

IN THE COURT OF RENT CONTROL, THIRUVALLA

Present:-Sri. Aravind.S.J, Rent Controller.

Monday the 17th day of November 2025/ 26th day of Karthika 1947 SE.

IA 01/2025 in RCP 03/2024.

Between

P.M.Varghese, aged 68, S/o P.M.Mathai, Padikkaveettil
Ebenezar Villa, Vallamkulam East P.O., Eraviperoor
Village, Thiruvalla Taluk, Pathanamthitta District

} Petitioner
Landlord

(By Adv. George.M.George)

And

Abraham John, aged 64, S/o K.M John, Kandathil House,
Kallisserry P.O., Thiruvandoor Village, Alappuzha
District.

} Respondent
Tenant

(By Adv. M.R.Mohandas)

This petition is filed under Section 12 of the Kerala Building (Lease and Rent Control) Act.

This petition having been finally heard on 22.10.2025 and stood over for consideration on 17.11.2025 and on the same day the court passed the following:-

ORDER

The afore numbered application is filed under section 12 of the Kerala Buildings (Lease and Rent Control) Act, 1965 to direct the respondent to deposit the arrears of rent.

2. Petition averments in brief are stated as follows:- Petitioner herein is the petitioner in the Rent Control Petition. The rent control petition is filed under S. 11(2) (b) and 11(3) of the Act seeking eviction of the respondent from the tenanted premises. The total amount due as arrears of rent as on the date of institution of the petition is Rs. 21,44,250/-. In spite of repeated demands, the respondent has not paid the arrears

of rent. The respondent had filed objection to the Rent Control Petition contending that the monthly rent was at the rate of Rs. 12,500/- and denying the actual rate of rent of Rs. 30,000/-. It is also alleged in the objection that he had paid rent till May 2024. The respondent has also admitted that the monthly rent is at present Rs. 15,000/- per month. At any rate, the respondent has admitted that the arrears of rent is Rs. 15,000/- per month and the same is due from June 2024. Even according to the respondent, the total arrears of rent is Rs. 1,80,000/-. The Hon'ble High Court had held in several cases that the court can also consider the documents produced such as the rent deed, payment receipts etc for concluding the arrears of rent in a petition filed under s. 12 of the Act. Though the tenant admits the monthly rent is only @ Rs. 15,000/-, he has not specifically denied the lease agreement executed between the parties. Therefore, the agreement dated 14-03-2018 produced before this court is liable to be accepted for the purpose of considering the petition under S. 12. In that view of the matter, the admitted arrears of rent is liable to be calculated at Rs. 30,000/- per month. More over, no receipts whatsoever was produced by the respondent. Thus the actual admitted arrears of rent is Rs. 21,44,250/- as on the date of institution of the rent control petition. Thereafter a sum of Rs. 3,60,000/- has become due. Thus the total admitted arrears of rent is Rs. 25,04,250/-. Hence this application is filed to direct the respondent to pay or deposit the arrears of rent.

3. Respondent filed objection to the petition contending as follows: The petition is not maintainable either under law or on facts. The petitioner is not residing in the address stated in the petition. The respondent is not a tenant of the respondent. He is only a licensee with respect to the tenanted premises. The petition does not disclose the period from which the license fee is in arrears. The respondent has paid license fee till May 2024. The respondent is liable to pay arrears of license fee from June, 2024 and the same was in arrears as the petitioner was not ready to accept the rent. The licensee produced along with the rent control petition is fraudulent and forged. There was no rent agreement executed on 14-03-2018 or on any other subsequent date as alleged in the petition. The respondent has paid license fee @ Rs.

15,000/- per month till May 2024. The respondent is ready to pay the arrears of license fee from June 2024 @ 15,000/- per month. Hence the petition is liable to be dismissed finding that there is no landlord tenant relationship between the parties.

4. Heard both sides.

5. Points that arose for consideration are:-

1. Is this petition allowable?

2. What is the order as to costs?

6. **Point No.1:-** The petition is filed by the petitioner under section 12 of the Kerala Buildings (Lease and Rent Control) Act, 1965 to direct the respondent/tenant to deposit the arrears of rent. According to the petitioners, the respondent is liable to pay arrears of rent to the tune of Rs 25,04,250/-. The respondent has contended that he is not a tenant of the landlord and he is only a licensee and that he has paid license fee till May 2024 @ 15,000/- p.m. as agreed between the parties. The 1st question to be considered is if there is landlord-tenant relationship between the parties.

7. Even though the petitioner had contended in the present petition that there was a rent agreement dated 14-03-2018, no such agreement was produced by the parties. The only agreement produced is dated 14-03-2013 and the same is a photocopy. The petitioner has filed memo stating that the original of the said lease agreement cannot be found. The respondent in his original petition had admitted that he had paid an amount of Rs. 10,00,000/- on 14-03-2013 as security and that a license deed was executed on the same day. It can only be the document produced by the petitioner along with the Rent Control Petition. Therefore at this juncture, the deed produced by the petitioner dated 14-03-2013 can be considered.

8. The nomenclature of the said document would show that the same is a license deed. However the Hon'ble Apex court in **C.M.Beena v. P.N.Ramachandra Rao** ((2004) 3 SCC 595] held thus, - "8. *The crucial issue for determination is as to*

whether there is a lease or licence existing between the parties. Though a deed of licence may have been executed it is open for the parties to the document to show that the relationship which was agreed upon by the parties and was really intended to be brought into existence was that of a landlord and tenant though it was outwardly styled as a deed of licence to act as a camouflage on the Rent Control Legislation. 'Lease' is defined in S.105 of the Transfer of Property Act 1882 while 'licence' is defined in S.52 of the Indian Easements Act 1882. Generally speaking the difference between a 'lease' and 'licence' is to be determined by finding out the real intention of the parties as decipherable from a complete reading of the document, if any, executed between the parties and the surrounding circumstances. Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created; for the owner retains legal possession while all that the licensee gets is a permission to use the premise for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful [See: Associated Hotels of India Ltd. v. R.N. Kapoor - AIR 1959 SC 1262]. The decided cases on the point are legion. For our purpose it would suffice to refer to a recent decision of this court in Corporation of Calicut v. K Sreenivasan [(2002) 5 SCC 361].

9. A few principles are well settled. User of the terms like 'lease or 'licence', 'lessor', 'rent' or 'licence fee' are not by themselves decisive of the nature of the right created by the document. An effort should be made to find out whether the deed confers a right to possess exclusively coupled with transfer of a right to enjoy the property or what has been parted with is merely a right to use the property while the possession is retained by the owner. The conduct of the parties before and after the creation of relationship is of relevance for finding out their intention.

10. In Hill and Redman's Law of Landlord and Tenant (Seventeenth Edition, Vol.1) a more detailed discussion also laying down the determinative tests, is to be found stated as followed: "It is essential to the creation of a tenancy of a corporeal hereditament that the tenant should be granted the right to the exclusive possession of

the premises. A grant under which the grantee takes only the right to use the premises without being entitled to exclusive possession must operate as a licence and not as a lease. It was probably correct law at one time to say that the right of exclusive possession necessarily characterized the grant as that of a lease; but it is now possible for a licensee to have the right to exclusive possession. However, the fact that exclusive possession is granted, though by no means decisive against the view that there is a mere licence, as distinct from a tenancy, is at all events a consideration of the first importance. Further, a grant of exclusive possession may be only a licence and not a lease where the grantor has no power to grant a lease. In deciding whether a grant amounts to a lease, or is only a licence, regard must be had to the substance rather than the form of the agreement, for the relationship between the parties is determined by the law and not by the title which they choose to put on it. It has been said that the law will not impute an intention to enter into the legal relation of landlord and tenant where circumstances and conduct negative that intention; but the fact that the agreement contains a clause that no tenant is to be created will not, of itself, preclude the instrument from being a lease. If the effect of the instrument is to give the holder the exclusive right of occupation of the land, though subject to certain reservations, or to a restriction of the purposes for which it may be used, it is prima facie a lease; if the contract is merely for the use of the property in a certain way and on certain terms, while it remains in the possession and under the control of the owner, it is a licence. To give exclusive possession there need not be express words to that effect; it is sufficient if the nature of the acts to be done by the grantee require that he should have exclusive possession. On the other hand, the employment of words appropriate to a lease such as 'rent' or 'rental' will not prevent the grant from being a mere licence if from the whole document it appears that the possession of the property is to be retained by the grantor." (at pages 14-15)."

11. Therefore the nomenclature is not material and what is material is the real intention as decipherable from a complete reading of the document, if any, executed between the parties and the surrounding circumstances. The respondent had

contended that page No. 2 of the said document is fraudulently produced and that the same was not executed by the respondent. This court cannot considered the validity of the said agreement at this juncture. However, the learned counsel for the respondent has not denied the stipulations contained in page 3 of the agreement. The conditions laid therein would show that the licensee was directed to take care of the property covered by the license and that the same shall be returned to the owner in the same condition as on the date of the agreement and that the licensee was not permitted to make alterations in the property except with the permission of the owner. It is also stated that in case the licensee wants to terminate the license for any reason, the licensee can do so after three months prior notice to the owner. It is also stated that all expenses including electricity charges that may be incurred by the licensee in the usual course of using the room for their purpose shall be fully met by the licensee. These would show that exclusive possession was handed over to the respondent and prima facie thus it cannot be said that the agreement between the parties is merely a license agreement.

12. Thus, this court is of the opinion that the present petition can be considered by this court. It is now necessary to consider the admitted arrears of rent and the period of such arrears. The honourable High Court in **Koyakkanari Sivadasan v. K.K Nirmala** (2022(3) KLT 313) held that *“The principle that can be deduced from the aforesaid decisions is that in order to ascertain the 'arrears admitted by the tenant to be due' the Court can have an enquiry in a limited sense. The enquiry allowed is scrutiny of the petitions under S.11 and S.12 of the Act, the objections thereto and the other materials brought on record by either parties for purpose only of ascertaining admission regarding landlord-tenant relationship, the rate of monthly rent and the quantum of arrears of rent payable. If the materials on record disclose or infer such admission, the Court shall direct the tenant to pay or deposit the arrears of rent due as on the date of application under S.12 of the Act and continue to pay subsequent rent which falls due during the pendency of the litigation.”*

13. As the respondent is denying the 2nd page of the agreement dated 14-03-2013 stating that the same was not executed by him, this court cannot find that the rent is Rs. 30,000/- as alleged by the petitioner. Moreover, there is no receipt produced to show that the respondent was paying rent to the tune of Rs 30,000/- per month. The specific case of the respondent in the objection filed to the present petition and in the objection filed to the Rent Control Petition is that the fee is Rs. 15,000/- per month and that the same was paid till May 2024 and that the arrears is only from June 2024. Thus, this court is of the opinion that the admitted arrears of rent can be taken only to the tune of Rs. 15,000/- per month from June, 2024.

14. As per section 12 of the Kerala Buildings (Lease and Rent Control) Act, 1965, a tenant cannot contest the eviction proceedings unless he deposits or pays all arrears of rent admitted to be paid up to the date of payment and continues to pay or deposit, as the case may be, until the termination of the proceedings in the Rent Control Court. The respondent has also not denied the fact the rent is in arrears from June 2024. As the respondent has admitted the arrears of rent from June 2024 at the rate of Rs 15,000/- per month, this court is of the opinion that he is liable to pay the amount at the rate specified above and thereafter continue to pay or deposit the rent which subsequently becomes due. Sub-section (2) of Section 12 lays down the conditions and the time limit for the deposit to be made under section 12(1). As per the proviso to section 12(2), the time for deposit of rent should not be less than four weeks from the date of order. In the light of these reasons, this court is of the opinion that the present petition is liable to be allowed.

In the result, the application is allowed as follows: -

- a. Respondent shall pay or deposit an amount of Rs. 1,50,000/- per month as arrears of rent from 01-06-2024 till the date of deposit on or before 18-12-2025.**

b. The respondent is directed to continue to pay or deposit the rent which subsequently become due in respect of the building @ Rs 15,000/- per month, until the termination of the proceedings.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 17th day of November, 2025.

Sd/-

ARAVIND S.J.
RENT CONTROLLER

APPENDIX

Nil

Id/-

RENT CONTROLLER

Fair/copy of Order in IA 01/2025
In RCP 03/2024
Dated 17.11.2025