

REVISIONAL CIVIL

Before A. S. Bains, J.

SANTOKH SINGH,—Petitioner

versus

SHRI HARNAM SINGH,—Respondent.

Civil Revision No. 1005 of 1975

January 13, 1976.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Eviction of tenant sought on various grounds including non-payment of rent—Rent tendered in Court—Landlord accepting the same and making statement giving up the said ground—Landlord—Whether can withdraw such statement and continue with the plea of non-payment of rent.

Held, that where a tenant tendered rent to the landlord in Court and the latter accepting the same made a statement giving up the ground of eviction for non-payment of rent, the landlord cannot be allowed to withdraw his statement so as to allow him to continue with the said plea. Once a statement is made, the person who makes it is bound by the same and there is no question of withdrawing it on a subsequent date. Such a statement is not against any statutory provision as it is nowhere stated that it cannot be made. It was open to the landlord not to have accepted the rent tendered, but once he accepts and gives up the ground of non-payment, he is bound by it. After the statement, the ground of non-payment of rent did not, therefore, exist at all and it was not open to the Rent Controller to reopen the matter and permit the landlord to withdraw the statement and again take up the ground which he had already given up.

(Para 2)

Petition under section 15(5) of Act III of 1949 and Section 115, C.P.C. for revision of the order of Shri Tara Singh, Rent Controller, Ludhiana, dated the 3rd June, 1975, allowing the respondent to withdraw his statement dated 20th March, 1975 and holding that the plea of non-payment of rent taken by the respondent to continue to exist.

O. P. Hoshiarpuri, Advocate, for the Petitioner.

V. K. Jhanji, Advocate, for the respondent.

JUDGMENT

Ajit Singh Bans, J.

(1) The petitioner is a tenant. An application was filed against him under section 13 of the East Punjab Urban Rent Restriction Act (hereinafter briefly called 'the Act') by the landlord-respondent. The grounds taken in the petition for the eviction of the petitioner were (a) that he (the tenant) had not paid arrears of rent; and (b) that the landlord requires the rented house for his and his son's residence. The tenant-petitioner appeared for the first time on March 4, 1975. Some receipts regarding payment of rent, alleged to have been issued by the landlord, were put to the counsel for the landlord-respondent. Since the landlord was not present on that date, the counsel could neither admit nor deny the same. However, the counsel made the following statement :—

"I do not admit receipts produced by the respondent as applicant is not present. I will not take objection of non-payment of rent on first date if the respondent does not tender rent today."

However, the tenant-petitioner tendered the rent on the same date from December 1, 1974 to February 28, 1975. He further stated that he had already paid the rent upto November 31, 1974. The rent so tendered was accepted by the counsel for the landlord. The case was then adjourned to March 20, 1975. The tenant tendered on that date the rent for the period January 1, 1972 to November 30, 1974, also. On that date, the landlord-respondent was also present and he made the following statement :—

"I accept the tender and give up the ground of non-payment of rent."

It was on the next date that the landlord-respondent made an application to the effect that since the tenant had not made the full tender for the entire arrears of rent on the first date of hearing that is March 4, 1975, the tender made by him on the following date, that is March 20, 1975, is not valid and that the statement made by him giving up the ground of non-payment of rent was not correct because it had been made in the absence of the lawyer and without his consultation. The prayer made in that application was that either he may be allowed to withdraw the statement dated March 20, 1975 or be allowed to amend the plaint to the effect that the default committed by the tenant still continued. This application was contested by the

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present petitioner but the Rent Controller accepted the application,—*vide* order dated 3rd June, 1975 in favour of the landlord-respondent and allowed him to withdraw his statement dated March 20, 1975, and further decided that plea of non-payment of rent taken up by the landlord-respondent shall continue to exist. It is in these circumstances that the present petition has been filed against the order of the Rent Controller allowing the landlord-respondent to withdraw his statement dated March 20, 1975.

(2) In my opinion, the Rent Controller has erred in law in allowing the landlord-respondent to withdraw his statement and also allowing the plea of non-payment of rent taken up by him to continue. Once a statement is made, the person who makes it is bound by the same. There is no question of withdrawing it on a subsequent date. In this manner, there will be no end to the litigation between the parties. The only ground given in the application is that he made a statement under misconception and did not know the implications of it as he made the statement without consulting his lawyer. This can hardly be a ground for allowing any person to withdraw his statement. The Rent Controller is in error in observing that such a statement is against the statutory provision. It is nowhere stated in the statute that such a statement cannot be made. It is open to a party to the litigation to withdraw any of the grounds of claim at any time. The Rent Controller has taken a mistaken view of the whole matter. It was open to the landlord not to accept the rent tendered on the subsequent date, but once he accepts and gives up the ground of non-payment, he is bound by it. In fact, after the statement made on March 20, 1975, the ground of non-payment of rent did not exist at all and it was not open to the Rent Controller to reopen the matter and permit the landlord to withdraw the statement and again take up the ground which he had already given up. What the statute provides is that the tenant is to pay the rent due on the first date of hearing after service. It was open to the landlord not to accept the rent after the first date of hearing, but once the rent is accepted and statement given and plea of eviction on the ground of non-payment is given up, the landlord is estopped from urging that ground again. The same view is taken by this Court in *Amar Singh v. Hari Ram* (1). In that case, in the application for eviction, three grounds were taken that is (1) that the tenant had not paid the arrears of rent, (2) that the landlord required the house for his own use and occupation

(1) C.R. 255/62, decided on August 3, 1962.

and (3) that the tenant had used the premises for a purpose other than the one for which they were left. On the first date of hearing that is July 8, 1961, the tenant appeared but stated that he had not received a copy of the petition. At the same time, the tenant paid the landlord the arrears of rent. The case was adjourned to July 10, 1961, on which date the tenant's reply was filed and also the interest on the arrears of rent and the costs assessed were paid. After that, the counsel for the landlord made a statement before the Rent Controller giving up the plea of non-payment of rent. The parties proceeded to trial on the other pleas raised in the petition. The Rent Controller found that the same were not proved on evidence and thus dismissed the application of the landlord. In appeal before the appellate authority, it was urged that a new ground be allowed to be taken up, that is non-payment of rent. The appellate authority accepted this ground and allowed the appeal and ordered eviction of the tenant. It was against this order of the appellate authority that the revision was filed and this Court observed as under :—

“After hearing both counsel, I find that the order of the Appellate Authority, as it stands, cannot be sustained and that the Appellate Authority went wholly wrong in thinking that because the tenant had in law committed default in payment of arrears of rent, it became obligatory on the part of the Rent Controller to order his eviction. No such obligation is in the contemplation of the statute governing those matters, namely, the East Punjab Urban Rent Restriction Act.”

(3) The present case is on a better footing. Here the landlord himself made the statement and gave up the plea of non-payment of rent.

(4) For the reasons recorded above, I allow this petition and set aside the impugned order passed by the Rent Controller. The Rent Controller is, however, directed to proceed with the matter on the other grounds taken by the landlord in his application for eviction. The ground of non-payment of rent being given up by the landlord cannot be allowed to be taken up again. There is no order as to costs.