

MORRIS HEDSTROM LIMITED

A

v.

MOHAMMED RASHID KHAN

[SUPREME COURT—Sheehan, J.—3 July 1987]

B

Civil Jurisdiction

Landlord & Tenant—Summons by owner for possession pursuant to s.169—defendant asserted (but did not offer evidence to prove) his mother was tenant, both being occupants—service of Notice to Quit on occupant sufficient even if not tenant—also asserted that Fair Rents Act applied—no evidence thereof—rent in arrears since 1979—defendant failed to show cause—order for possession made.

C

K. W. March for the Plaintiff
N. S. Arjun for the Defendant

D

Morris Hedstrom Limited (plaintiff) applied under s.169 of the Land Transfer Act for possession of Part Lot 1 DP. 2460 Laucala Bay Road, Suva of which it was registered proprietor. Mohammed Rashid Khan (defendant) occupied the land with his mother and other members of his family. Plaintiff claimed that defendant's late father Mr Mohammed Lateef Khan was a monthly tenant under a lease between the parties dated 1 June, 1972, that by Notice to Quit dated 30 June 1986 the defendant was given until 30 June 1987 to vacate the premises. Evidence in support of plaintiff's claim was that the premises were required for sale and the Notice to Quit had determined the tenancy. No rent had been paid since 1980.

E

By s.172 of the Land Transfer Act the obligations on the defendant is to show cause why an order should not be made against him, that he has some serious claim to resist the application. The defendant stated that he was not the tenant—his mother was tenant, being the administratrix of her deceased husband who was the tenant. The assertion that the Notice to Quit should have been served on the mother failed, for reasons the Court gave (*infra*).

F

Held: S.169 may be used to enable a proprietor of land to obtain and prompt decision on his right to eject an occupier in adverse possession.

G

The landlord did not have to locate a personal representative, established by grant of letters of administration before serving a Notice to Quit. He was entitled to treat the actual person in occupation as the tenant and serve the Notice to Quit on that person. *Egerton v. Rutter* (1951) 1 K.B. 472. Letters produced in evidence showed the defendant not only had been in occupation but had attempted to negotiate as a tenant or occupier as well.

H

A The defendant asserted but did not prove a lease to "the estate". Nor was there any evidence; thereof; or that the Fair Rents Act applied. The failure to pay rent since 1979 deprived the defendant of any protection from the Fair Rents Act.

The defendant did not show cause why there should not be an order for possession.

B Order made for possession by plaintiff.

Defendant to pay costs.

Case referred to:

Egerton v. Rutter (1951) 1 K.B. 472

C SHEEHAN, J.

Decision

D This is an application for an order for possession under Section 169 of the Land Transfer Act. The plaintiff is the proprietor of a piece of land at Laucala Bay Road in Suva described as Part lot 1 DP2460. The defendant occupies the land with his mother and other members of his family.

The plaintiff's claim is that the defendant's late father Mr Mohammed Lateef Khan was a month to month tenant of the land under a lease made between the parties on 1st of June 1972.

E By notice to quit given on the 30th of June 1986 the defendant was given till the 30th of January 1987 to vacate the premises. In an affidavit in support of the plaintiff's claim Mr J. S. Singh asserts that the property is required for sale and a notice to quit has determined the tenancy. He goes on to depose that no rent in fact has been paid on the premises since 1980.

F Application under Section 169 of the Land Transfer Act may be made to enable a proprietor of the land to obtain a prompt decision on his rights to eject an occupier in adverse possession. By Section 172 of the Land Transfer Act the obligation is thrown on the Defendant to show cause why such an order should not be made against him. A defendant is not required to prove a conclusive or documented title. But the onus is on him to show serious claim to resist the application.

G The defendant contends in his affidavit in reply that while he lives on the property he is not a tenant. His mother is. The actual tenant under the leases of 1st June 1972 died "some years ago" and his mother now occupies the property as administratrix and major beneficiary of the deceased tenant's estate. Thus any notice to quit should be served on the estate as the successor to the true tenants rights. Since this has not been done the Plaintiff's application must fail.

H This assertion by the defendant serves him not at all. It is settled law that the landlord does not have to locate a personal representative established by grant of letters of administration or grant of probate before serving a Notice to Quit. He is entitled to treat the actual person in occupation as the tenant and serve that person. *Egerton v. Rutter* (1951) 1 KB 472.

But in any case the defendant in the letters exhibited by the plaintiff show plainly that he has not only been in occupation of the premises but also has negotiated or has attempted to negotiate as a tenant or occupier as well. A

The notice to quit was plain and open to no misinterpretation such that the defendant was left in no doubt that the plaintiff required vacant possession of the property.

Apart from asserting a lease to "the estate" the defendant offers no evidence of that. B

There has been no evidence advanced suggesting for example that the tenant's widow became the successor acknowledged by the plaintiff either in writing or by acceptance or rent. In fact the evidence is that no rent was paid at all for the past six years or more.

The defendant's contention that section 25 of the Fair Rents Act applies is also assertion only backed by no evidence. When challenged on this by the plaintiff, Counsel for the defendant asks what evidence is there that it doesn't apply? The onus is on the defendant to show an arguable case, not just an argument. That means that the defendant must show evidence to support its contention and the bare assertion that the Act applies hardly does that. C

But even if it were the case that the Fair Rents Act did cover this lease the acknowledged non-payment of rent since 1979 would in any case preclude that Acts protection. I am also inclined to accept the plaintiff's contention that while there is apparently no separately assessed statutory valuation of the site and buildings the value of the site alone, based on the large valuation of the whole of the property is likely to be in excess of \$12,000. Of course, in the absence of a statutory valuation of the property these remarks regarding values must be speculative. However the assertions of fact required to show cause remained the obligation of the defendant and this it has not done. I am satisfied in any case that the Fair Rents Act does not apply. D E

In the result I am satisfied that the defendant has not shown cause why an order should not be made. Accordingly there will be an order for possession in the plaintiff's favour. Costs to the plaintiff to be taxed if not agreed. F

Order for possession.