

Before the Rent Control Tribunal (III Additional District Munsif Court)

Tiruchirappalli.

PRESENT : Selvi. D.Jeyapradha, B.A.,B.L.,(Hon's)

III-Additional District Munsif, Tiruchirappalli.

On the 26th day of September 2024, Thursday

RLTOP.No. 41/2023

CNR No. TNTP05-000670-2023

J. Mohamed Aslam,

Represented by his Power of Attorney Agent,

K. Jeelani Basha

....Applicant/Landlord

-Vs-

T. Kadhiresan

.... Respondent/Tenant

This petition came up before me for final hearing on 19.09.2024 in the presence of Mr. V. Santhanam, Advocate for the Applicant/Landlord and Mr. L. Rengarajan, Advocate for Respondent/Tenant and upon perusal of the available case records and upon hearing both side arguments and having stood over for consideration till this day, this court delivered the following:

ORDER

1. This application has been filed for recovery of possession of the demised property from the respondent on the ground of having failed to enter into a written lease agreement by the parties under sub-section (2) of section 4 of The

Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenants Act, 2017, along with the cost.

2. BRIEF AVERMENTS OF THE APPLICATION:

It is submitted that the property bearing Old Door No.31, New Door No. 124 consist of two portions and the same absolutely belongs to the applicant herein. Previously, the respondent who was a tenant for both the portions committed willful default in payment of rents and therefore, the applicant herein was constrained to file a petition for eviction on that ground and the same was numbered as R.C.O.P. No. 118 of 2017. The respondent had entered appearance in the said case and during its pendency, the matter was compromised between them. As per the terms of compromise, the respondent had vacated and handed over vacant possession of the portion described as Item No. 1 in the said petition which is situated on the rear side of the petition mentioned property described herein to the applicant and entered into an unregistered deed of lease dated 10.8.2018 in respect of the petition mentioned property for 11 months commencing from 10.8.2018. The respondent is running hardware business in the property. The monthly rent was mutually agreed as Rs. 18,000/-. While so, after the expiry of 11 months, the respondent has failed to enter into a written agreement with the applicant after the advent of the new rent law in spite of being aware of such a requirement. The oral requests of the applicant to comply

with the said legal requirement fell only on deaf ears. Therefore, the respondent is liable to be evicted on this ground.

3. BRIEF AVERMENTS OF THE COUNTER:

It is submitted that the respondent is a tenant on an agreement to pay a sum of Rs. 18,000/- as month rent. This respondent is very regular and he is not in arrears of rent. In fact, it is only this respondent insisted the petitioner to enter into an agreement of lease and get the same registered in online as per the requirement made in the TNRRRLT Act. But, the petitioner has not cooperated. Then this respondent is advised to approach the concerned Revenue Divisional Authority and he has replied that no such infrastructure is available and none of the tenancies are registered and drove away the respondent. This respondent is ever ready and willing to cooperate with the landlord when he takes up the task of registering the tenancy in online. Now taking advantage of the position, conveniently the landlord has come forward with this sort of application. Procedural formalities when not implemented by the authorities concerned even when approached, then citing the same as a reason for eviction by the Landlord that it was not registered is unacceptable and the rent court ought not to have entertained the application for eviction.

4. GROUNDS UNDER WHICH THE APPLICANT SOUGHT FOR RE-POSSESSION OF THE DEMISED PROPERTY:

- i. In spite of the repeated demands, the respondent has failed to enter into a written lease agreement with the applicant, hence the applicant sought repossession under section 21(2)(a) of The Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenants Act, 2017.

5. POINTS FOR DETERMINATION:

Based upon the pleadings of the parties following point has been raised for determining the application,

Whether the applicant is entitled to get the re-possession of the demised property from the respondent?

In order to establish the case of the applicant, he filed an affidavit and EX-P1 was marked. On the side of the respondent, he filed an affidavit, and no document marked. Both sides' counsels placed their submissions to substantiate their case.

DISCUSSION AND DECISION

6. Point for determination - Whether the applicant is entitled to get the re-possession of the demised property from the respondent?

7. This application has been filed for recovery of possession of the demised property on the ground of having failed to enter into a written lease agreement

by the parties under sub-section (2) of section 4, for which Relief sought under Section 21(2)(a) of The Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. (Hereinafter called as Act 42 of 2017).

8. Both counsels have vehemently argued on their side for the above-stated grounds. It is admitted that the respondent is a tenant under the applicant. Further, it is admitted that the respondent is in possession of the demised property through an unregistered written tenancy between the parties, which is prior to the commencement of this Act 42 of 2017 i.e., on 10.08.2018.

9. Before getting into the appreciation of evidence adduced with respect to the above-mentioned grounds, there is a necessity to take note of the dictum of our Hon'ble High Court laid in **S. Muruganandam v. J. Joseph** reported in **2022 MLJ (2) 482** , wherein it was held that,

13. From the instances that had arisen in these six revisions, the different types of cases that may arise before the Rent Court can be broadly classified as follows:

- i. Written tenancy created prior to and expired prior to the commencement of the Act (Tenant holding over under an oral tenancy);*
- ii. Oral tenancies created prior to the new Act and no written agreement entered into;*

- iii. Written tenancies created prior to the new Act and the period expired after the commencement of the Act;*
- iv. Written tenancies entered after the commencement of the new Act not registered but subsisting;*
- v. Written tenancies created after the commencement of the new Act and had presently expired (either registered or unregistered)*
- vi. Oral tenancies created after the new Act.*

16. I have enumerated the six possible contingencies that would arise in respect of either execution of a written agreement or registration thereof under the provisions of the New Act. As far as the first three contingencies are concerned, it can straight away be concluded without much difficulty that all of them will be covered by Section 4(2) and its proviso. Thus the landlord would have the right to invoke Section 21(2) (a) of the New Act, in respect of contingencies 1 & 2 and all other clauses of Section 21(2) in the respect of the third contingency to seek eviction of such tenants where the agreement expired after the commencement of the New Act...

10. The applicant pleads that the parties have entered into an unregistered written tenancy agreement for a period of 11 months from 10.08.2018 and after

the expiry of the said period no written agreement has been entered into by the parties with respect to the demised property. To support his contention Ex-P1 has been marked. Further, the respondent failed to state anything contrary to the pleadings of the applicant regarding the above fact and simply stated it as not fully correct and the applicant needs to prove the same. Evasive denial is a deemed admission. Further, the said fact is evident from Ex-P1 filed by the applicant.

11. Hence it is established that Written tenancies created prior to the new Act is expired after the commencement of the Act on 10.07.2019 and no new agreement in writing as required under Section 4(2) of the Act has been entered into or the existing agreement has been registered within a period of 575 days from the date of the commencement of the new Act and it was not subsisting at the time of filing of this application. While this being so, by applying the above dictum to the case on hand, this court is of the considered view that the applicant is entitled to seek relief only under Section 21 (2) (a), which comes under the third category of Written tenancies created prior to the new Act and expired after the commencement of the Act, therefore the relief of the applicant to approach this rent court under the Act 42 of 2017 under Section 21 (2) (a) is not barred.

12. During arguments the learned counsel for the respondent contended that the respondent repeatedly insisted the applicant to enter into a written tenancy agreement and get the same registered with the rent authority. However, the applicant failed to co-operate with the registration process and further states that the respondent is always willing to enter into a written tenancy with the applicant, thus the applicant cannot take advantage of his own wrong and ask for an order of eviction. Furthermore, when the respondent approached the RDO for registration of tenancy agreement, it was replied that no such infrastructure was available and none of the tenancies were registered, and they drove away the respondent. Hence the respondent should not suffer for procedural formalities when the same was not implemented properly by the concerned authorities and in these circumstances, this application itself is not maintainable as there is no registered tenancy agreement. On the contrary, the learned counsel for the applicant argued that this application is very much maintainable, and the applicant is entitled to get re-possession of the demised property from the respondent.

13. Already maintainability of this petition is discussed above and decided that this petition is maintainable on the ground of Section 21 (2) (a) of the said Act, hence contention of the respondent's counsel on the point of maintainability is untenable. After considering the rival submissions on the ground of not entering

into a registered tenancy agreement, this court is of the view that even for instance if it is taken that due to the mistake of the applicant alone, parties have not entered into a written agreement, the applicant is entitled for eviction as per the provision of this act. To reinforce the view of this court, the relevant portion of the observation made in the above-cited judgment is extracted hereunder,

5. Sub Section (2) of Section 4 imposes an obligation on the parties to an existing oral lease agreement to enter into an agreement evidencing the terms of the tenancy within a period of 575 days from the date of the commencement of this Act. Proviso to Sub Section 2 enables either the landlord or the tenant to seek termination of tenancy under Clause (a) of Sub Section 2 of Section 21 in the event of failure on the part of any one of the parties to comply with the provisions of Sub Section 2.....

6. Sub Section (3), makes it obligatory on the part of the parties to an agreement to have the agreement registered with the Rent Authority irrespective of fact whether the agreement was entered into before or after the commencement of the Act.

9. It gives the right to the landlord to sue for repossession de hors the fact that the landlord may be at fault and he may be the reason for non-renewal or failure to enter into an agreement in writing. It is not open to a tenant

to contend that despite his request, the landlord did not execute an agreement in writing and therefore, the landlord cannot invoke Section 21(2)(a) seeking repossession.

14. Further it is relevant to rely upon the dictum of our Hon'ble High Court laid in **Devaraj Jain V. Shafak Hameed Thaika reported in 2022 (1) MLJ 315** , where in it was held as,

7.From a reading of the above provision, it is clear that if the parties to an existing lease had not entered into an agreement within 575 days as required under Section 2 of Sub-section 4, that by itself will constitute a ground for eviction. Clause(a) of Sub-section 2 of Section 21 does not make a difference as to who was responsible for non-execution of the lease document. The fact that the landlord is unwilling to execute a lease document does not make a difference. If a lease document is not entered within 575 days from the date of coming into force of the new Act, even if the landlord is responsible for such non-execution, the non- execution simpliciter gives a right to the landlord to seek eviction. Therefore, the claim of the tenant that he was willing to execute the lease deed, the landlords were not coming forward to execute the same, even assuming it to be true, does not make any difference.

15. From the above observation in the two decisions, it is made clear that the default of either party to enter into a written agreement with the other and to get the same registered with the rent authority will entitle the landlord to seek eviction under Sec.21(2)(a) of Act 42 of 2017. Admittedly there is no written agreement registered with the rent authority as contemplated under Act 42 of 2017. Therefore, the contention of the respondent's counsel that, the respondent is always willing to enter into a rental agreement and the applicant alone failed to come forward for the same is unsustainable. Further, when it is established that there is no consensus between the parties to enter into a registered tenancy agreement, the non-availability of a registration facility is immaterial. Hence, it's made clear before this court that the landlord/applicant and tenant/respondent have failed to enter into an agreement under sub-section (2) of section 4 of Act 42 of 2017, thereby the applicant is entitled to the relief of recovery of possession under sec.21(2)(a) of the Act 42 of 2017.

16. In the result, **the Respondent is directed to vacate and hand over the possession of the petition-mentioned property (Demised property) to the applicant within two months from the date of receipt of a copy of this order. The respondent shall bear the cost.**

Typed and formatted by Steno-Typist, corrected and pronounced by me in the open court, on this 26th day of September 2024.

Rent Controller/III-Additional District Munsif,
Tiruchirappalli.

LIST OF WITNESS EXAMINED ON THE SIDE OF APPLICANT/LANDLORD:

PW1- K. Jeelani Basha

LIST OF DOCUMENT MARKED ON THE SIDE OF APPLICANT/LANDLORD:

Sl. No.	Date	Particulars of Document	Remarks
Ex. P1	8.9.2018	Award passed by the District Legal Services Authority, Trichy in LAC No. 729 of 2018 with joint memo filed by both parties.	Certified copy

LIST OF WITNESS EXAMINED AND DOCUMENT MARKED ON THE SIDE OF RESPONDENT/LANDLORD: NIL

Rent Controller/III-Additional District Munsif,
Tiruchirappalli.