

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2006 - 03746

Between

**Kamal Arman**

(Administrator ad litem of Jasiman Nabie Baksh Arman)

Claimant

v

**H.V. Holdings Limited**

Defendant

Before The Honourable Mr. Justice A. des Vignes

**Appearances:**

**Mr. Bissoondath Ramlogan, S.C. and Mr. David Cowie instructed by Ms. Veena Badrie-Maharaj**

**Mr. Anthony V. Manwah instructed by Mr. Ronald Dowlath for the Defendant**

**JUDGMENT**

1. The Claimant claims to be a statutory lessee of a parcel of land owned by the Defendant, situate at Lot 29 Southern Main Road Marabella between Ramoutarsingh's Hardware and NP Gas Station (hereinafter called "the said property") pursuant to the **Land Tenants (Security of Tenure) Act 1981** (hereinafter called "the LTA"). The Claimant also claims that by virtue of the provisions of the LTA she was entitled to purchase the said property from the Defendant at half the market value. Accordingly, the Claimant seeks declaratory and other relief against the Defendant compelling the sale of the said property and/or transfer of the tenancy to Steve Arman and Kamal Arman pursuant to **Sections 5(8) and 10(1) of the LTA.**

## BACKGROUND HISTORY

2. By Claim Form and Statement of Case filed on 21<sup>st</sup> November, 2006, the Claimant brought this action against the Defendant by her lawful attorney, Kamal Arman. However, the Claimant died on 18<sup>th</sup> January, 2007 and on 20<sup>th</sup> March, 2007, Kamal Arman applied to be appointed administrator ad litem of the estate of the Claimant and to be substituted for the Claimant.
3. The application was heard by Mr. Justice Moosai (as he then was) and by Order dated 12<sup>th</sup> November 2007, he dismissed the application and the action. On 19<sup>th</sup> November, 2007, Kamal Arman appealed against this Order and on 19<sup>th</sup> March, 2012, the Court of Appeal allowed the appeal and ordered, *inter alia*, that Kamal Arman be substituted for the Claimant as administrator ad litem to continue the proceedings and that the matter be remitted to the High Court for hearing of the substantive claim.

## THE CLAIM

4. The Claimant relied on the following allegations in support of the claim:
  - a. The Claimant's predecessors in title were tenants of the said property and since 12<sup>th</sup> May 1970 she was the tenant thereof;
  - b. On 15<sup>th</sup> April 1971, the Claimant was personally served with what purported to be a Notice to quit by the Defendant and/or its servants and/or agents and/or its predecessors in title but since that time, the Claimant continued to occupy the said property for over thirty (30) years and continued to pay rent to the Defendant by certified cheque;
  - c. On 10<sup>th</sup> January, 1983 the Claimant served the Defendant with a Notice to purchase the said property, pursuant to Section 9(1) of the LTA but the Defendant did not respond within the stipulated period of two months and the Claimant failed to apply to the High Court to enforce her right to purchase at that time;
  - d. Between July 2002 and October 2006, the Claimant's Attorneys-at-Law and the Defendant exchanged correspondence with respect to the Claimant's willingness to purchase the said property:

- i. By letter dated 17<sup>th</sup> July, 2002, the Claimant's Attorneys-at-Law wrote to the Defendant reiterating, *inter alia*, her willingness to purchase the said property in accordance with the LTA or in the alternative to transfer her tenancy rights to Kamal Arman and his son, Steve Arman. A certified cheque dated 16<sup>th</sup> July, 2002 for the payment of rent was also enclosed;
- ii. By letter dated 12<sup>th</sup> September, 2002, the Defendant acknowledged receipt of the Claimant's cheque but responded that purchase of the said property or transfer of the tenancy were not options as the contractual tenancy of the Claimant had been determined by the Notice to quit;
- iii. By letters dated 26<sup>th</sup> June 2003, 21<sup>st</sup> June 2004, 28<sup>th</sup> June, 2005 and 16<sup>th</sup> June, 2006, the Claimant's Attorneys-at-Law reiterated the Claimant's willingness to purchase the said property in accordance with the LTA or in the alternative to transfer her tenancy rights to Kamal Arman and his son, Steve Arman. Cheques for rent for the relevant periods were also enclosed;
- iv. By letter dated 31<sup>st</sup> January, 2006, the Defendant advised the Claimant that the construction works on the said property were being undertaken by the Claimant without the consent of the Defendant and were at her own risk. The Claimant was also referred to as a statutory tenant of the said property.
- v. By letter dated 27<sup>th</sup> September, 2006, the Claimant's Attorneys-at-Law contended that the Defendant, by previous letter dated 31<sup>st</sup> January, 2006, acknowledged the Claimant as a statutory tenant under the LTA and reiterated, *inter alia*, her desire to purchase the said property in accordance with the LTA; and
- vi. By letter dated 11<sup>th</sup> October, 2006, the Defendant disputed that the Claimant had been acknowledged as a statutory tenant under the LTA.

5. Accordingly, the Claimant claimed against the Defendant the following reliefs:

- i. A declaration that the Claimant is a statutory tenant of the said property under the terms of the LTA;
- ii. A declaration that the Claimant is entitled to purchase the said property under the provisions of Sections 5(5) and 9(1) of the LTA;

- iii. An Order compelling the Defendant to sell to the Claimant the said property at no more than one-half the market value pursuant to the LTA;
- iv. Further and/or alternatively, an Order compelling the Defendant to transfer the tenancy of the said property to the Claimant and his son, Steve Arman, pursuant to Sections 5(8) and 10(1) of the LTA; and
- v. Costs

### THE DEFENCE

6. By its Defence filed on 28<sup>th</sup> December, 2006 the Defendant responded as follows:
  - a. While it was not disputed that the Claimant was a tenant of the said property since 12<sup>th</sup> May, 1970, the Claimant became a statutory tenant from 1<sup>st</sup> January, 1972 by virtue of a Notice to quit served upon on the Claimant by the Defendant's predecessor in title on 15<sup>th</sup> April, 1971, which said Notice expired on 31<sup>st</sup> December, 1971;
  - b. At all material times, the said property was used mainly for commercial purposes and was let and assessed by the Rent Assessment Board (hereinafter called "the Board") as commercial lands;
  - c. The Notice to quit effectively determined the contractual tenancy which existed between the Claimant and the Defendant's predecessor in title and thereafter the Claimant remained in possession as a statutory tenant pursuant to the provisions of the Rent Restriction Act (hereinafter called "the RRA");
  - d. Subsequent to the service of the Notice to quit, the Claimant remained in occupation and continued to live at the said property in excess of thirty (30) years and continued to pay rent; and
  - e. The Claimant served the Defendant with a Notice to purchase the said property, pursuant to Section 9(1) of the LTA, to which the Defendant did not respond. Subsequently, several letters were exchanged between the Attorney-at-Laws for the Claimant and the Defendant as itemized by the Claimant in the Statement of Case.
7. As a consequence, the Defendant contended that the Claimant was a statutory tenant of the said property under the RRA since 1st January 1972. As such, she did not become a statutory

lessee pursuant to the LTA on the 1st June 1981 and she was not entitled to the reliefs claimed in this action.

### THE REPLY

8. By Amended Reply filed on 28<sup>th</sup> November, 2012, the Claimant joined issue with the Defendant on its Defence.
9. The Claimant further contended that:
  - a. The father of the Claimant, Nabie Baksh Arman, became the tenant of the said property in or around 1925 after the death of his father, Arman, who had been a tenant thereon since around 1873;
  - b. Arman constructed a wooden structure on the said property in which he and his family resided. This structure was later renovated, with the entire upstairs and part of downstairs being utilized for residential purposes and part of the downstairs being used for commercial purposes occasionally;
  - c. After the death of Arman, the Claimant continued to reside in the entire upstairs along with her brother, Mosam Arman and his family;
  - d. The Claimant paid rent as a tenant and was recognized as such. Accordingly, the Defendant is estopped from asserting that the tenancy was determined on the following basis:
    - i. The Claimant paid rent on 14<sup>th</sup> January, 1972 on the understanding that she was a tenant;
    - ii. The Claimant continued in possession as a contractual tenant of the said property and the building thereon and she, together with other members of her family, resided therein and used same as a place of business until her death on 18<sup>th</sup> January, 2007;
    - iii. The Notice to quit expired on 31<sup>st</sup> December, 1971 and the Defendant never took any steps to recover possession of the said property;
    - iv. The Defendant's predecessor in title, H.V. Gopaul and the Defendant continued to accept rent;

- v. H.V. Gopaul acknowledged the Claimant's contractual tenancy by participating in the Claimant's Application No. 61/73 for the determination of the standard rent for the premises before the Board. Further, the Board's determination of the standard rent superseded and rendered otiose the Notice to quit and the Defendant is thereby estopped from denying the existence of the Claimant's contractual tenancy; and
  - vi. The Defendant issued several receipts to the Claimant for the periods 1972 – 1985, 1987, 1988 and 1989 in respect of the contractual tenancy.
- e. At the commencement of the LTA on 1<sup>st</sup> June, 1981, the contractual tenancy of the Claimant subsisted and was not determined;
- f. The Defendant acknowledged the Claimant as a statutory tenant under the LTA by virtue of its application to the Board dated 12<sup>th</sup> November, 2001 for review/increase of the rent, pursuant to **Section 5A of the LTA**, based on the following:
- i. The summons was filed in the form prescribed by the **Land Tenants (Security of Tenure) (Rent Review) Regulations 1992** and the application was made on grounds provided in the **Land Tenants (Security of Tenure) (Rent Review) Order 1992**; and
  - ii. Neither the Defendant nor its predecessor in title ever effected any improvements to the said property and, after expiry of the RRA on 23<sup>rd</sup> February, 2002, the summons was not determined and the Board had not been reconstituted to date.

## **ISSUES**

10. Based on the pleadings before this Court and the Statements of Issues filed on behalf of the Claimant and the Defendant, I am of the opinion that the following issues arise for determination in this matter:
- a. Was the Claimant a contractual tenant of the premises prior to the service of the Notice to quit upon her?
  - b. If so, what effect, if any, did the Notice to quit served upon the Claimant have upon her contractual tenancy?

- c. If the Claimant's contractual tenancy was terminated by the Notice to quit, what was the effect, if any, of:
- i. her subsequent payment and acceptance of rent?
  - ii. the Application of the Claimant for the determination of standard rent (No. 61/73) and the consequential order of the Board dated 7<sup>th</sup> June, 1973?
  - iii. the Application of the Defendant for an increase in rent pursuant to Section 5A of the LTA dated 12<sup>th</sup> November, 2001?
- d. If the contractual tenancy was not terminated by the Notice to quit, did the Claimant become a statutory lessee under the LTA and, if so, is the Claimant entitled to the reliefs claimed?

## THE LAW AND ANALYSIS

### A. Was the Claimant a contractual tenant of the premises prior to the service of the Notice to quit upon her?

11. In the Statement of Case<sup>1</sup> it was pleaded that the Claimant was a tenant of the said property since 12<sup>th</sup> May, 1970 and that she was served with a Notice to quit on 15<sup>th</sup> April, 1971.
12. In the Defence, the Defendant did not dispute that the Claimant was a tenant of the said property since 12<sup>th</sup> May 1970.
13. In the Reply,<sup>2</sup> it was pleaded that on 14<sup>th</sup> January 1972, the Claimant paid rent for the said property and was issued with a receipt on the understanding that she was a tenant and an old resident in the building.
14. The Witness Statement of Steve Arman was silent as to the status of the Claimant prior to the service of the Notice to quit upon her.
15. In his Witness Statement, Kamal Arman stated that his grandfather was a tenant of the said property and he died on 12<sup>th</sup> May, 1970 having devised his tenancy to the Claimant. After his death, Kamal's father, Moasam Arman, paid the rent to H.V. Gopaul who issued a receipt dated 10<sup>th</sup> June 1970 which stated as follows:

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<sup>1</sup> Statement of Case filed on 21<sup>st</sup> November, 2006 at paras. 2 and 4.

<sup>2</sup> Reply filed 28<sup>th</sup> November 2012 at para. 3(c)

*"Received from the Estate of Nabie Baksh Arman (deceased) the sum of One Thousand two hundred and forty eight Dollars and eighty eight cents for:*

<i>Land Rent due</i>	<i>1968-70</i>	<i>\$86.40</i>
<i>House Tax due</i>	<i>1968-70</i>	<i>\$563.40</i>
<i>G.W. Rates due</i>	<i>1968-70</i>	<i>\$563.40</i>
<i>Water Rates</i>	<i>up to 8/10/69</i>	<i>\$35.68</i>
	<i>TOTAL</i>	<i>\$1,248.88....."</i>

16. Further, he stated that a Notice to quit dated 15<sup>th</sup> April 1971 was served upon the Claimant purporting to terminate the tenancy of his grandfather.<sup>3</sup> The rent for 1971 was paid by the Claimant in 1972 and a receipt dated 14<sup>th</sup> January, 1972 was issued by H.V. Gopaul in the name of the Claimant for that year. This receipt stated as follows:

*"Received from Jasiman Nabie Baksh Arman the sum of Two Hundred and Forty Eight Dollars and twenty six cents for:*

<i>Land Rent due 1971</i>	<i>\$28.80</i>
<i>House Tax due 1971</i>	<i>\$100.80</i>
<i>G.W. Rates due 1971</i>	<i>\$100.80</i>
<i>...</i>	<i>\$17.86</i>
	<i>TOTAL \$248.26....."</i>

17. Further, on 10<sup>th</sup> January 1983, the Claimant served upon the Defendant a Tenant's notice, to which she affixed her thumbprint, to purchase the said property pursuant to **Section 9(1) of the LTA**. In the Schedule to that Notice, in answer to paragraph 4, the Claimant stated she acquired the tenancy on 12<sup>th</sup> May 1970.

18. Under cross-examination, Kamal Arman initially responded that as far as he was aware it was his grandfather and not the Claimant who was the tenant of the said property. However, he subsequently admitted that in April 1971 he was not certain whether or not the Claimant was a tenant of the said property.

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<sup>3</sup> Claimant's Witness Statement filed on 25<sup>th</sup> January, 2013 at para. 3.



19. In his witness statement, Byron Gopaul stated that the Claimant became a tenant of the Defendant's predecessor in title, H.V. Gopaul, since May 1970 and that on 15<sup>th</sup> April 1971 the Notice to quit was served upon her personally. Under cross examination, Mr. Gopaul said that the Claimant's father was the tenant and, after his death, the Claimant became the tenant of the said property by virtue of the RRA and by operation of law. Further, when questioned about the receipt dated 10<sup>th</sup> June 1970 issued to the Estate of Nabie Baksh Arman, he insisted that the tenancy of the Claimant commenced in May 1970. Further, he stated that the first time that a receipt was issued in the name of the Claimant was sometime after May 1970.
20. In his written closing submissions, Counsel for the Claimant submitted that the estate of Nabie Baksh Arman, and not the Claimant, was the tenant of the said property on 12<sup>th</sup> May 1970. Therefore, the Notice to quit served upon the Claimant in April 1971 was ineffectual because she was not the tenant at that time. In support of this submission, Counsel relied on the said receipt dated 10<sup>th</sup> June 1970.
21. In my opinion, the submission of Counsel for the Claimant is inconsistent with the Claimant's pleadings and the evidence adduced in support of the claim. The Statement of Claim clearly alleged that "*since 12<sup>th</sup> May 1970 the Claimant is and has been a tenant of the lands....*". Although the receipt dated 10<sup>th</sup> June 1970 was made out to the Estate of Nabie Baksh Arman (deceased), it was in respect of the period 1968 to 1970. When the Claimant paid rent on 14<sup>th</sup> January 1972 and was issued with a receipt in her name, she paid for 1971. Further, when the Claimant served a notice to purchase upon the Defendant in 1983, she stated unequivocally that she acquired the tenancy on 12<sup>th</sup> May 1970, which was the date of death of her father, Nabie Baksh Arman.
22. In the circumstances, I find that the Claimant was a contractual tenant of the said property when she was served with the Notice to quit dated 15<sup>th</sup> April 1971.

**B. If so, what effect, if any, did the Notice to quit served upon the Claimant have upon her contractual tenancy?**

23. As it relates to the determination of a tenancy, Halsbury's Laws of England<sup>4</sup> states as follows:

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<sup>4</sup> Volume 62 (2012) at para 213 and 230.

*“213. A tenancy from year to year is determinable by notice to quit, and the parties may enter into special stipulations both as to the length of the notice and the time when the tenancy may be determined under it. In the absence of special stipulation or of special custom or statute, a yearly tenancy may be determined by a half-year's notice, expiring at the end of some year of the tenancy. Where there is a term specifying the length of notice required, then, in the absence of any provision to the contrary, that notice must be given so as to expire at the end of some year of the tenancy...”*

*230. Once a valid notice to quit has been served, it automatically brings the tenancy to an end on the expiration of the notice and may not be withdrawn or treated as waived...”*

24. By virtue of **Section 15(1) of the RRA:**

*“15(1) A tenant who, under this Act, retains possession of any premises shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with this Act, and shall be entitled to give up possession of the premises only on giving such notice as would have been required under the original contract of tenancy; but, notwithstanding anything in the contract of tenancy, a landlord who obtains an order for the recovery of possession of premises or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.”*

25. In **De Haney v Ali**,<sup>5</sup> the Court of Appeal dismissed the claim of the Appellant that the lower court erred in law in holding that the LTA was inapplicable on the basis that his contractual tenancy had been duly determined on 30<sup>th</sup> June, 1980 and was thus incapable of conversion into a statutory lease when the LTA came into force. Mc Millan JA. Ag. stated as follows:

*“It is trite law that a contractual tenancy continues to neither exist nor subsist where the tenant remains in occupation under and by virtue of the Rent Restriction Act after his contractual tenancy has been properly determined by notice to quit or otherwise; and it is a fallacy to assume that he remains a contractual tenant, dormant or otherwise, until a Court of competent jurisdiction pronounces on the validity of a notice to quit as a step in determining whether to make an order for possession under the Rent Restriction Act, or that he has a tenancy created by statute under that Ordinance. The expression “statutory tenancy” is a popular expression, first used by Lord Colerige J in Hunt v. Bliss (1919) 89*

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<sup>5</sup> Mag. App. No. 169/84 at pages 6 - 7.

*L.J.K.B. 174 at 177 to describe the “status of irremovability” acquired by a tenant who continues in occupation under the Rent Restriction Act after his contract of tenancy is determined. Determination of the contractual tenancy is a prerequisite to the coming into being of a “statutory tenancy” since a “statutory tenancy can only come into existence to use the language of Section 15(1) of the Act ... by the circumstances that a contractual tenant retains possession of the subject matter of the tenancy after the contract has been determined”: per Raymond Evershed M.R., in *Strutt v. Pantor* [1953] 1 All ER 445 at 446. What continues to subsist are the terms and conditions of the original contract but only in so far as they are consistent with the provisions of the Act. The “statutory tenant” has no interest in the land but merely a personal right to remain in occupation, a statutory license so to speak, and unlike a contractual tenancy it cannot be transferred by the “statutory tenant” to another inter vivos, or pass under his will, or vest in his legal personal representative: *Keeves v. Dean* [1924] 1 KB 687, and *Lovibond & Sons v. Vincent* [1929] 1 KB 687.” (emphasis mine).*

26. In *Alexander v Rampersad*,<sup>6</sup> the Court of Appeal applied *De Haney (supra)* in its determination. Hamel-Smith JA. stated as follows:

*“Likewise, in this case, where it is beyond doubt that the contractual tenancy had come to an end before the introduction of the Act, and on the very argument of the appellant that he had become a statutory tenant, the appellant cannot avail himself of the benefit of the Act...”*

27. In the Privy Council decision of *Ramdass v Bahaw-Nanan*<sup>7</sup> the Appellant claimed entitlement to a statutory lease pursuant to the LTA. On the facts of the case, an annual tenancy existed between the predecessors in title of both the Appellant and the Respondent. The trial judge accepted that a Notice to quit was duly served upon the Appellant’s predecessor in title which lawfully terminated the tenancy from 1978 and found that by virtue of him remaining in possession until the time of his death in 1984, he became a statutory tenant under the RRA (the Appellant having succeeded him), which did not entitle him to a statutory lease under the LTA. In his judgment, the trial judge held that the Appellant succeeded his predecessor in title as a statutory tenant under the RRA in respect of the disputed parcel of land and that the LTA did not apply to a statutory tenancy so as to convert

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<sup>6</sup> Civ App No. 11/1989.

<sup>7</sup> PCA No. 38 of 2009.

it into a statutory lease. This decision was upheld by the Court of Appeal who dismissed the Appellant's case as being without merit.

28. The Privy Council subsequently dismissed the appeal and upheld the decision of the lower courts with the exception of an adjustment to the timeframe for the payment of mesne profits. In delivering the judgment, Lord Walker considered the effect of the RRA and the LTA on the status of the Appellant and opined that the principal issue for determination was whether the Appellant as a statutory tenant pursuant to the RRA became entitled to a statutory lease on the passing of the LTA on 1<sup>st</sup> June, 1981.
29. In support of the Appellant's case, his Counsel, Mr. Beharrylal argued that De Hayney (supra) and Alexander (supra), which were followed by the lower court, to be erroneous. However, the Privy Council also affirmed these decisions and Lord Walker stated as follows in this regard:

*"22. ... In De Hayney v Ali the facts were essentially similar to those of the present case. The leading judgment in the Court of Appeal was given by McMillan JA (Ag), with whom des Iles and Warner JJA agreed. He treated the expression "tenant" in the Land Tenants (Security of Tenure) Act as having a "restricted and specific meaning." Following some English authorities including Keeves v Dean [1924] 1 KB 685, he observed,*

*"The 'statutory tenant' has no interest in the land but merely a personal right to remain in occupation, a statutory licence so to speak ..."*

*He has no transmissible interest and no contractual tenancy, which is essential to the main part of the definition. He rejected an argument based on the definition's reference to "by operation of law or otherwise" since those words were directed to the manner in which the tenant acquired his interest, and did not detract from the need for an interest under a contractual tenancy. The fact that section 15(1) of the Rent Restriction Act applied the terms of the former tenancy (which were contractual) to the statutory tenancy did not alter the nature of the latter from a statutory relationship to a contractual one.*

*23. In Alexander v Rampersad the facts were rather different ... But on the central issue the tenant's arguments were essentially the same as in De Hayney v Ali, and the Court of Appeal (Sharma, Hamel-Smith and Warner JJA) followed that decision...*

24. ... Mr Beharrylal submitted that it would be absurd if a contractual tenant could, simply by the landlord serving a notice to quit (and without any order for possession being sought or made against him), be deprived of the substantial benefit of a 30-year statutory lease (renewable for a further 30 years and with an option to purchase). But that point cuts both ways. The Act was indeed conferring substantial benefits on tenants, as is marked by its passage through Parliament by the special procedure in section 13 of the Constitution. A statute which deprives landlords of property rights must be construed with some degree of strictness. That is, in the Board's opinion, a further reason for concluding that the Court of Appeal reached the right conclusion in the two cases which are challenged."

30. In the recent decision of **Rajaram v H.V. Holdings Limited**<sup>8</sup> the Claimant sought, *inter alia*, a declaration that he was a statutory tenant of a parcel of land owned by the Defendant pursuant to the LTA and as a consequence was permitted to exercise the option to purchase the said land. The Defendant contended that the tenancy was terminated by a Notice to quit effective 1971 and as such when the LTA commenced there was no contractual tenancy available for conversion. The parties agreed that the only issue for determination was whether the tenancy was duly terminated by the said Notice to quit. Kokaram J. stated as follows:

"2. It is common ground and accepted by the parties that if the contractual tenancy had been determined by the service of the notice to quit before the appointed day (1st June 1981) then the Claimant could not claim the benefit of the statutory tenancy under section 3 of the said Act. The entitlement is in fact tied to an existing tenancy. See *Kumar v Ramcharitar HCA No. 3924/89 per Archie J.* and *Alexander v Rampersad C.A. 11/89 per Hamel Smith J.A.* The tenancy being protected under the Rent Restriction Act Chap 59:55 upon being terminated by the service of a valid notice to quit would bring the contractual tenancy to an end. However if the tenant remains in occupation, it would not be by virtue of the contractual tenancy but until the landlord can validly obtain possession by the provisions of the Rent Restriction Act. For this reason the nature of that tenancy is described as a "statutory tenancy".

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<sup>8</sup> CV No. 2014-02288 – delivered on 26<sup>th</sup> May, 2015.

31. Having considered the evidence, Kokaram J. found on a balance of probabilities that he was not satisfied that the Notice to quit was served and as such the contractual tenancy subsisted which was thereafter converted into a statutory lease under the LTA.

32. In the instant matter, it was undisputed that the Claimant was served with a Notice to quit dated and served on 15<sup>th</sup> April, 1971. At paragraphs 4 and 5 of the Statement of Case it was pleaded that:

“4. On 15<sup>th</sup> April, 1971 the Defendant and/or its servants and/or agents of its predecessors in title, personally served on the Claimant what purported to be a Notice to Quit with respect to the said property.

5. Since the 15<sup>th</sup> April, 1971, the Claimant has been in occupation of the said property and has been living there for over thirty (30) years and has continued to pay rent to the Defendant...”

33. By way of its defence, the Defendant pleaded that the Notice to quit effectively determined the contractual tenancy of the Claimant and a copy of the said Notice to quit dated 15<sup>th</sup> April, 1971 was annexed.

34. In his evidence,<sup>9</sup> Kamal Arman stated that a Notice to quit dated 15<sup>th</sup> April, 1971 was served on the Claimant purporting to terminate the tenancy of his grandfather. Under cross-examination the Claimant stated as follows when asked about how he came to the conclusion that the Notice purportedly terminated his grandfather’s tenancy:

“My grandfather at the time was the tenant as far as I am aware, until his death. I am not saying that the Notice terminated the tenancy of my grandfather. My grandfather died in 1970. As far as I am aware, my aunt was not the tenant. I am saying that in April 1971 I am not certain if she was a tenant or not. I am aware that I am representing Jasiman here in this matter.”

35. In his evidence,<sup>10</sup> Byron Gopaul stated that he was present when the Notice to quit was served upon the Claimant by Mr. H.B. Webster (on behalf of H.V. Gopaul) on 15<sup>th</sup> April, 1971. He also stated that the Claimant did not deliver up possession of the said property

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<sup>9</sup> Witness Statement of Kamal Arman filed on 25<sup>th</sup> January, 2013 – Para 3.

<sup>10</sup> Witness Statement of Byron Gopaul filed on 25<sup>th</sup> January, 2013– paras 5 – 6.

when the Notice expired. Under cross-examination, Byron Gopaul stated the following in answer to the question as to how the Claimant became a tenant:

*“She became tenant by virtue of the Rent Restriction Act. The father was the tenant, Nabie Baksh Arman. She became tenant by operation of law.”*

36. Mr. Gopaul was not cross-examined in relation to the service of the Notice to quit upon the Claimant.

37. Bearing in mind my earlier finding that the Claimant was a contractual tenant as at 15<sup>th</sup> April, 1971 and the unchallenged evidence of Mr. Gopaul that on 15<sup>th</sup> April, 1971, she was served with a Notice to quit on behalf of H.V. Gopaul, I find that the Notice to quit was duly served upon the Claimant and, as a consequence, the contractual tenancy that existed between the Claimant and H.V. Gopaul was effectively determined on 31<sup>st</sup> December, 1971. Further, I find that the Claimant became a statutory tenant pursuant to the RRA when she failed to deliver up possession to the landlord and that she remained in possession as a statutory tenant after the termination of her contractual tenancy.

38. As a statutory tenant under the RRA the Claimant did not hold a transmissible interest in the said property that was capable of disposition under a will or vesting in a legal personal representative but merely possessed a personal right to occupy the said property until the expiration of the RRA on 23<sup>rd</sup> February, 2002.<sup>11</sup>

*C (i): If the contractual tenancy was terminated by the Notice to quit, what was the effect, if any, of the subsequent payment and acceptance of rent?*

39. In the Court of Appeal decision of Jumadeen v H.V. Holdings Limited<sup>12</sup> de la Bastide CJ., rejected the argument that the acceptance of rent over a long period subsequent to the determination of a contractual tenancy could give rise to a new one. He stated as follows:

*“To my mind this submission is as strange and as novel as the last one. I would have thought that it was well established law that the acceptance of rent per se from a person whose contractual tenancy has been terminated but who continues under the protection of Rent Restriction legislation, does not provide any basis for inferring the creation of a new contractual tenancy...”*

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<sup>11</sup> PCA No. 38 of 2009 at paras 11 – 13.

<sup>12</sup> CA No. 93 of 1988 at pages 10-11 – delivered 17<sup>th</sup> May, 1996.

*... it seems to me quite immaterial how long rent is received by the landlord from a person in his position. The effluxion of time does not confer on the owner of controlled premises any ground for removing therefrom a person whose possession is protected by the Rent Restriction Ordinance, as long as such a person remains in possession and no facts which would constitute a ground for ejecting him arise.*

*The owner has no option but to do nothing and make the best of his situation by accepting rent. It would seem to me quite illogical therefore to infer from the fact that that situation has existed for a long time, any intention on the part of the landlord to create a new contractual tenancy."*

40. According to **Section 15(1) of the RRA**, a statutory tenant continues to retain possession with the continued obligations and benefits as existed under the terms and conditions of their former contractual tenancy, providing that said terms and conditions are in accordance with the RRA.
41. It is not disputed by the parties that subsequent to the service of the Notice to quit dated 15<sup>th</sup> April, 1971 the Claimant continued to pay rent to H.V. Gopaul and subsequently to the Defendant for a period in excess of thirty (30) years and such payments were accepted.
42. In his evidence Byron Gopaul stated that the acceptance of rent was on the basis that the Claimant was a statutory tenant and, as such, obligated to pay rent and could not be evicted unless the stipulations of the RRA were complied with. He went on to note that several of the rent receipts expressly stated that it was without prejudice to the Notice to quit.
43. Under cross examination Mr. Gopaul was shown exhibit K.A. 15 which comprised rental receipts for the years 1988 to 1995. When shown Receipt Nos. 9015, 9099, 9173 and 9244, he stated that the endorsement "Payment received subject to Notice to quit served on 23/4/71" which appears to the top meant that payment was received subject to that Notice. He also stated that these receipts were signed by Ali Kazim and the endorsements were made by him, based on the advice of the Defendant's Attorneys-at-Law in respect of the statutory tenancies. However, when shown Receipt Nos. 8848, 8849 (both dated 2<sup>nd</sup> June, 1986) and 9482 (dated 20<sup>th</sup> June 1995), he admitted that these receipts were not so endorsed since the Attorneys-at-Law had not yet given advice to include such endorsements on the receipts.



44. In his evidence, Kamal Arman stated that the first time that the endorsement, "Payment received subject to Notice to quit served on 23/4/71" was made on the rent receipts was in 1989. He stated that in late 1989, Mr. Ali Karim asked him to bring all of the Claimant's receipts for accounting purposes and due to his scepticism at this request he only carried two receipts for 1988 and 1989. He specifically noted that these receipts initially bore no such endorsement and it was only upon their reproduction to Mr. Ali Karim that the handwritten endorsement was made and thereafter returned to him. Kamal Arman further stated that while the other receipts for the years 1985 to 1987, which he had not handed over to Mr. Karim, bore no such endorsement, all subsequent rent receipts that were issued carried similar endorsements.
45. Under cross examination when Counsel for the Defendant put to Kamal Arman that the aforementioned events never occurred, he stated that he was present and knew what transpired.
46. In his closing submissions Counsel for the Claimant submitted that the collection of rent from the Claimant amongst other factors led to the conclusion that the Claimant was accepted as a tenant.
47. Counsel for the Defendant relied on Section 15(1) of the RRA as well as the authorities of Jumadeen (supra) and De Haney (supra) in support of the contention that the payment and acceptance of rent were consistent with the statute and not determinative of the existence or subsistence of a tenancy.
48. In the first instance, I am of the opinion that it is not necessary for me to determine whether the endorsements were in fact made according to the version of events posited by the Claimant or the Defendant since on this issue the Court is required to decide, as a matter of law, whether the payment and receipt of rent subsequent to 31<sup>st</sup> December, 1971 gave rise to the creation of a contractual tenancy in favour of the Claimant. In my opinion, having regard to the decision in Jumadeen (supra),<sup>13</sup> the payment of rent by the Claimant along with the Defendant's acceptance of said rent did not evidence an intention to create a new contractual tenancy nor did it revive the contractual tenancy which had been determined by the Notice to quit. Further, the payment of rent by the Claimant and the acceptance thereof by the

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<sup>13</sup> Ibid at page 10.

Defendant were in keeping with the stipulations of the former contractual tenancy and, in my opinion, were consistent with the provisions of the RRA.

49. Accordingly, I find that the payment and acceptance of rent did not have any effect on the status of the Claimant as a statutory tenant subsequent to termination of the contractual tenancy.

*Issue C (ii): If the contractual tenancy was terminated by the Notice to quit, what was the effect, if any, of the Application of the Claimant for the determination of standard rent (No. 61/73) and the consequential order of the Board dated 7<sup>th</sup> June, 1973?*

50. By virtue of Section 8 of the RRA applications can be made to the Board to have a standard rent determined for any applicable premises. Section 8(3) specifically states that:

*“8(3) The landlord or the tenant of any premises to which this Act applies may at any time apply to the Board to determine the standard rent thereof appropriate to the category of letting in which they are let.”*

51. In the Claimant’s Amended Reply, it was alleged that H. V. Gopaul participated in the application of the Claimant for the determination of standard rent before the Board (No. 61/73) and by virtue of such participation H.V. Gopaul acknowledged the existence of the Claimant's contractual tenancy. Further, it was alleged that by virtue of such participation, coupled with the Board’s determination of the standard rent, the Defendant was estopped from denying that the Claimant was a contractual tenant.

52. The Defendant did not dispute the Claimant's application to the Board, the participation of its predecessor in title, H.V. Gopaul as Respondent in the proceedings and the Board’s subsequent determination of standard rent for the disputed property.

53. In his closing submissions<sup>14</sup> Counsel for the Claimant argued that the Defendant did not adduce any evidence to refute or controvert the estoppel pleaded in the Reply in relation to H.V. Gopaul’s participation in the proceedings before the Board and that the Defendant failed to cite any authority to contradict the legal significance of such participation. In support of this submission, Counsel relied on Turner v Beharry HCA No. 2342 of 1993 per

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<sup>14</sup> Claimant’s Closing Submissions filed on 9<sup>th</sup> March, 2015 at para 6.

Sealey J. at pages 10-11 and Dickson v Singh Civ. App No. 14 of 2003 per Warner J. at page 6.

54. In his closing submissions,<sup>15</sup> Counsel for the Defendant responded that, as a statutory tenant, the Claimant's rent was regulated by the RRA which provides for the determination of standard rent. He also submitted that the landlord is entitled to receive rent as determined by the Board and his participation in the said application did not convert the Claimant's status from a statutory tenant to a contractual tenant. He relied on the authority of Dean v Bruce (1951) 1 K.B.11.
55. In my opinion, the Application of the Claimant for the determination of standard rent and the consequential order of the Board had no effect on the status of the Claimant as a statutory tenant. The said application was made by the Claimant pursuant to Section 8 of the RRA which allows either party to make such an application to the Board. Accordingly, when the Claimant filed the Application and H.V. Gopaul participated in the hearing of that Application, this was entirely consistent with the Claimant invoking the procedure expressly provided for in the RRA. Therefore, the participation of H.V. Gopaul in the hearing of the Claimant's Application and the Board's determination of the standard rent did not amount to an acknowledgment of the existence of a contractual tenancy and the Defendant is not estopped from denying that the Claimant was a contractual tenant.
56. Further, upon an examination of the authorities cited by Counsel for the Claimant, both Dickson (supra) and Turner (supra) can be distinguished from the instant matter since in those cases the contractual tenancy had not been determined whereas in this matter the contractual tenancy of the Claimant was determined by the notice to quit served upon her on 15<sup>th</sup> April 1971.
57. In Dickson (supra) Warner JA. concluded that at the commencement of the LTA, *the contractual tenancy not having been determined,*<sup>16</sup> the Plaintiff/Appellant's subsisting tenancy was converted into a statutory lease. She held that based on the totality of the evidence, "*the documentary evidence, the receipts for rent in the name of the plaintiff, the defendant's application to the Rent Board naming the plaintiff as his tenant,*" there was

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<sup>15</sup> Defendant's Closing Submissions filed on 19<sup>th</sup> January, 2015 at para 6.

<sup>16</sup> Civ App No. 14 of 2003 – delivered 24<sup>th</sup> January, 2005.

cogent evidence that the tenancy subsisted and the Defendant/Respondent had not adduced any evidence in rebuttal. Warner JA. also stated as follows:

*“8. ... The expression “a statutory tenant” refers to a person who, after his contractual tenancy has expired, or has been lawfully determined retains possession of the demised premises by virtue of the provisions of the Rent Act and this seems the only way in which a person can become a statutory tenant. (See Hill and Redman 14<sup>th</sup> Edition page 1061).”*

58. In **Turner (supra)** Sealey J. found that, *inter alia*, the Claimant was a tenant under the LTA. The Defendant had argued, *inter alia*, that the Claimant had surrendered his tenancy of the disputed parcel of land by agreement between the parties in January 1981 and as a consequence by the time the LTA came into force, the Claimant was no longer a contractual tenant. Sealey, J. rejected this contention stating that there was no evidence of such an agreement or surrender, either expressed or implied.

***Issue C(iii): If the contractual tenancy was terminated by the Notice to Quit, what was the effect, if any, of the Application of the Defendant for an increase in rent pursuant to Section 5A of the LTA dated 12<sup>th</sup> November, 2001?***

59. By virtue of **Section 5A of the LTA** a landlord or tenant may apply to the Land Commission to have a review of rent in respect of land to which the LTA applies. The section states:

*“5A. (1) The Land Commission may on the application of a landlord or a tenant review the rent in respect of land to which this Act applies in any area for which a Rent Assessment Board has been constituted under the Rent Restriction Act.*

*(2) Until the Land Commission is appointed, rent may be reviewed by the Rent Restriction Boards for their respective areas and such Boards shall exercise the powers of the Land Commission under this section.*

*(3) For the purpose of the review of rent the Minister shall by Order specify the matters to which the Land Commission or the Rent Assessment Boards, as the case may be, shall have regard in undertaking a review.*

*(4) An Order of the Minister under this section is subject to affirmative resolution of the House of Representatives.*

*(5) A review under this section shall be conducted in accordance with procedures provided for in Regulations made by the Minister under section 18.”*

60. In her Amended Reply, the Claimant alleged that the Defendant unequivocally acknowledged the Claimant *as a statutory tenant under the latter Act* by virtue of its application to the Board pursuant to **Section 5A of the LTA** for a review of rent. This was based on the fact that the summons was filed in the form prescribed by the LTA. As a consequence, the Claimant contended that the Defendant was estopped and/or precluded from denying the status of the Claimant as a statutory lessee protected by the LTA.

61. The Defendant did not dispute that in November 2001 it made an application to the Board. At paragraph 11 of his witness statement Byron Gopaul stated as follows:

*“11. ... the company made an application to the Rent Assessment Board for an increase in the rent. This application was incorrectly done and was withdrawn in January 2002 without any steps being taken other than its filing.”*

62. Under cross-examination on this aspect of his evidence, Byron Gopaul stated as follows:

*“I made application for increase in rent in 2001. I did that on prescribed form. There were two applications, both for increases in rent. I don't remember date.”*

63. When shown the Summons for Review of Rent, made pursuant to **Section 5A of the LTA**, Byron Gopaul stated:

*“ This is application for review of rent. This is the form under the Security of Tenure Act. We were not making application under that Act. We were making the application under the Rent Restriction Act. The only form they had was for Security of Tenure Act. When that was recognised we withdrew application.”*

64. At paragraph 34 of his witness statement, Kamal Arman stated that in or about January 2002 the Claimant was summoned before the Board for the hearing of the summons for the review of rent but the matter was eventually not dealt with as a Board had not been appointed since 23<sup>rd</sup> September, 2002. However, under cross-examination, he admitted that it was correct to say that the matter was withdrawn by the Defendant on 24<sup>th</sup> January, 2002. He also admitted that the application made by the Defendant was an application by the landlord for an increase in rent.

65. In his Closing Submissions,<sup>17</sup> Counsel for the Claimant argued that the Defendant's use of the prescribed form under the LTA was conclusive evidence that the Claimant was being acknowledged as a statutory lessee. Counsel also submitted that the Defendant had not adduced any evidence to refute or controvert the estoppel pleaded by the Claimant in her Reply with regard to this issue. The authorities of Turner (supra) and Dickson (supra) were again relied upon by Counsel.
66. In his Closing Submissions,<sup>18</sup> Counsel for the Defendant submitted that there was no representation made to the Claimant by the Defendant that the application was under the LTA. Further, he submitted that the Claimant did not act upon the application nor did she suffer any detriment as a result of it. He emphasised that the Claimant had admitted that the application was for a rent increase which could only be made pursuant to the RRA and not the LTA. Counsel submitted that, in any event, a statutory lease could only be created at the time of commencement of the LTA, which would have been on 1<sup>st</sup> June, 1981.
67. I accept the evidence of the Defendant that the application filed by the Defendant was for an increase in rent and that when he discovered that the application had been incorrectly made on the form under the LTA, the same was withdrawn. This evidence is entirely consistent with the evidence adduced by the Defendant which clearly demonstrates that the Defendant had consistently taken the position for several years prior to 2001 that the Claimant was a statutory tenant, and not a statutory lessee protected by the LTA. In the circumstances, I am not persuaded that the Defendant, by making the application for an increase in rent in the manner which it did, acknowledged the Claimant as a statutory lessee under the LTA or that the Defendant is estopped from denying that the Claimant is a statutory lessee entitled to the protection of the LTA.
68. Accordingly, I find that the Defendant's application did not have any effect on the status of the Claimant as a statutory tenant protected by the RRA.

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<sup>17</sup> Claimant's Closing Submissions filed on 9<sup>th</sup> March, 2015 at para 1.

<sup>18</sup> Defendant's Closing Submissions filed on 19<sup>th</sup> January, 2015 at para 11.

**D. If the contractual tenancy was not terminated by the Notice to quit, did the Claimant become a statutory lessee under the LTA and if so, is the Claimant entitled to the reliefs claimed?**

69. **Section 4(1) of the LTA** states as follows in relation to the conversion of tenancies to statutory leases:

*“4. (1) Notwithstanding any law or agreement to the contrary but subject to this Act, every tenancy to which this Act applies subsisting immediately before the appointed day shall as from the appointed day become a statutory lease for the purposes of this Act.”*  
(emphasis mine).

70. Accordingly, in order to become a statutory lessee under the LTA there must be a subsisting tenancy as at 1<sup>st</sup> June, 1981 when the LTA came into operation, which was capable of conversion at the appointed day: **De Haney (supra)**, **Ramdass (supra)** and **Rajaram (supra)**. Taking into account that the Claimant was duly served with a notice to quit dated 15<sup>th</sup> April 1971 and my earlier determination that this notice effectively terminated the contractual tenancy between the Claimant and the Defendant on 31<sup>st</sup> December, 1971, I am of the view that there was no subsisting contractual tenancy to which the provisions of the LTA could apply so as to be capable of conversion to a statutory lease on 1<sup>st</sup> June, 1981.

71. Therefore, since the notice to quit terminated the contractual tenancy prior to the commencement of the LTA, the Claimant did not become a statutory lessee under the LTA and the Claimant is not entitled to the reliefs sought.

72. In any event, Counsel for the Claimant accepted in his written closing submissions that since the Claimant had failed to discharge the legal and evidential burden of establishing that service of a Notice of a renewal had been effected, she was not entitled to the reliefs sought at paragraphs 5(i) and 5(iv) herein, namely:

- a. A declaration that the Claimant is a statutory tenant of the said property under the terms of the LTA; and
- b. Further and/or alternatively, an Order compelling the Defendant to transfer the tenancy of the said property to the Claimant and his son, Steve Arman, pursuant to **Sections 5(8) and 10(1) of the LTA.**

73. However, Counsel for the Claimant submitted that the Claimant was still entitled to a declaration that the Claimant is entitled to purchase the said property under **Sections 5(5) and 9(1) of the LTA** and an Order compelling the Defendant to sell at no more than one half of the market value based on the several expressions by the Claimant of her desire to purchase the said property. Counsel for the Claimant further submitted that even if the Tenant's Notice of desire to purchase dated 10<sup>th</sup> January, 1983 is statute barred, the subsequent notifications by the Claimant's Attorneys-at-Law supported the Claimant's entitlement to purchase since the LTA does not deprive the Claimant of the right to exercise the option to purchase at any time during the subsistence of the statutory lease. He added that these proceedings were commenced during the subsistence of the statutory lease.
74. Counsel for the Claimant argued that although the Claimant's subsequent notifications were not in compliance with Form 3, the Claimant had furnished the Court with ample documentary evidence of her intention to purchase the property. Further, he argued that the Defendant did not comply with Form 5 so it cannot insist upon the Claimant's strict compliance with the formalities of the Tenant's Notice of desire to purchase in Form 3.
75. Counsel for the Claimant further submitted that the Tenant's Notice of desire to purchase dated 10<sup>th</sup> January, 1983 stated a value of \$40,187.96 and the Claimant's evidence at paragraph 19 of Kamal Arman's Witness Statement was not challenged in cross-examination. He also argued that in any event, the Court may determine the market value pursuant to **Section 9 (5) and (6) and 11 (1) of the LTA** and the Court could use the date of the last of the notifications as the material date for valuation purposes.
76. In my opinion, these submissions presuppose that the Claimant was a statutory lessee under the LTA. However, having already found that the Claimant was a statutory tenant as at the 1<sup>st</sup> June 1981 and not entitled to the benefit of a statutory lease pursuant to the LTA, I cannot accept the submissions of Counsel for the Claimant.

### **SUMMARY AND CONCLUSION**

77. I have found that:

- a. the Claimant was a contractual tenant prior to the service of the notice to quit dated and served on 15<sup>th</sup> April, 1971;



- b. the notice to quit served upon the Claimant effectively determined her contractual tenancy and her continued occupation thereafter of the said property was as a statutory tenant under the RRA;
- c. the said contractual tenancy was not revived by the subsequent payment and acceptance of rent from the Claimant and/or by the Application by the Claimant for the determination of standard rent (No. 61/73) and the consequential order of the Board dated 7<sup>th</sup> June, 1973 and/or the Application of the Defendant for an increase in rent pursuant to the LTA dated 12<sup>th</sup> November, 2001;
- d. the Claimant was not a contractual tenant but a statutory tenant under the RRA as at the date of commencement of the LTA and, as such she was not entitled to the benefit of a statutory lease under the LTA; and
- e. the Claimant is not entitled to the reliefs sought.

78. Based on these findings, I am of the view that the Claimant is not entitled to any of the reliefs sought and this claim must be dismissed.

**ORDER**

79. In the circumstances, I hereby order that:

- a. The Claimant's claim be dismissed; and
- b. The Claimant do pay the Defendant's costs of this action in the amount of \$14,000.00, pursuant to Part 67.5 of the Civil Proceedings Rules (1998) as amended.

**Dated this 5<sup>th</sup> day of November, 2015**

The Honorable Mr. Justice André des Vignes  
.....  
Supreme Court of Trinidad and Tobago  
**André des Vignes**  
**Judge**

