THE LANDLORD AND TENANT RELATIONSHIP

Historical and Sources

There can hardly be a more authoritative basis on which to commence a discussion of the relationship of landlord and tenant than by adopting the opening statement on page 3 of the 16th Edition of Hill and Redman on this subject which reads as follows:-

> " The relation of landlord and tenant has its origins in the medieval land law and was originally one of contract only."

From this concise but comprehensive statement of the relationship by an undoubted authority on the subject, it is possible to make the comments which follow.

Firstly, due to the early development of the relationship the rights of the parties have been decided with reference to practice and custom over the years and the learning on this subject reposes for the most part in common Law sources. Statutory legislation in this regard has been more of the nature of consolidating statutes on the one hand and to a much greater extent on the other hand, what I prefer to describe as "social legislation" the main purpose of this is to protect the tenant from oppressive treatment by the landlord. Examples of the latter type are to be found in the United Kingdom Rent Acts, the pasaage of which was directed against the social and economic evils generated by the housing shortage in that country caused to some extent by the first World war and the conditions which prevailed thereafter. The Jamaican counterpart can be found in the Rent Restriction Acts and recent amendments thereto.

The development of this subject in the area of the common law is perhaps fortuitous for us here in Jamaica as this means that we can rely heavily on the United Kingdom authorities for the learning on the subject. This reduces to a considerable extent the hardship which we would otherwise experience in not having locally written books in this area of the law. Nevertheless, I

would like to draw your attention to a dissertation on Jamaican Land Law written in 1948 by Victor Grant, Q.C. and former Attorney General, as well as to an article on the Recovery of possession in the Resident Magistrate's Court by R.N.A. Henriques appearing in the October, 1973, issue of the Jamaica Law Journal. Both of these works provide useful assistance to the Student of the subject as they deal with certain fundamental aspects of the relationship.

Nature of the Relationship

The second comment which arises from the statement of Hill and Redman referred to above, is that the basic nature of the relationship is a contractual one and this cannot be over-emphasized. The entry into any such relationship must therefore be attended by the fundamental requirements of a contract as to capacity, offer and acceptance and agreement between the parties. The rights and obligations will be only those which the parties have agreed on and in the absence of agreement will be determined with reference to practice and the common law. On the other hand this contract differs from all other contracts in that it confers on the tenant an estate in land which may exist at law or in equity. In this regard it is unique as a form of contract

Definition of the Relationship

It is necessary at this stage to give a working definition of the subject and here again we can rely on the authority of Hill and Redman:-

> "The relation arises as a rule, when one party confers on another the right to the exclusive possession of land, mines or buildings for a time which is either subject to a definite limit originally or which can be made subject to a definite limit by either party".

This statement will be found to contain the two features which may be described as sine qua non to the existence of the relationship. A precise definition therefore is that the contract must

create an estate in land, giving exclusive possession for a definite period.

With the assistance of the above definition it will be possible and is indeed necessary, to discuss and distinguish similar relationships which while conferring some right to the enjoyment or use of property do not fall within the above definition. Examples of such relationships are as follows:

(i) A licence - giving a right to the use of premises which is personal to the grantee and creating no interest in the said premises

(ii) A tenancy at will - the permissive occupation of premises by a person at the will of both parties which arises in the absence of agreement for a legal tenancy or other form of occupation.

(iii) A tenancy at sufferance - arising where one who enters on land by a lawful title continues in possession after his title has ended without statutory authority or the consent of the person entitled.

Having this defined and distinguished the relationship, it will be useful at this stage to examine a few of its more salient features as a basis for discussion.

Estoppel

One such feature is the well established principle that a tenant is estopped from repudiating the title of his landlord subject only to certain limited exceptions. This principle received reaffirmation from our Court of Appeal in the case of Lucius White Vs. Carlos Cotterell R. M. C. A. No. 61/1969. It is important to note that this principle applies with equal strength even where the person granting the tenancy had no right to create same. The doctrine rests not so much on the landlord's right to title or even possession, but on the fact of the creation of the tenancy. One notable

exception to this principle is that the tenant may dispute the title of his landlord where the latter's title has come to an end. For the tenant to avail himself of this exception however he must engage in some act of solemnly renouncing the title of his previous landlord and commence a fresh holding under the person now being recognised. See Balls Vs. Westwood, 2 Campbells Reports (1818) pages 11 - 12. The raison d'etre of this doctrine is seen as for the protection of the landlord from arbitrary recognition by the tenant of any claimant to his tenement. Of equal interest is the converse principle that a landlord is also estopped from repudiating a tenancy he has created. Here, as in the above-mentioned case this estoppel is founded not in the title or right to possession in the landlord but on the fact of the creation of the tenancy. Where a landlord subsequently acquires title of the legal estate, this is said to feed the estoppel and will confer a legal tenancy (as opposed to a tenancy by estoppel) on the tenant.

Rent and Distress

Another feature which we might wish to consider is the payment of rent which is the recompense reserved out of the demised premises by the landlord. Contrary to popular belief, rent need not take the form of some monetary consideration but may be in the form of chattels or services. An important incident to this right to collect rent is the right on the part of the landlord to distrain on goods found on the demised premised and to sell same where there has been non payment of rent. The right to distrain is a summary remedy i.e. a form of self help in Jamaica and the United Kingdom in that it does not require the intervention of the Court. This may be compared with the position in Belize where such action requires the prior intervention of a Magistrate. The right to distrain has been the subject of strong criticism in recent times and we might well like to discuss whether it should be retained in the Jamaica of today. It seems however to give rise to the question as to whether person who has acquired expensive chattels in the form of furnishings for his house should be allowed their use and enjoyment when he

cannot afford to pay for the premises in which to keep them.

Recovery of Possession

As time will not permit a more exhaustive analysis of the relationship under discussion , a final feature to which we might like to address our minds is the right of the landlord to recover possession both during the currency of the tenancy and after same has expired.

The Rent Restriction Act on which I have touched very briefly, is the main instrument by which the legislature has empowered the Courts (and this includes the Rent Assessment Board) to hold the balance between the landlord and tenant and to this extent is par excellence an illustration of "social legislation". While I will leave this area to be dealt with at greater length by my learned colleague Dennis Daley, I would crave your indulgence to deal briefly with two limited aspects of this legislation.

In Section 25 of this Act one can see the extent to which the Legislature has gone to protect the tenant as a result of which it can be virtually impossible to obtain an Order in the in the Court for possession of any protected tenancy. After enumerating ~~eighteen~~ seven grounds (a- q) of which one must obtain before an Order for possession can be applied for, the Act goes further and adds the requirement that the Court must consider it "reasonable" to make the Order. As if the above requirements did not provide adequate safe-guards, the Act goes on to provide in the case of grounds (e) (f) and (h) that the Order should not be made

" Unless the Court is also satisfied that having regard to all the circumstances of the case, less hardship would be caused by granting the Order than by refusing it"

and includes as an example of circumstances which should be taken into account:-

" the availability of alternative accommodation for

the landlord or the tenant"

In addition to restricting the right of the landlord to bring an end to a contract freely entered into, the Act further regulates the rental which he may charge, even though this might have been the subject of arms-length discussion at the time of the creation of the tenancy and a matter on which the parties had agreed.

It is an interesting commentary here that while in many other areas statutes import certain terms and condition into a contract at the time of its formation e.g. the sale of goods and Hire Purchase Acts, in the area under discussion the Statute applies after the parties have concluded their agreement.

As distinct from recovery of possession through the Courts there is also a right of recovery of possession after a tenancy has expired and the tenant continues to hold over. This right is subject to the requirement that the landlord must enter peaceably i.e. without force, unusual arms or menace of life or limb and without a multitude of people. An entry otherwise peaceable can become unlawful if force be used afterwards. The United Kingdom Statutes of Forcible Entry 1381 in this regard is applicable in Jamaica. They do not however apply to squatters. See McPhail Vs. Persons unknown(1973) Ch. 447 at 456

Appellate Jurisdiction

The second point on which I wish to touch briefly is on the question of appeals from the Rent Assessment Board in the light of a recent decision in the Court of Appeal in this connection.

The procedure on appeal is regulated by the Rent Restriction Appeal Rules 1945, and such Rules provide inter alia, that Notice of an Appeal containing the Grounds of Appeal with particulars thereof, must be filed in the Office of the Rent Assessment Board within 14 days from the date of any decision or Order. No where in these Rules is any mention made of what should

the availability

happen in the event that such notice and grounds are not filed within the prescribed time. Rule 11 of the said Rules incorporate by reference, Section 575 and 576 of the Civil Procedure Code Chapter 463 in addition to all the other powers contained in these Rules. This reference is of course to the 1938 Edition of the Laws of Jamaica. An examination of these sections (and I invite you to undertake this exercise) does not however take the matter any further. When one traces the history of these sections down to the present time the route leads to the Court of Appeal Rules, 1962. However, an examination of these Rules together with other legislation in this regard, fails to provide any answer to this question.

By way of a comparison with the above situation, the Court of Appeal Rules together with the Judicature Resident Magistrate's Court's Act, provide that where Notice and Grounds of Appeal have been filed in appeals both from the Resident Magistrate and the Supreme Courts out of time the Court shall have a discretion to correct this omission. A local case in which this position was reviewed at some length is that of Aggie Forbes Vs. Victor Bonnick R. M. C.A. No. 20/68. It is clear from this case when considered along with the legislation already referred to, that the legislature has evinced a clear intention that where a matter has not been properly adjudicated and injustice could result the Court should have a discretion to allow Grounds of Appeal to be filed out of time where the justice of the cause warrants this course.

In the recent case of Dudley Wehby Vs. Tenants, the Court of Appeal missed an opportunity of taking a bold step in this direction and while conceding that the Appeal had considerable substantive merits, concluded that it did not have the power to extend the time for filing Grounds of Appeal in matters from the Rent Assessment Board. This decision was arrived at notwithstanding the discovery by the Court that on the 24th day of September, 1976, in the case of Elmira Shaw Vs. The Tenants, leave to file and argue

Grounds of Appeal out of time was granted by a panel including Mr. Justice Swaby, who presided in the instant Appeal. The Court of course regognised that in taking the course it did that two decisions were being created at the same level and suggested that the matter would best be sorted out by the full Court. The Court further indicated that their decision would be put in writing emphasizing the urgent need for legislation in this direction but to date this has not been done.

If the decision of the Court of Appeal is correct then, it is clear that early steps should be taken to bring Appeals from the Rent Assessment Board in line with those from the Resident Magistrate's and Supreme Courts on the question of jurisdiction in the Court of Appeal to extend time for the filing of Notice and Grounds of Appeal out of time.

In this connection I wish to direct your attention to Section 11 (13) of the Rent Restriction Act under which provision rules may be made governing such appeals and all matters incidental thereto. It is clear that the 1945 rules should now be up-dated by virtue of this provision. At the same time it is interesting to note that such rules can be made to confer on the Court of Appeal a jurisdiction which they now disclaim.

In closing I would like to emphasize that this paper was not intended to be an exhaustive treatise on the subject as time would not have permitted so thorough an exercise. I have accordingly concentrated my efforts on only certain interesting aspects of the subject. It is, therefore, my hope that notwithstanding the shortcomings of this paper, it has been in some way informative and will prove sufficiently thought provoking to stimulate discussion among you.

Many thanks for your attention during the presentation of this paper as well as for the opportunity of presenting it to you.

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