

Remedies

Cancellation

Lessee may cancel or rescind contract if totally evicted or evicted to a serious degree

Damages

Lessee will irrespective of his knowledge have a right to damages only when lessor terminates rights voluntarily.

STUDY UNIT 10 (TENANTS DUTIES)

1) THE TENANT MUST PAY THE RENT

CERTAINTY - essential element of a contract

If performance is vague, contract void for vagueness. Contracts in which performance are left by parties or a party to decide @ a later stage are invalid

Certainty of performance can be attained in 2 ways

- 1) Defining performance (obligations parties wish to create)
- 2) Identifying an external standard by which performance should be determined.

The rent agreed upon must be certain.

Rent is certain when 1 parties agree upon a definite amount of money or a definite method whereby 1 rent can be fixed.

If rent is indefinite, 1 whole contract is void for vagueness.

Genac Properties (MBC Pty) Ltd v NBC Admin CC.

Appellant - landlord / Respondent - Tenant

- ① Facts - lease was entered into between landlord as appellant & tenant as respondent. Clause 5 stated 1 rentals was to be paid as per 1 table below setting out 1 rentals for period of 5 years of which 1 lease was to endure. Clause 6 stated 1 1 landlords maintenance & running expenses were to be paid by 1 tenant monthly in advance ^{equal to amount x 11.3% of estimate} ~~provision~~ Provision also being made for additional amounts to be paid & refunds should 1 landlords estimate be incorrect. Clause 6.1 defined maintenance & running expenses as "1 aggregate of all 1 landlords actual & reasonable maintenance & running expenses". Clause listed 9 specific expenses & 9th being ^{costs} an amt not exceeding 5% of 1 aggregate of all 1 exp^s.
- ② ^{landlord} Tenant instituted action in local division for an amt of M&R expenses, 1 tenant pleaded 1 1 amt could not be determined ~~with~~ with reasonable certainty & 1 lease was void for vagueness. 1 local division upheld tenants contentions & dismissed 1 claim. In an appeal 1 tenant contended 1
- (a) 1 word reasonable in 6.1, 1 expenses in 6.1 was left entirely in 1 air & could not be det with reasonable certainty.
- (b) 1 1 amount of expenses was left to 1 discretion of 1 landlord to determine & 1 landlord could be acting with 3rd

Also tenant had no say in amt incurred

persons of which tenant had no say in amt incurred
c) = surcharge of 5% in 6.1 was left to discretion of landlord which he could exercise capriciously, without referring to an external standard, rendering clause invalid.

Court Held

(a) word reasonable was used in relation to actual expenses & did not create uncertainty
actual expenses could be ascertained from landlords financial records

(b) held there were 2 qualifications regards landlords right to det amt
(1) exp should have actually been incurred. (2) Expenses should have been reasonable in relation to nature & amt of expenses.
Held further reasonableness was to be objectively ascertained & not to will of landlord.

Held it was wrong to say under clause 6 landlord det amt of expenses

(c) If prov in ? was reasonably capable of interpretation, interpretation was to be preferred to one which would render lease invalid.
Held lease was valid & enforceable

~~Appeal~~