

Before N. C. Jain, J.

JOGINDER SINGH,—Petitioner.

versus

HARBHAJAN SINGH,—Respondent.

Civil Revision No. 1615 of 1980.

September 5, 1988.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2) (i)—Tenant in arrears of rent—Eviction sought—Rent tendered on first date of hearing—Rent due—Meaning of.

Held, that the rent of a particular month would become due not on the expiry of the last day of that month but on the last day of the month next following that month. This is the only true and simple interpretation of S. 13(2) (i) of the East Punjab Urban Rent Restriction Act, 1949. To put any other interpretation would be doing violence to the language of the statute and rather would mean addition of words in the relevant clause.

(Para 5).

Petition under section 15(5) of Act III of 1949 for revision of the order of the court of Shri Amarbir Singh Gill, Appellate Authority, Amritsar dated 3rd June, 1980 affirming that of Shri M. S. Chawla, Rent Controller, Amritsar dated 24th April, 1978 passing the ejection order in favour of the applicant and against the respondent with costs with a direction to the respondent Joginder Singh to hand over the possession of the demise premises within three months from the date of this order. The appellate authority directed the appellant to hand over the vacant possession of the premises in dispute to his landlord within two months time from today i.e. 3rd June, 1980.

R. L. Sarin, Advocate, for the Petitioner.

R. K. Chhibar, Advocate, for the respondent.

ORDER

Naresh Chander Jain, J.

In this revision petition the legality and validity of the orders of eviction passed by the authorities below have been challenged

by the tenant-petitioner who has been ordered to be evicted from the demised premises on the ground of short tender of arrears of rent to the tune of Rs. 5.71 paise.

(2) The facts necessary for disposal of the revision petition are in a very narrow compass. The landlord sought the eviction of the tenant on the ground that the arrears with effect from 15th December, 1973 at the rate of Rs. 30 per month were due from the tenant. The ejection application was filed on 3rd June, 1975. The petitioner-tenant tendered the arrears of rent Rs. 510 that is for a period of 17 months, besides, Rs. 30 as costs and Rs. 25.50 as interest, totalling Rs. 565.50 on 11th September, 1975. The amount was accepted under protest by the landlord. The learned Rent Controller found that the interest was required to be paid on the amount of arrears of rent till the date of payment that is the date of the first hearing of the application for eviction and, therefore, tender was short of Rs. 5.71. The finding of the learned Rent Controller was upheld by the Appellate Authority.

(3) Mr. R. L. Sarin, learned counsel for the petitioner-tenant while not disputing the proposition of law that the interest was to be tendered upto 11th September, 1975, has vehemently argued that the landlord is liable to be non-suited on the short ground that the tenant tendered one month's extra rent. The learned counsel has drawn my attention to the provisions of section 13(2) (i) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') which is reproduced below :—

“S. 13(2) (i) *Eviction of tenants.*

(1)

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied :—

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord

Joginder Singh v. Harbhajan Singh (N. C. Jain, J.)

or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable. Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid.

According to the counsel for the petitioner the rent which the tenant was liable to pay and which was due from him would be upto April 1975 as the application for eviction was filed on June 4, 1975. Since, admittedly, the tenant tendered the rent for a period of 17 months commencing from 15th December, 1973 to 14th May, 1975, there was an excess payment of rent of one month. This excess payment of rent exceeds the amount of interest. He was entitled to adjustment according to the well settled proposition of law and, therefore, Mr. Sarin, learned counsel has argued that the tender could not legally be said to be short. The learned counsel for the landlord, on the other hand, has by reference to the rent note Exhibit A.2, argued that the tenant was liable to pay advance rent and, therefore, there was no excess payment of rent. The learned counsel for the landlord has pointedly drawn my attention to the wording of the clause (i) of the terms and conditions of the Rent Note Exhibit A.2, according to which the rent was to be paid month by month and regarding the payment, endorsement was to be made on the back of the rent note. The learned counsel has also shown me the payment of advance rent on the back of the rent note. The precise submission of the learned counsel for the landlord is that the recital in the rent note regarding regular payment of rent month by month followed by payment of advance rent as shown in the endorsement on the back of the rent note clinches the issue in his favour for warranting a finding that the rent was payable in advance. In other words, the argument of the learned counsel is that the factum of advance payment of the rent on the back of the rent note coupled with the recital of regular payment of rent every month shows that the parties understood clause (i) of the tenancy and that the landlord was entitled to advance payment of rent that to put any other interpretation on clause (i) of the rent note would make the same redundant in the eye of law.

(4) After giving my thoughtful consideration to the entire matter and after examining the case law cited at the Bar, I am

of the view that the revision petition deserves to be allowed. In my considered view the tenant was not liable to pay rent for the month of May 1975 as the same had not become due on the date of the institution of the application. The wording of the section 13(2) (i) of the Act in this respect is quite clear. As has been held in *Khushi Ram v. Shanti Rani and others* (1), and *Sant Singh v. M/s Finley and Company* (2), that the rent for a particular month does not become due until the last day of the next month. Even a bare reading of the provisions of Section 13(2) (i) of the Act makes it clear that only that tenant is liable to be evicted who has not paid or tendered the rent due from him in respect of the building within 15 days after the expiry of the time fixed in the agreement of tenancy or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable. In the instant case, there is no term and condition in the agreement of tenancy to the contrary by which the tenant could be held liable to pay the rent of May 1975 which would fall due only in the month of July, 1975. On the date of the institution of the application i.e. 4th June, 1975 the rent of only April 1975 had become due and not the rent for the month of May 1975. The wording of the rent note regarding the regular payment of rent month by month and the endorsement of the advance payment of rent on the back of the rent note does not and cannot mean that in the agreement of tenancy any time limit was fixed regarding the payment of advance rent. In view, thereof, I am unable to accept the submission of the counsel for the landlord. It is undisputed that the tenant is entitled to adjust the excess payment of rent towards any short tender made by him by way of interest, costs etc. When the precise point of excess payment was argued before the Appellate Authority, it did not find favour with it on the ground that from the pleadings of the tenant and the statement made in the Court, he deposited the rent for 17 months which was due from him. I am afraid, the Appellate Authority has not taken into consideration the relevant statute and the case law and committed an apparent error of law.

(5) After examining the case law and the provisions of the statute, I am of the firm view that the rent of a particular month

(1) 1964 Pb. Law Reporter 755.

(2) 1967 Pb. Law Reporter 548.

Kaushalya Devi and others v. Karam Chand Munjal (S. S. Sodhi.)

would become due not on the expiry of the last day of that month but on the last day of the month next following that month. To illustrate, if the landlord files an application for the eviction of the tenant on the ground of non-payment of arrears of rent on 1st March of a particular year the rent 'due'—would be not of the month of February of that particular year but only of the month of January and, therefore, the rent payable on the first date of hearing of the application would be upto the end of only January of that year and not of the next month. This is the only true and simple interpretation of section 13(2) (i) of the Act. To put any other interpretation would be doing violence to the language of the statute and rather would mean addition of words in the relevant clause.

(6) Once it is held that the rent of May 1975 had not become due, the interest has to be calculated on the amount of Rs. 480 only and not on the amount of Rs. 510 and, therefore, the tenant made an excess payment of Rs. 24.25 to the landlord and, therefore, he is not liable to be evicted.

In view of what has been noticed above, the revision petition is allowed, the orders of the authorities below are set aside and the application of the landlord for eviction of the petitioner-tenant is dismissed with no order as to costs.

S.C.K.

Before S. S. Sodhi, J.

KAUSHALYA DEVI AND OTHERS,—*Petitioners.*

versus

KARAM CHAND MUNJAL,—*Respondent.*

Civil Revision No. 894 of 1988.

July 11, 1988.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Eviction—Landlord's plea that premises required for setting up son's medical clinic—Son taking up ad hoc appointment during the pendency of proceedings in a government hospital—Landlord's right to eviction—Whether survives—Tenant—Whether liable to be evicted.

Held, that the nature of the appointment held by the son of the landlord, being purely *ad hoc* appointment for six months can by no