IN THE COURT OF APPEAL OF BELIZE, A.D. 2008

CIVIL APPEAL NO. 17 OF 2007

BETWEEN:

GUSTAVO PEREYRA	**Appellant**
AND	
RAUL DANIELS	**Respondent**

BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Sosa	**-**	**Justice of Appeal**
The Hon. Mr. Justice Carey	**-**	**Justice of Appeal**

Mrs. Naima Barrow-Badillo for the appellant.
Mr. Oswald Twist for the respondent.

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12 October 2007 & 13 March 2008.

CAREY JA

1. This is an appeal against a judgment of Muria J dated 30 May 2007 whereby he found in favour of the landlord, Mr. Raul Daniels, the claimant and the present respondent, against the tenant, the present appellant whom he ordered to pay (US) $14,000.00 with interest at 6% per annum plus costs to be taxed if not agreed. The action arose from a tenancy agreement in which Mr. Daniels agreed to rent to Mr. Pereyra fully

furnished premises situate at #20, 3rd Street, Santa Rita Layout, Corozal Town for a period of one year at (US) $2,200.00 per month or Belize $4,400.00 commencing 29 May 2005 and terminating 31 May 2006. Mr. Pereyra paid a security deposit of (Belize) $2,200.00 and the rental for June in a like sum and promptly terminated the agreement. Mr Pereyra averred as follows in his defence:-

> "5. It was an implied condition of the agreement that the premises would be reasonably fit for human habitation.
> 6. In breach of the said condition the premises was rat infested and unfit for human habitation and on the 6 June the Defendant as he was entitled to do elected to terminate the agreement and vacated the premises."

He also put in a counter-claim for the sum of (US) $5,959.99 being unearned rent and re-imbursement of the security deposit. The judge stated in his reasons for judgment that the counter-claim must fail, but in his "Conclusion and Order", he did not advert to the finding. In the result, the formal order of the judgment omits any reference to that claim. Mr. Pereyra, aggrieved by the decision, appeals to this court.

2. We heard submissions on October 12 last when we allowed the appeal and set aside the judgment entered below on the claim and counter-claim. We entered judgment for the appellant on the claim and on the counter-claim in the sum of (US) $3,959.99 with costs both here and below to be taxed, if not agreed. We promised reasons at a later date; mine are set out hereunder.

3. In my opinion, the essential issue for determination was whether the demised premises were fit for human habitation which was a question of fact for the trial judge, and if it were not, whether that entitled the appellant

to rescind the contract, give up occupation and claim to recover the rent and security deposit. The judge accepted this as the position although he added another, namely, whether the appellant entered into the agreement with the landlord for himself or a company called Las Vegas Hotel & Casino. As however, this was not raised on the pleadings and plays no part in the outcome of the action, nothing more need be said in that regard. To return to the matter of substance in the case, the judge found as a matter of fact that there were rats in the house. He also found that the house was in a fit state for habitation at the commencement of the tenancy. He held however that "no complaint was made to the claimant about any of the problems mentioned with a view to remedying them". Perhaps it is as well to set out the *ratio decidendi* from the judgment (pp 13 – 14)

> "..There was no mention of notice to remedy default in the agreement. However, even if the agreement did not specify the requirement of notice to remedy the problems complained of, the law implies reasonable notice for taking remedial acts by the landlord upon a complaint by the tenant. Only where the landlord has failed to carry out his obligation to remedy the problems complained of will the tenants be entitled to take steps to repudiate the tenancy agreement. This is not what happened in this case and there is no evidence to show that the landlord/claimant had refused to remedy the problems complained of to him. I find that there was no notice given to the claimant to remedy any of the complaints. However, even if the letter of 3/6/05 could be said to be a notice to him, it was not reasonable notice to enable the landlord/claimant to remedy the situation complained of. In any case, in the absence of breach by the landlord of the implied condition that the house was in a fit state for habitation, the defendants were not entitled to unilaterally repudiate the rental agreement and if the rats were the

> reason for vacating the premises, the defendants cannot terminate the agreement without reasonable notice to the claimant…"

4. Any consideration of the case must start with an appreciation of the fact that there was an implied condition in this tenancy agreement that the premises were fit for human habitation at the commencement of the tenancy. The condition is imposed by section 6(1) of the Landlord and Tenant Act, Cap 189:

> "6(1) Subject to subsection (2) in any contract for letting any house for human habitation there shall, notwithstanding any stipulation to the contrary, be implied a condition that the house will be kept by the landlord during the tenancy, in repair and in all respects reasonably fit for human habitation"

The tenancy agreement thus envisages that the premises were habitable, and the premises are deemed to be habitable. So far as the instant case is concerned, the agreement was for a rat-free house. Rat is vermin and is dangerous vermin. There is always the possibility of leptospirosis being contracted by the occupants of the house where rats are about. There is no doubt that there were rats in this house, the subject of the tenancy agreement. The judge made just such a finding. But with all respect to the judge, the significance of that finding, was not, I fear, fully appreciated by him. He took the view that the house was habitable at the commencement of the tenancy because a defence witness, Mr. Garbutt in his witness statement, stated, that he had been occupying the house prior to its being rented and he had not seen rats. It was not the fact, however, that Mr. Garbutt occupied the house, He occupied a part of the house and I would agree with counsel for the appellant that Mr. Garbutt must necessarily have been speaking solely to that portion of the house which he occupied. But the evidence of rats being seen in the house related to a two week period of the appellant occupying the house. Graphic evidence

was provided from which the only conclusion was that the house was infested with rats. Mr. George Hardie Sr., who made the arrangements for the rental of the premises in his sworn witness statement, said that about the third day of occupying the house, he saw "a humongous rat" which scampered to the other end of the counter where it stood. That behaviour suggests a rat seised with proprietorial rights. It would not be illogical to suggest that this rat and others seen within two weeks of occupancy, must have been living in the house at the time of, if not, before the tenant took possession. It follows that the premises were not fit for habitation. The judge's holding to the contrary is not supported by the weight of evidence and, indeed, is inconsistent with his accepting that rats were in the house.

5. There is no question that in occupying a house which was not fit for human habitation meant, in the eye of the law, that the tenant had not received what he had bargained for. In the event, he was entitled to rescind the contract with the consequential remedies. There was, no necessity to give any notice to remedy the rat infestation for the reason that the house was not fit for human habitation. We were referred to a case of respectable antiquity, namely, *Stanton v. Southwick [1920] 2 K.B 642* in which the house that was let was overrun by rats, but that did not make it unfit for human habitation. That case turns on its particular facts because the evidence was that the rats came from the sewers and visited the shop which was let with the house in search of food. The judge, Salter J, sitting in a Divisional Court, thought that if the judge had found that "the house was infested with rats in the sense that they bred there, were regularly there and, as it were, formed part of the house", the position would be different. The obiter dicta supports the opinion I have expressed, that these rats formed part of the house and consequently entitled the tenant to rescind the contract because there had been a breach of the condition mandated by section 6(1) of the Landlord and Tenant Act, Cap. 189.

6. Mr. Twist who appeared on behalf of the respondent valiantly submitted that there was no evidence that the premises were not fit for human habitation at the commencement of the tenancy. That argument proceeded on the hypothesis that commencement meant on the first day of entry into possession. But it is fair to say that he did not demonstrate much enthusiasm or confidence in the point. For the reasons given in this judgment, that argument could not prevail.

7. In the result, I agreed that the appeal should be allowed, the judgment of the court below set aside, judgment entered for the appellant on the claim and counterclaim in the sum of (US) $3959.99 with costs to the appellant both here and below to be taxed, if not agreed.

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CAREY JA

MOTTLEY P

8. I agree and have nothing to add.

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MOTTLEY P

SOSA JA

9. On 12 October 2007 I agreed with the other members of this Court that the appeal should be allowed, that the order of the judge below should be set aside, that judgment should be entered for the appellant in the claim and also (in the sum of US$3,959.99 with interest as claimed) in the counterclaim and that the appellant should have his costs, here and in the court below, to be taxed if not agreed. I concur in the reasons for judgment stated by Carey JA in his judgment, which I have read in draft.

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SOSA JA