

1955  
Sept. 22

[HALLINAN, C.J., and ZEKIA, J.]  
(September 22, 1955)

MURUDE  
MEHMET ALI

MURUDE MEHMET ALI of Nicosia, *Appellant,*

v.

v.

HASSAN REMZI  
SHENIKLI

HASSAN REMZI SHENIKLI of Nicosia, *Respondent.*  
(*Civil Appeal No. 4142*)

*Rent Control Law, 1954—Claim for possession under section 18 (1) (i)—Permit to demolish premises—Sufficient if obtained before hearing.*

The plaintiff, the landlord of certain premises, claimed under section 18 (1) (i) of the Rent Control Law, 1954, possession from the defendant, a statutory tenant, as the premises were required for demolition. Sec. 18 requires the landlord to obtain the necessary permit to demolish before an order for possession can be made. He obtained this permit after the service of the notice to determine the statutory tenancy but before action brought. The trial Court held that the claim failed as the permit must be obtained before proceedings are begun.

*Held:* In cases under the Rent Control Law, 1954, the circumstances relevant to this claim, including the obtaining of a permit by the landlord, are those existing at the date when the case is heard.

Appeal allowed.

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Appeal by plaintiff from the judgment of the District Court of Nicosia (Action No. 3923/54).

*Umit Suleiman* for the appellant.

*M. Triantafyllides* for the respondent.

The facts sufficiently appear in the judgment delivered by:

HALLINAN, C.J.: In this case the owner of certain premises, the appellant, terminated the contractual tenancy by a notice on the 26th April, 1954, and on the 14th July of that year he served a notice on the tenant, who is the respondent, giving notice that the statutory tenancy would be terminated at the end of three months as the premises were required for demolition and rebuilding. This last notice expired on the 2nd November and on the 3rd November the appellant obtained a permit from the competent authority to demolish the premises. This action was commenced on the 2nd December, 1954, and it was heard on the 29th April, 1955. Section 18 (1) (i) of the Rent Control Law, 1954 (No. 13 of 1954) provides that a Court may give an order for possession if it is satisfied that the landlord requires the premises for purposes of demolition, that he has obtained the necessary permit to demolish and that he has given the tenant not less than three months' notice in writing to vacate the premises.

The respondent admitted that the premises were required for demolition and that he had received the required three months' notice, but he submitted that this notice was bad because at the time when it was served the landlord had not yet obtained a permit from the competent authority. The Court below upheld this submission on the ground that on the true construction of the section and the reasonableness of the construction which the respondent sought to put on that section, the condition of obtaining a permit and the condition of three months' notice were not separate but the validity of the notice was dependent on the landlord having obtained the permit before the notice was served.

Considerable reliance was placed on the inconvenience which a tenant would suffer if on receiving the notice he did not know whether the landlord would get his permit to demolish or not. It would appear to us that this point can be answered shortly by saying that when a tenant continues in possession in the hope that the landlord will not get a permit it is incumbent on the tenant to inform the landlord that he will remain in possession until the landlord acquaints him with the fact that a permit has been obtained. There is no suggestion in the present case that the tenant followed this course.

We consider that there should be applied in this case the well known principle in Rent Act cases that the circumstances relevant to a claim, both as to reasonableness and, in general, the specific heads, are those not when proceedings are commenced but at the date of the hearing of the trial Court. We consider that this principle should apply to the interpretation of paragraph (i) and it is sufficient if the landlord has obtained a permit on the day of the hearing. At the same time it is open to a Court in considering the reasonableness of the landlord's claim to inquire whether the tenant asked the landlord to inform him when a permit was obtained and if the landlord did so inform the tenant, or whether the landlord commenced his action before obtaining the permit.

In the circumstances of the present case we consider that the landlord has fulfilled the conditions provided in para. (i) and that it is reasonable to make an order for possession subject to section 19 of the Law which provides for the payment of compensation where the tenant of the premises was carrying on a trade therein. *We therefore hold that the fact that the permit was not obtained until after the notice was issued is not a defence, and this case is sent back to the trial Court to determine what compensation, if any, should be paid to the tenant for the loss of occupation of the premises and we direct that this issue be given an early trial in the District Court.*

*Appellant is entitled to his costs up to the date of this judgment.*