

A

**DINESH JAMNADAS  
SATISH JAMNADAS**

v.

B

**HONSON LIMITED**

[COURT OF APPEAL—Speight V. P., Mishra J. A., Roper J. A.]

Civil Jurisdiction

C

Date of hearing: 17 July, 1985  
Date of Judgment: 20 July, 1985

*(Landlord and Tenant—Notice to Quit—Summary Judgment for possession of shop premises—correspondence regarding possible extension of tenancy after Notice to Quit—written material on which appellants could seriously contend that further tenancy granted—not an appropriate case for Land Transfer Act S. 169.)*

D

*Mr H. K. Nagin* for the Appellants.  
*Mr H. Lateef* for the Respondent.

Appeal from a decision of the Supreme Court giving vacant possession to the respondent owner of certain shop premises pursuant to an order for summary judgment under the Land Transfer Act S. 169.

E

The appellants held a 5 year tenancy of the shop (rental \$600 per month), expiring on 31 October 1984.

F

On 11 July 1984 the respondent wrote to the appellants requiring them to vacate on that date. On the same day appellants wrote to a Director of the respondent Company asking him to grant a new tenancy for at least 3 years, offering rent at \$900 per month.

The Director wrote back stating inter alia

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“If you wish to continue as our temporary tenant until my return I am prepared to extend your stay for three months as our tenant, but there will be no Lease to your shop, and you must pay \$900 per month from 15 November 1984 to 15 February 1985.....”

.....please confirm whether you wish to continue as our temporary tenant under..... (these) terms and conditions.

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On 21 November 1984 without replying the appellants paid the increased rent of \$900 for November.

On 27 December 1984 the respondent served a notice to the appellant worded:—

"Dear Sirs

RE: *HONSON BUILDING*

On instructions received from our abovenamed client we hereby give you notice to vacate the premises on or before the 31st January 1985.

You are no doubt aware that the Leasing Agreement entered into between yourselves and our abovenamed client in respect of leasing a shop premises in its building situated in Thompson Street, in the City of Suva expired on the 30th November 1984. Since the expiry of the lease you became a monthly tenant having paid rent for December 1984.

As you are aware that the premises which you were leasing is a commercial one and since the Lease has expired our client is entitled to give you one calendar month's notice to vacate the premises....."

On 1 February 1985 the respondent applied to a Judge in Chambers for an order for immediate vacant possession under Land Transfer Act S.169.

The learned Trial Judge said inter alia:—

"The defendants' case is that there was an agreement to grant them a lease which is an interest in land. They have not produced any memorandum or note thereof signed by the plaintiff ..... and it must therefore be assumed that no such memorandum or note exists."

He made an order for immediate vacant possession. The main question before the trial judge was whether the respondent had shown conclusively that appellants' tenancy had been affectively terminated by the Notice to Quit.

The Property Law Act S.89(2) stated:

"In the absence of express agreement between the parties, a tenancy of no fixed duration in respect of which the rent is payable weekly, monthly, yearly or for any other recurring period may be terminated by either party giving to the other witten notice as follows:—

(a) .....

(b) Where the rent is payable for any recurring period of less than one year, notice for at least a period equal to one rent period under the tenancy and expiring at any time, whether at the end of a rent period or not."

The Judgment of the Court was delievered by Mishra J.A.

*Held:* The letter and the payment of \$900 clearly showed material on which the appellants could contend that a tenancy for a fixed period of at least 3 months had been granted.

On the material before the learned Judge this was not a case to be dealt with under S. 169.

Appeal allowed.

## A Order for possession set aside.

The Court considered it unwise to deal with other arguments as there would be further proceedings in the matter.

MISHRA, Judge of Appeal.

## B Judgment of the Court

This is an appeal from a decision of the Supreme Court, Suva, giving vacant possession of certain shop premises to the respondent under section 169 of the Land Transfer Act.

## C The shop in question forms part of a substantial building consisting of shops and offices situated in central Suva. A five-year tenancy held by the appellants in respect of the shop expired on 31st October, 1984.

On 11th July, 1984 the respondent wrote to them requiring them to vacate the shop on that date. On the same day, i.e. 11th July, 1984, the appellants wrote to Duncan Honson, a director of the respondent Company who was then in Vancouver, Canada, asking him to grant them a new tenancy at least for three years, if not five, and offered to pay \$900 per month which the respondent had fixed for that shop. The monthly rent under the old tenancy agreement had been \$600. Honson in his reply, *inter alia*, said:—

E "If you wish to continue as our temporary tenant until my return I am prepared to extend your stay for three months as our tenant, but there will be no lease to your shop, and you must pay \$900 per month from 15 November 1984 to 15 February 1985, plus your share of the running costs of the airconditioning.

Would you please confirm whether you wish to continue as our temporary tenant under the terms and conditions I have just outlined above."

F No reply to this letter was received by the respondent, but on 21.11.84 the appellants paid the increased rent at the rate of \$900 for the month of November.

On 27th December, 1984 the respondent served on the appellants the following notice:—

G "Dear Sirs  
RE: *HONSON BUILDING*

On instructions received from our abovenamed client we hereby give you notice to vacate the premises on or before the 31st January, 1985.

H You are no doubt aware that the Leasing Agreement entered into between yourselves and our abovenamed client in respect of leasing a shop premises in its building situated in Thomson Street, in the City of Suva expired on the 30th November, 1984. Since the expiry of the Lease you became a monthly tenant having paid rent for December 1984.

As you are aware that the premises which you were leasing is a commercial one and since the Lease has expired our client is entitled to give you one calendar month's notice to vacate the premises.

Please note that if the premises is not vacated by the stipulated date and rent paid up to date our client will have no alternative but to issue Supreme Court proceedings to have you evicted from the premises." A

On 28th January, 1985 the appellants instituted proceedings in the Supreme Court challenging the validity of this notice to quit and seeking a declaration that they were entitled to a three year tenancy of the shop. On 1st February, 1985 the respondent applied to a judge in chambers for immediate vacant possession under section 169 of the Land Transfer Act, which provides a speedy procedure for obtaining possession where the occupier can show no cause why an order should not be made. Where, however, he can show an arguable defence the application is dismissed without prejudice to the applicant's right to proceed by way of writ. B

At the hearing, the appellant's main submission was that, as proceedings relating to the same matter were already before the Supreme Court, the application should be dismissed. The learned Judge, quite correctly in our view, held that existence of such proceedings was, by itself, not a cause sufficient to resist an application under section 169 of the Land Transfer Act. He said:— C

"The defendants' case is that there was an agreement to grant them a lease which is an interest in land. They have not produced any memorandum or note thereof signed by the plaintiff or its agents and it must therefore be assumed that no such memorandum or note exists." D

He made an order for immediate vacant possession.

The appellants appeal against that order on the following grounds:—

- "1. That the learned trial judge erred in law and in fact in holding that the Appellants had not shown cause why an order for vacant possession should not be made. E
2. That the learned trial judge erred in law and in fact in not holding that the Notice to Quit dated 27th December, 1984 was not a valid notice.
3. That the learned trial judge erred in law and in fact in not dismissing Supreme Court Civil Action No. 84 of 1985 and ordering that Supreme Court Civil Action No. 73 of 1985 should proceed to trial.
4. That the learned trial erred in law and in fact in not holding that Supreme Court Civil Action No. 84 of 1985 was an abuse of process as Supreme Court Civil Action No. 73 of 1985 was still pending." F

As we have already indicated, we see no merit in grounds 3 and 4. The main question before the learned Judge, was whether the respondent had shown conclusively that the appellants' tenancy, such as it was, had been effectively terminated by the notice to quit. Duncan Honson's letter, referred to earlier, clearly shows that a tenancy for a fixed period of three months ending on 15th February, 1985 was offered to the appellants at an increased rent of \$900 per month. Receipts issued by the respondent showed that such a rent had been paid. There was, therefore, written material on which the appellants could seriously content that a tenancy for a fixed period of at least three months, if not three years, had been granted to them. G

The relevant part of section 89(2) of the Property Law Act under which the tenancy was purportedly terminated reads:— H

"89. (2) In the absence of express agreement between the parties, a tenancy of no fixed duration in respect of which the rent is payable weekly, monthly,

- A yearly or for any other recurring period may be terminated by either party giving to the other written notice as follows:—
- (a) .....
  - (b) where the rent is payable for any recurring period of less than one year, notice for at least a period equal to one rent period under the tenancy and expiring at any time, whether at the end of a rent period or not.”

B The appellants submit, with considerable force, that if evidence could establish a tenancy agreement for a fixed period, the respondent's notice to quit would be ineffective. We accept that there was sufficient written material before the learned Judge to form the basis for a serious challenge to the validity of the notice to quit.

C We have, therefore, reached the conclusion that, on the material presented to the learned Judge, this was not an appropriate case to be dealt with under section 169 of the Land Transfer Act. The appeal is, therefore, allowed and the order for possession set aside with costs to be taxed in default of agreement.

Issues of part-performance and applicability of section 59 of Indemnity, Guarantee and Bailment Act to tenancy agreements were also raised by the appellants but we do not find them necessary for our decision and, in view of the likelihood of further proceedings in the matter, consider it undesirable to comment on them.

*Appeal allowed, order for possession set aside.*