

KWAZULU-NATAL RENTAL HOUSING TRIBUNAL

Tolaram House
No.2 Aliwal Street, DURBAN, 4001

Private Bag X54367,
DURBAN, 4000

Ref:13/8/3/1426/06
Enq:NS Mkhwanazi

Tel: (031) 336 5222
Fax: (031) 336 5219

RULING OF THE RENTAL HOUSING TRIBUNAL IN TERMS OF SECTION 13 OF THE RENTAL HOUSING ACT, 50 OF 1999

RR Badal v A Govender / 1625
Wednesday, 20 October 2004

Complainant –landlady lodged complaint re: arrear rental; tenant vacated the dwelling. Respondent is Calcitrade CC T/A Altak Africa (CK 2001/066871/23) but was cited as Alan Govender, its sole member. Mediation failed, referred to a hearing

Calcitrade CC entered into a written lease agreement for a fixed period (6 months: 1 February – 31 August 2004) with Belinda Jane McIntosh in respect of C Ellesmere, 255 Musgrave Road, Musgrave, Durban on 29th January 2004. The property was subsequently sold and ownership passed over to Dr RR Badal. In terms of “huur gaat voor koop” rule, the new owner is substituted *ex lege* for the original landlord and acquires by operation of law all rights of the original landlord under lease and the latter falls out of the picture [Genna-Wae Properties (Pty) Ltd v Medio-Tronics (Natal) (Pty) Ltd 1995 (2) SA 926 (A)]. In this appellate Division judgment it was stated that the lessee, in turn, is also bound by the lease and, provided that the new owner recognises his rights, does not have any option, or right of election, to resile from the contract.

The evidence of the complainant was that the respondent did not pay rentals totalling R13500.00. The respondent’s evidence was contradictory, alleging that he did not know who was entitled to the rental, that the complainant informed him that he could stay free of charge; that the previous owner did inform him prior to concluding the

lease that the property was in the process of being sold and that he could utilise the security deposit as rental for the last month.

In the end, the respondent conceded to the amount owing. He, however, asked the Tribunal to consider “his” i.e. the CC’s circumstance and offered to pay R100.00 per month over 135 months. The respondent, however, failed to produce any satisfactory documentary proof of “his” / CC’s circumstance to justify this request.

In terms of the provisions of the Rental Housing Act, No 50 of 1999 the landlord rights against the tenant include his or her right to prompt and regular payment of a rental or any charges that may be payable in terms of a lease [s4(5)(a)]. The Tribunal members applied their minds and were not able to find reasonable grounds to make an order as per the request of the respondent.

The Tribunal therefore rules that Calcitrade CC pay Dr. RR Badal R13500.00. This amount is due and payable in full by not later than 30th November 2004.

A Freeman
Chairperson

Adv M M Mthembu
Member

S.I. Mohamed
Member