



# In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2016: No. 5

**JOSETTE TROTT**

**Appellant**

**- and -**

**KAUWANDA TOMLINSON**

**Respondent**

**EX TEMPORE JUDGMENT**

(in Court)

*Appeal from Magistrates' Court-termination of tenancy by consent- Rent Increases (Domestic Premises Act 1978 section 10-jurisdiction of Court to adjudicate matter Act requires to be dealt with by Rent Increases Arbitration Tribunal*

Date of hearing: April 4, 2016

Mr. Javone Rogers, Mussenden Subair Limited, for the Appellant

Ms. Akilah Beckles, Cox Hallett Wilkinson Limited, for the Respondent

## **Introductory**

1. In this matter the Appellant by Notice of Appeal dated 2<sup>nd</sup> November 2015 appeals against a decision of the Magistrates' Court (Wor. Nicole Stoneham) of 9<sup>th</sup> October 2015 whereby the Respondent was granted possession of premises leased to the Appellant.

2. The background to the present matter can be shortly stated. And that is that, having entered into a tenancy agreement on 1<sup>st</sup> March 2015, the Respondent landlord served a notice to vacate on 28<sup>th</sup> May 2015. The notice purported to be notice on grounds that the Appellant was an undesirable tenant. That notice was disputed by the tenant when legal proceedings were commenced. It was contended that the relevant legal regime required particularity to be given to the complaint and it was suggested that the Magistrates' Court did not have jurisdiction over the matter.
3. However, on 9<sup>th</sup> October 2015, apparently on a day when civil matters are normally mentioned in the Magistrates' Court, the Learned Magistrate recorded this note:

*“Parties appear-Durham-had opportunity to discuss way forward-resolution. Trott to vacate on or before 30 Nov 2015. Order: possession in terms.”*

4. The position on appeal has been essentially agreed. And that is that section 10 of the Rent Increases (Domestic Premises) Control Act 1978 was the governing provision and under that provision the dispute fell to be referred to a Tribunal.

#### **Section 10 of the Rent Increases (Domestic Premises) Control Act 1978**

5. Section 10 of the Act provides as follows:

*“(1)A landlord may serve on the tenant a notice to quit on the grounds that he is an undesirable tenant:*

*Provided that a notice shall not be served under this subsection unless the landlord has given to the tenant in writing an opportunity to remedy the matter complained of and the tenant has failed to do so.*

*(2) The notice to quit served under subsection (1) shall specify the grounds on which the landlord considers the tenant to be undesirable.*

*(3) Where the tenant disputes the allegation contained in the notice to quit, he shall do so in writing within 14 days of receiving the notice and he may submit such explanation as he thinks fit, and thereupon the landlord shall send copies of the notice to quit and of the tenant's reply to the Rent Commissioner, together with a request that a date be fixed for a hearing before the Tribunal.*

*(4) A Tribunal to be called the Rent Increases Arbitration Tribunal and consisting of the Commissioner and two members of the Panel, shall hear evidence in a summary way and adjudicate on the dispute between the landlord and the tenant.*

*(5) If the Tribunal are satisfied that the tenant is an undesirable tenant within the meaning of this Part they may —*

- (a) *confirm the notice to quit and, where necessary, extend the time specified in the notice; or*
- (b) *if the circumstances so warrant, order the tenant to remedy the matter complained of within a given period, and suspend the operation of the notice for that period,*

*and if they are not satisfied that he is an undesirable tenant, shall cancel the notice to quit.*

*(6) The decision of the Tribunal shall be final.*

*(7) For the purposes of this Part "undesirable tenant" means a tenant who*

- (a) uses the premises for any illegal purpose; or*
- (b) persistently admits to the premises any person of bad character; or*
- (c) causes unnecessary annoyance, nuisance, disturbance, inconvenience or damage to the landlord or his property or to any other person or the property of that person occupying the same building as the tenant or any building adjacent to it; or*
- (d) in breach of his agreement, is persistently in arrears in the payment of his rent for periods of not less than two weeks and at the time of service upon him of the notice to quit his rent is in arrears for not less than two months."*

6. That is the relevant statutory regime which Ms Beckles sensibly conceded meant that the Magistrates' Court did not have jurisdiction over this matter. As has been stated by this Court recently<sup>1</sup>, the Magistrates' Court is a creature of statute and as such has no inherent jurisdiction.
7. Accordingly, irrespective of the merits of the underlying dispute, the Magistrates' Court erred in entering a judgment, apparently by consent, and this Court is duty bound to set aside that decision in its entirety.

### **Costs**

8. It is difficult to see why the Appellant should not be awarded her costs.

[After hearing counsel]

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<sup>1</sup> *Lightbourne-v- Thomas* [2016] SC (Bda) 36 App (5 April 2016), giving out reasons for a decision made on March 23, 2016.

9. Perhaps I should reserve costs with a view to encouraging the parties to reach some consensual resolution with the indication that in principle, it seems to me that the Appellant has been successful and should be awarded her costs.

**Disposition**

10. Appeal allowed. Costs reserved.

Dated this 4<sup>th</sup> day of April, 2016

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IAN R.C. KAWALEY CJ