

BARBADOS

**IN THE MAGISTRATES' COURT FOR DISTRICT 'A'
CIVIL JURISDICTION**

**WILBERT HOOD
AND
VIRGINIA EDWARDS**

DECISION

BACKGROUND

A Notice to Quit dated November 24, 2005 was served on the tenant Ms. Edwards on November 30, 2005.

The Notice requested that she vacate the house spot by 31st day of May, 2006. The subsequent two notices: Notice of Owner's Intention to Apply to a Magistrate to Recover Possession and the Complaint, were served on the tenant.

On September 19, 2006 the application for ejectment order came on for hearing.

The Landlord noted in the complaint that Mr. Wilbert Hood and his counsel were present. The tenant was served and was absent. An Order to Quit and deliver up possession on or before November 20, 2006 was made.

The initial issues before the court were:

- (i) Does the house spot form part of a tenantry?

- (ii) Is the Complainant the Landlord of the tenant?
- (iii) Did the tenant receive the second and third notices namely: Notice of Intention and the Complaint before the Magistrate?
- (iv) If the house spot does constitute part of a tenantry, does the service of a Notice of Intention to purchase nullify a Notice to Quit which was served prior to that Notice?
- (v) If it is a tenancy, whether refusal to accept the rent should nullify a Notice to Quit?

Issues that arose during evidence:

- (i) Was rent paid during the Notice to Quit?
- (ii) Did the purported landlord Mr. Wilbert Hood sign the Notice to Quit before the court?

Laws of Facts

Some of issues need not be dealt with because of the prominence of others.

Collection of rent during Notice to Quit.

Mr. Hazel Hood - the only person to ever collect rent from Ms. Edwards said that he collected rent at 1st January 2006. This would be during the Notice to Quit dated November 24, 2005. He admitted to not always giving receipt for the land rent.

He said twice in examination in chief and once in cross-examination that he collected rent in January 2006.

Ms. Edwards said, "Mr. Hazel still took rent during those two Notices to Quit."

The Court accepts this as a fact and accordingly the acceptance of rent would nullify the Notice to Quit.

Whether Notice of Intention and Complaint were served on Tenant

This issue arose in Affidavit of the tenant but no evidence was given by any person on this issue.

The Court must hold that those documents were properly served. As a consequence the matter before the court should be dismissed.

However, the court is mindful that the landlord can commence action again and similar issues such as who is landlord and whether it is a tenantry would arise.

The Court therefore would address the other issues.

Who is the Landlord?

The only person Ms. Edwards paid rent to was Mr. Hazel Hood. Mr. Hazel Hood said his brother did not give him permission to rent out the spot. He Hazel collected rent for himself indicating that there was no agency.

However, Ms. Edwards admits that Mr. Hazel Hood told her to deal with Mr. Wilbert Hood. She therefore had knowledge of change in the Landlord from Mr. Hazel to Mr. Wilbert.

The evidence on land ownership

Mr. Wilbert said he owned it. Mr. Hazel said he was told he would own it. The history of the land indicates that Mr. Wilbert as eldest son would own the land.

That fact along with Ms. Edward's evidence that her previous Landlord told her to deal with Mr. Wilbert the Court accepts that Mr. Wilbert is the landlord.

Whether it is a Tenantry

Mr. Wilbert Hood gave evidence that the land had two houses on it. The land was rented out to two houses.

Section 5 – Tenantry Freehold Purchase Act

In summary – allows an area of land subdivided into a maximum of five lots for chattel dwelling house to be a 'tenantry' in certain conditions.

The Tenant must reside on the lot immediately before February 1, 1990 and be a qualified tenant.

Facts

Ms. Edwards resided on one of two lots from 1974. She satisfies five years residential period to be a qualified tenant (Section 4(2)(a)).

She did not exercise her right to purchase the lot by February 1, 1990 but had carried out substantial improvements [5 (2)(b)] by constructing a water borne toilet. Thus she remains a qualified tenant.

Is she entitled to purchase from the Landlord?

According to Section 6, any tenant who is not qualified in accordance with Section 5 has the right to purchase from the Crown a suitable lot at a purchase price to be determined by the Crown or tenant. This does not apply to Ms. Edwards as she is a qualified tenant.

Section 6 also deals with compensation for a tenant under Section 5(1).

Ms. Edwards falls into the ambit of Section 5(2) and not Section 5(1) so she can purchase from her landlord.

Termination of Tenantry

Termination of tenantry under Freehold Purchase Act is governed by the Security of Tenant of Small Holdings Act.

A landlord can only terminate if the rent is in arrears for three months. Court had accepted Mr. Hazel Hood's evidence that he collected rent at January 1, 2006 during the Notice to Quit. Court also accepts Mrs. Edward's evidence that she paid rent during the two Notices to Quit served on her. That is 2001 and 2005.

There is evidence from Ms. Edwards that at some point Mr. Hood refused to take rent from her, Mr. Hazel Hood gave evidence that Wilbert told him not to take rent from Ms. Edwards.

Counsel referred to **Ward v Foster (1992) 28 Barbs L. R Pg 197**. Justice Chase in that case at page 197 said a "Qualified tenant was contemplated by Parliament as a Tenant who fulfilled all of his/her obligations which were embodied in the tenantry


agreement which entitled him/her to enjoy all the rights and privileges attached to the land.”

He further stated that if you are not paying rent when you file a Notice of Intention to Purchase you were not a qualified tenant.

The present case can be distinguished from **Ward v Foster**. The court accepts Ms. Edwards and Mr. Hazel’s evidence of Mr. Hazel refusing to take rent. The court views this as being against the spirit of the Tenantry Freehold Purchase Act. The landlord was attempting to engineer application of Section 12(b) of the Security of Tenure of Small Holdings Act to remove a tenant.

Conclusion

- (i) Ms. Edward is a qualified tenant with a right to purchase from landlord.
- (ii) The landlord is Mr. Wilbert Hood.
- (iii) Notice to Quit is null and void as rent collected during its existence.
- (iv) Application for Order of Ejectment is dismissed.



B. Cooke-Alleyne
Magistrate