously ignored delay. The principle to which I have been referring therefore does not apply and the tenant's appeal must be dismissed with costs.

Appeal dismissed.

