

From : Sayed-Iqbal Mohamed

To: Prof Isobel Konyn
Adv Mike Mthembu

Date: Wednesday, 20 October 2004

Re: **Modilal v Sewpaul / 1679**

Dear Isobel / Mike

My Opinion :

In summary, I am of the view that we order that the notice to vacate is cancelled and would have been declared an unfair practice, reconnection of the electricity be effected immediately; Remission of rental and an award be made for damage to goods. I set out hereunder my reasons for the above.

Complainant –tenant lodged complaint re: notice to vacate,
nuisance, rent increase

1. **Notice to vacate** (Exh 1 & 2) would have been terminated on being an unfair practice. In any event, the previously terminated lease was renewed. My explanation as follows: -

Evidence: unfair practice

Terminating a lease after one month's occupation based on what the respondent may not have liked about the Modilals or because of a change in circumstance of the respondent's situation, would appear to be an unfair practice.

Notice dated 23 March 2004 –

No reference to the lease period being a lease for one month.
Evidence indicated a monthly tenancy. It appears that the landlady "changed her mind".

Notice of rent increase (Exh 3)

- (a) The notice of rent increase cancelled the notice to vacate.
- (b) The offer of the new rental agreement resulted in tacit relocation of the previously terminated lease [Pareto Ltd & Others v Mythos Leather Manufacturing (Pty) Ltd 2000 (3) SA 999 (W)]

- (c) Notwithstanding the breakdown in relationship, the tenant's lease remains in force by way of renewal (tacit relocation).

2. Disconnection of electricity

In her evidence, Mrs Sewpaul conceded she switched off the electricity supply to Modilal's dwelling from 24 August 2004.

I was not persuaded to believe the evidence that she did not interrupt the supply on previous occasions.

3. Ruling: I am of the view that the: -

- 3.1. Landlord be ordered to switch-on the electricity supply with immediate effect.
- 3.2. Notice to vacate was cancelled through tacit relocation, and would have been declared an unfair practice.
- 3.3. Remission of rental. The tenant is entitled to R650.00 reduction for the period March to October 2004 (refer to my calculation below).
 - 3.3.1 Tenant is entitled to a reduction in rental because the Modilal's beneficial occupation was diminished due to the disconnection of electricity supply. The disconnection was a "punitive measure" or an act of harassment to induce and achieve vacant occupation. The actual deprivation is not trivial.
 - 3.3.2 In *Ntshiqqa v Andreas Supermarket (Pty) Ltd* 1997 (3) SA 60 (TkS), the tenant (respondent) withheld rental to get the landlord to perform. It was held that the respondent "was, because of the appellant's failure to install facilities and his wilful tampering with the electricity supply to the premises, entitled to withhold his performance as a means of enforcing appellant's counter-performance."
 - 3.3.3 Calculation: I am of the view that R200.00 per month must be deducted from 24 August to 19 October 2004 = Approximately R400.00
 - 3.3.4 A further R50.00 per month for the numerous interruption (Exh 11); March, April, May, June, July = R250.00.
 - 3.3.5 Total reduction: R400.00 + R250.00 = R650.00
- 3.4. **Damage to goods (Exh 12)**

As for the damage to goods (Exh 12), in the absence of vouchers but bearing in mind that the Modilal would have suffered some

loss, I am of the view that a quarter of R1132.00 should be the amount of compensation, i.e. R280.00.