

1968

Present : Sirimane, J., and Samerawickrame, J.

M. A. S. M. CASSIM, Appellant, and L. THIAGARAJAH,
Respondent

S. C. 291/66—D. C. Matale, 1958/M. R.

Rent Restriction Act (Cap. 274)—Section 13 (1A)—Action thereunder—Rent in arrear for one month after it has become due—Requirement of 3 months' notice to quit—Civil Procedure Code, s. 46 (2) (i).

Where a tenant occupying premises to which section 13 (1A) of the Rent Restriction Act is applicable is in arrear of rent for one month after it has become due, an action to eject him is barred unless he has been given three months' notice of termination of the tenancy.

APPEAL from a judgment of the District Court, Matale.

M. S. M. Nazeem, with N. R. M. Daluwatte and S. K. H. Wijetilaka,
for the defendant-appellant.

C. Ranganathan, Q.C., with Nihal Jayawickrame, for the plaintiff-respondent.

Cur. adv. vult.

June 20, 1968. SIRIMANE, J.—

The main point urged at the hearing of this appeal was that the notice terminating the defendant's tenancy was bad in law.

The plaintiff gave the defendant a month's notice to quit by letter dated 26.4.65. It was argued for the defendant that according to the law as it stood on the date on which the action was filed, he was entitled to *three months'* notice, within which period he could tender any arrears of rent due.

Section 13 (1) (a) of the Rent Restriction Act, Chapter 274 (hereinafter referred to as the main Act) sets out the different grounds on which a landlord could seek to eject his tenant. One of these grounds was that the rent was in arrear for one month after it had become due. The principal Act did not provide any particular period of time for a valid termination of the tenancy. So, a month's notice was given to the tenant under the common law.

By an amendment to section 13 of the principal Act [section 13 (1A)] introduced by section 6 of the Rent Restriction (Amendment) Act No. 10 of 1961 (hereinafter referred to as the Amending Act) a landlord was not entitled to institute an action for ejectment, on the ground that rent had been in arrear for one month after it has become due, unless he had given the tenant *three months'* notice of termination of tenancy, and unless the tenant had failed to tender all arrears of rent within the period specified in such notice.

Section 13 of the Amending Act enacted a temporary law to be in operation for a period of two years commencing from 20.7.60 *notwithstanding anything in the principal Act*. This law provided that the right of a landlord to institute an action for ejectment on the ground of arrears of rent was restricted to those cases where the tenant was in arrears for three months.

The period of three months required for the termination of tenancy was not part of the temporary law, so that during this period of two years, though a landlord could not come into Court unless the tenant was in arrears of rent for three months, yet, the tenancy could be terminated with a month's notice. This was pointed out, by H. N. G. Fernando, C.J. in *Abdul Rahuman v. Abdul Cader*¹, and that decision was followed by a Bench of two judges in *Sellathurai v. Fernando*².

The present action was instituted on 23.9.65, i.e. after the period during which the temporary law was in operation had elapsed.

The tenant, therefore, was entitled to *three months'* notice of the termination of the tenancy, within which period he could have tendered the arrears due.

In the course of his argument, Counsel for the defendant-appellant also submitted that the action was " null and void " in view of section 4 (1) of the Rent Restriction Amendment Act 12 of 1966. I am still of the view which I have expressed earlier that if the action had been filed

¹ (1963) 67 N. L. R. 86.

² (1965) 68 N. L. R. 454.

on a ground on which the institution of an action was permitted by section 12 (a) introduced by that very Act, then such action would not be null and void.

It is, however, unnecessary to discuss in any detail the impact of that amendment on the facts of the present case, as I am in respectful agreement with the view expressed by my brother Samerawickrame in *Ratnam v. Dheen*¹ where the facts were very similar ; that is to say,— on the date this action was filed there was a positive rule of law [section 13 (1A) referred to above] which barred the filing of the action unless the tenant had been given three months' notice of termination of tenancy.

On the face of the plaint, which averred that only a month's notice had been given, the action was barred and the plaint should have been rejected under section 46 (2) (i) of the Civil Procedure Code.

The appeal is allowed and the plaintiff's action dismissed with costs both here and below.

SAMERAWICKRAME, J.—I agree.

Appeal allowed.
