CEO (Housing) v Brown & Cooper [2000] NTSC 29

PARTIES:	CHIEF EXECUTIVE OFFICER (HOUSING) v KEITH BROWN and ANGELINE COOPER
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NO:	LA9/2000 (9929197)
DELIVERED:	17 May 2000
HEARING DATES:	2 May 2000
JUDGMENT OF:	THOMAS J

CATCHWORDS:

LANDLORD AND TENANT - TERMINATION OF THE TENANCY - NOTICE TO QUIT APPEAL

Appeal from the Local Court at Darwin - magistrate found notice to quit defective - not unambiguously clear - meaning of 'specify the day' - whether specification to appear in the document - interpretation of s 47(1) (b) *Tenancy Act 1979* (NT) - whether *Tenancy Act* is a code - common law principles to apply to interpretation of s 47 (1) (b) *Tenancy Act* - notice to quit to be clear and unambiguous and a reasonable tenant with information as to the date of service - magistrate fell into error - test is from the perspective of a reasonable tenant - appeal allowed

Tenancy Act 1979 (NT), s 47 (1)(b); *Residential Tenancies Act 1999* (NT), s 160 (1) and (2); *Residantial tenancies (Consequential amendments) Act 1999* (NT)

Roche v Norman, Ex p [1961] Qd R 36; *Blumberg v Wood, Ex p* [1966] Qd R 457; *Piggott v Seeburg* (1949) 66 WN (NSW) 198; *Sunrose Ltd v Gould* [1962] 1 WLR 20; *Addis v Burrows* 1948] 1 KB 444 ; *Carradine Properties Ltd v Aslam* [1976] 1 All ER 573; *Watson v Riding, Ex Parte Riding* [1945] QSR 75; *P. Phipps & Company (Northhampton and Towcester Breweries) Limited v Rogers* [1925] 1 KB 14; *John Stephen Sheperd and Mary Jane Nagle v Chief Executive Officer (Housing)* unreported No AP15 of 1999; *Mason and Mason v The Northern Territory Housing Commission* (1997) 6 NTLR 152; *Ellul v Fauser* (1981) 28 SASR 300, applied.

Jolly v District Council of Yorktown (1968) 119 CLR 347; *Sheffield City Council v Graingers Wines Ltd* [1978] 2 All ER 70, referred to.

Home Purchase Assistance Authority v Holt, Neville Keith and June Anne unreported No 98/17262 delivered on 27 August 1998, distinguished.

REPRESENTATION:

Counsel:

Appellant:	M Grant
Respondent:	J Duguid

Solicitors:

Appellant:	Morgan Buckley
Respondent:	North Australian Aboriginal Legal Aid Service

Judgment category classification:	C
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IN SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

CEO (Housing) v Brown & Cooper [2000] NTSC 29
No. LA9/2000 (9929197)

BETWEEN:

CHIEF EXECUTIVE OFFICER (HOUSING)
Appellant

AND:

KEITH BROWN and ANGELINE COOPER
Respondent

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 17 May 2000)

[1] This is an appeal from a decision of Mr Gillies SM sitting in the Local Court at Darwin.

[2] The appeal concerns the interpretation by the learned stipendiary magistrate of s 47(1)(b) of the *Tenancy Act* (NT) 1979.

[3] The grounds of appeal are as follows:

> "1 The learned Magistrate erred in construing section 47(1)(b) of the *Tenancy Act* (NT) so as to require a Notice to Quit to contain the specific **date** on which the premises are to given up by the tenant.

2 The learned Magistrate erred in finding that the Notice to Quit dated 25 November 1999 did not comply with the requirements of section 47(1)(b) of the *Tenancy Act* (NT). It is the Appellant's contention that a Notice to Quit which states:

> "TAKE NOTICE that you are required to quit the dwelling … on or before the expiry of fifteen (15) days after the date this Notice is served on you"

is valid and is in compliance with the *Tenancy Act* (NT)."

[4] The orders sought are as follows:

"1 The determination of the learned Magistrate is set aside.

2 The matter is remitted back to the Local Court for trial.

3 The Respondent is to pay the Appellant's costs of the Appeal."

[5] Section 47(1)(b) of the *Tenancy Act* provides as follows:

> "(1) Subject to section 47A, a notice to quit premises, being a dwelling-house, shall –
>
> ……..
>
> (b) be given for not less than the period prescribed in this section and specify the day on which the premises are to be delivered up; …."

[6] The Notice to Quit, which is the subject of the present argument, was tendered and marked Exhibit 1. The Notice is to the tenants of the premises and states:

> "TAKE NOTICE that you are required to quit the dwelling situated at 21 Schombacher Circuit, Moulden NT 0830 ("the premises") which you occupy as Lessee from the Chief Executive Officer (Housing) ("the Lessor") on or before the expiry of fifteen (15) days after the date this Notice is served on you."

[7] The Notice to Quit was served personally on each of the tenants.

[8] In the course of his Reasons for Decision the learned stipendiary magistrate stated as follows:

> "To my mind there is no ambiguity or doubtful meaning in the wording of section 47(1)(b) of the Tenancy Act. 'Specify' is defined in the Concise Oxford Dictionary 5th Edition 1964 as: 'name expressly, mention definitely'. I consider a tight definition of the word 'specify' to mean: 'make unambiguously clear'.
>
> The day on which premises are to be delivered up can be made unambiguously clear by (1) stating the date the premises are to be vacated, for example on 7 March 2000; or by a more roundabout description for example the first Monday in March 2000; the statement of the date 7 March 2000 or a roundabout description the first Monday in March 2000 makes an unambiguously clear the date of vacation.
>
> The notice to quit in this case is defective because it does not make unambiguously clear the date the premises are to be vacated. A perusal of the notice to quit reveals that the premises are to be quit on or before the expiry of 15 days after the date of service. There is nothing in the notice to quit which enables me to work out when service occurred so that I can then try to work out a day 15 days after service.
>
> The day on which the premises are to be delivered up must be specified. The day must be specified in the notice to quit. It must not be specified in some other document such as an affidavit of service which deposes as to the date of service. The notice to quit, within its four corners – emphasis on the words 'within its four corners' – does not make unambiguously clear the date the premises are to be vacated.
>
> The date can only be determined by reference to something else, namely evidence as to the service of the notice to quit, which of course does not appear in the notice to quit.
>
> The purpose of the amendment brought by the Tenancy Amendment Act No 19 of 1982 was to make it perfectly clear, within the four corners of the notice to quit, the day the premises were to be vacated. That clarity could be achieved by naming the date in the notice to quit.
>
> I just go back to the wording of section 47(1)(b):

> A notice to quit premises shall specify the day on which the premises are to be delivered up.
>
> The specification has to appear in the notice to quit document. That is, within the four corners of the document.
>
> I consider that there is a public policy reason for this. The reason was to avoid cases of this type where in order to determine the date of vacation, findings would have to be made as to the date of service in order to work out the date of vacation of the premises."

[9] The essential argument is whether the actual day the tenants are to vacate the premises should be specified within the four corners of the Notice to Quit or whether from the words "on or before the expiry of fifteen (15) days after the date of this Notice is served on you" a reasonable tenant with information as to the date of service would be able to calculate the date the premises were to be vacated and this is sufficient to comply with the provisions of s 47(1)(b) of the *Tenancy Act*.

[10] The provisions of s 47 of the *Tenancy Act* have now been repealed but the provision does still apply to leases entered into before commencement of the *Residential Tenancies Act* 1999. The *Residential Tenancies Act* provides as follows at s 160(1) and (2):

> "160. Continued application of former *Tenancy Act*
>
> (1) Subject to this Part, nothing in this Act applies to or in relation to a lease that was in force immediately before the commencement day.
>
> (2) Subject to this Part, the *Tenancy Act* continues to apply to and in relation to a lease that was in force immediately before the commencement day as if the amendments to the *Tenancy Act* effected by the *Residential Tenancies (Consequential Amendments) Act* had never come into operation."

[11] This Notice to Quit relates to one such lease. Counsel for the appellant advised that the appellant is a party to many other such leases and it could be 10 years before all leases under the now repealed provisions of the *Tenancy Act* have concluded.

[12] In *Roche v Norman, Exp* [1961] Qd 4 36 it was held that:

> "Where in a notice to quit given under *The Landlord and Tenant Acts*, 1948 to 1954, the tenant was required to deliver up possession 'within thirty days after service of the notice' on him it was held that 'within thirty days' means that the landlord has given notice to quit for the last day which becomes the specified day, but he has also given the tenant an offer to deliver up possession on any day prior to that day should the tenant so desire."

[13] In *Blumberg v Wood, Exp* [1966] Qd R 457 in the Full Court of Queensland the Notice to Quit was held to be valid which was dated 8 April 1965 and was admitted to have been served on or about 9 April 1965 was, omitting formal parts this Notice to Quit read as follows at 459:

> "Boaz Blumberg hereby gives you notice to quit and deliver up possession of all that portion of the premises (being Flat No. 1) situated at 170 Park Road, Woolloongabba Brisbane in the State of Queensland, which you hold of him as tenants, on the twelfth day of May 1965, or at the expiration of the week of your tenancy which shall expire next after the end of twenty-eight days from the date of service of this notice upon you."

[14] The principle of law applied in that case is set out by Stable J at 463 – 464:

> "…. I think that the principle expressed by Coleridge C.J. in *Gardner v. Ingram* (61 L.T. at page 30) is correct: 'Although no particular form need be followed, there must be plain unambiguous words claiming to determine the existing tenancy at a certain time.' Bowen J., in the same case uses language to the same effect. The date of determination must be the right date. It may, however, be

> given alternatively, and it is sufficient if one of the alternatives, without expressing the actual date, denotes it in terms which enable the person receiving it to make it certain. Thus notice for a fixed day or 'at the expiration of the year of your tenancy which shall expire next after the end of one half-year from the date of this notice' is sufficient. It is to be noted that in such a case the legal or agreed period of notice is mentioned; and the date of the expiration of the tenancy is a question of fact which the tenant knows, or can properly be alerted to work out the matter of fact for himself, for he knows or is deemed to know matters of fact pertaining to his tenancy. It would be otherwise, as the learned Lord Justice points out on the same page, if the tenant were supposed to resolve matters of law to lead him to the date of termination of this tenancy. See too, *per* Bankes L.J. at p. 1012: 'There are many decided cases in the books where the Courts have imputed to the tenant knowledge which, when applied to the notice to quit served upon him, renders clear what without that knowledge would have been neither clear nor unambiguous.'"

[15] In *Piggott v Seeberg* (1949) 66 WN (NSW) 198 it was held that:

> "…. A notice to quit by a landlord in the following terms 'Take notice that I require you to quit and deliver up possession of the above premises which you occupy as a tenant of me at the expiration of thirty days from the date of service upon you of this notice ….', is not invalid on the ground that the exact date on which the tenant was to quit was left uncertain or doubtful."

[16] Herron J after finding that although a Notice to Quit must be plain and unequivocal in its terms and must be expressed to expire at the proper time held it was not necessary to specify any particular day for quitting. Herron J then went on to state as follows at 199:

> "…. The notice must indicate with reasonable clearness when possession will be demanded, so that the tenant may know what is required of him. He is not required to solve difficult questions of law in order to determine this, so that if he is left in doubt the notice is invalid. These questions were discussed at length in *Phipps v. Rogers*. In my opinion the notice here told the tenant clearly that after the day he was served with the notice he had thirty days within which to vacate. The objection taken to it by the appellant fails."

[17] In *Sunrose Ltd v Gould* [1962] 1 WLR 20 Holroyd Pearce LJ held at 24:

> "The liberal construction of notices has been extended to notices under the Agricultural Holdings Act 1948 – see *Mountford v. Hodkinson*. In *Bolton's (House Furnishers) Ltd. v. Oppenheim* Hodson L.J. treats the contents of a notice under the Landlord and Tenant Act, 1954, as coming within the ordinary principles applicable to common law notices to quit.
>
> That case was followed by Barry J. in *Barclays Bank Ltd. v. Ascott*, where he said: 'As I understand Hodson L.J.'s judgment, the question which the court really has to consider is whether the statement or [sic] notice given by the landlord has given the proper information to the tenant which will enable the tenant to deal in a proper way with the situation, whatever it may be, referred to in the statement of notice. It is clear from the authorities which have been cited to me that the construction of this notice should be a liberal one, and provided that the notice gives the real substance of the information required, then the mere omission of certain details or the failure to embody in the notice the full provisions of the section of the Act referred to will not in fact invalidate the notice.'
>
> I agree with those words of Barry J. In the present case the judge rightly held that the notice was a valid document under the Act. I would dismiss the appeal."

[18] In *Addis v Burrows* [1948] 1 KB 444, the Court found a Notice to Quit was valid and at 453 Evershed LJ held:

> "The question which then arises is: Is the notice to quit a valid and effectual notice? The language of the notice, dated June 28, 1945, in a letter addressed to the tenant, proceeds, after the formal part, to give notice to quit and deliver up possession 'at the expiration of the year of your tenancy, which will expire next after the end of one half year from the service of this notice.' The formula used in that letter is one of long standing, and in Woodfall on Landlord and Tenant (24th ed.), p. 973, I find the following statement: The notice need not mention the particular date on which the tenant is required to quit. Thus a notice to quit 'at the expiration of the current year of tenancy which shall expire next after the end of one half year from the date hereof' is sufficient. …."

[19] In Tenancy Law and Practice Victoria, Second Edition by Alex Chernov at 398:

> "Although the word 'specified' is used in the subsection the notice need not mention the particular day on which the tenant is required to quit. As long as the landlord either gives a certain date or supplies the tenant with a formula from which the date can be ascertained this will certainly make the notice good: *Addis v Burrows* [1948] 1 All ER 177 …."

[20] In *Carradine Properties Ltd v Aslam* [1976] 1 All ER 573 it was held:

> "… In interpreting a notice to quit, the test which was in general to be applied was to ask whether it would be quite clear what it meant to a reasonable person reading it. Applying that test, the plaintiff's notice was valid since it would be perfectly clear to a tenant who knew the terms of the lease that the reference in the notice given in 1974 to a date in 1973 was an error and that the reference should have been to the corresponding date in the year 1975 when the first seven years of the term expired. Accordingly the declaration would be granted …."

[21] The concept of the reasonable tenant understanding the Notice to Quit was endorsed by the Full Court of the Supreme Court of Queensland in *Watson v Riding, Ex parte Riding* [1945] QSR 75.

[22] In *P. Phipps & Company (Northhampton and Towcester Breweries) Limited v Rogers* [1925] 1 KB 14 Banks LJ at 20:

> "A much more difficult question to my mind is the question whether the notice to quit offends against the rule that a notice to be a good notice must be clear and unambiguous. It is not necessary that a notice should be clear and unambiguous in its expressed terms provided it can be rendered clear and unambiguous by the application of the maxim 'Id certum est quod certum reddi potest.' There are many decided cases in the books where the Courts have imputed to the tenant knowledge which, when applied to the notice

> to quit served upon him, renders clear what would without that knowledge have been neither clear nor unambiguous. ….”

[23] In the case before this Court there is no dispute with the fact that the tenants were personally served with the Notice to Quit.

[24] I have concluded that a reasonable tenant being in possession of the information as to the date on which they were served would be able to work out the date they were required to vacate the premises i.e. on or before the expiry of fifteen (15) days after the Notice to Quit was served upon them.

[25] In his Reasons for Decision, the learned stipendiary magistrate stated that he could not tell from looking at the document i.e. the Notice to Quit (Exhibit 1), what date it had been served and there was nothing on the Notice to Quit which enabled him to work out a day 15 days after service. I consider this is not the test and that in applying such a test the learned stipendiary magistrate fell into error. The test is not what the magistrate could understand from the Notice to Quit but what a tenant acting reasonably would understand from the Notice to Quit. In this case the tenants were served personally and knew the date of service. The learned stipendiary magistrate would not know the date of service from a perusal of the Notice to Quit. However, it is not the knowledge and information conveyed to the learned stipendiary magistrate by a reading of the Notice to Quit which is relevant. What is relevant is the knowledge and information of the tenants who having been served personally with the notice to quit

were in a position to calculate the date by which they were to vacate the premises.

[26] Certain arguments were advanced as to whether the common law principles expressed in the cases referred to above could be applied to the interpretation of s 47(1)(b) of the *Tenancy Act* or whether in fact the *Tenancy Act* NT (1979) was a code. Counsel for the respondent argues the *Tenancy Act* is a code and the common law principles do not apply.

[27] I am satisfied the *Tenancy Act* is not a code in the sense that it sweeps away the application of the common law. I accept the statement in Australian Real Property Law, Second Edition by Adrian J Bradbrook, Susan V MacCallum and Anthony P Moore at paragraph 13.52 under the heading "Residential Tenancies:

> "1. Scope of the Legislation
>
> [13.52] Comprehensive legislation regulating residential tenancies was initially introduced in South Australia and Victoria, and later in New South Wales, Western Australia and Queensland. In these States, landlord and tenant law has now been codified in respect of those residential tenancies within the scope of the legislation. In the Northern Territory, less comprehensive residential tenancies legislation exists which merely supplements the general law."

[28] In *John Stephen Shepherd and Mary Jane Nagle v Chief Executive Officer (Housing)* unreported N° AP 15 of 1999, the Court of Appeal had to consider certain provisions under the *Tenancy Act*. Martin CJ, with whom Mildren and Bailey JJ agreed, stated at paragraph 10:

> "The *Tenancy Act* (the Act) recognises that at common law a notice to quit is a means by which a periodic tenancy may be terminated by one party without the consent of the other (s 45 and see *Arnold v Mann* (1957) 99 CLR 463; and Bailey J in *Mason v Northern Territory Housing Commission* (1997) 6 NTLR 152). The statute however significantly modifies the basis upon which the notice to quit may be given."

[29] In *Mason and Mason v The Northern Territory Housing Commission* (1997) 6 NTLR 152 Bailey J stated at 158:

> "In substance, the Act provides a code governing the repossession of premises including:
>
> (a) the grounds of recovery and the time provided by notices to quit (ss 47 and 47A);
>
> (b) the form of a notice to quit (s 42A);
>
> (c) the consequences of a defective notice to quit (s 45; and
>
> (d) limits on the operation of a notice to quit in specified circumstances (s 47B).
>
> Analysis of the Act's provisions indicates that the legislation provides a substantial measure of restriction upon the circumstances in which a lessor can terminate a lease. …."

[30] I do not interpret these decisions to mean that the common law principles can no longer be applied to those provisions of the *Tenancy Act*.

[31] My understanding of the decisions is that the *Tenancy Act* provides a code in the sense that it restricts the grounds on which a notice to quit can be issued. It is not a code in the sense that common law principles no longer apply. Accordingly, I apply the common law principles, which have been expounded in the authorities to which I have already referred, to the interpretation of ss 47(1)(b) of the *Tenancy Act*.

[32] The argument that Part VII of the *Tenancy Act* is a Code does not in any event assist the respondent. I am satisfied that a plain and literal reading of the provisions of s 47(1)(b) is satisfied by a document which when handed to the tenant advises them they are to quit the dwelling "on or before the expiry of fifteen (15) days after the date this Notice is served on you."

[33] In his submissions on behalf of the respondent, Mr Duguid referred to the definition of the word "specify" and "day" in the Shorter English Oxford Dictionary and referred the Court to the decision of *Ellul v Fauser* (1981) 28 SASR 300 Cox J at 303:

> "… The cases show, then, as one would expect, that 'specified' is a protean word, the requirements of which will vary according to subject matter and the evident policy of the legislative prescription. No doubt in many cases there will be a question of degree involved as well."

[34] See also *Jolly v District Council of Yorktown* (1968) 119 CLR 347 and *Sheffield City Council v Graingers Wines Ltd* [1978] 2 All ER 70. I was referred by Mr Duguid, counsel for the respondent, to a decision of the Residential Tribunal of New South Wales in a matter of *Home Purchase Assistance Authority v Holt, Neville Keith and June Anne* (unreported) File N° 98/17262 delivered on 27 August 1998. In the decision to which I was referred the Tribunal made a ruling in dealing with a notice under s 45 of the *Residential Tenancies Act* which deal with notices to be given in respect of rental increases. The Tribunal found that the notice itself should be specific

and that the notice should stand alone and be capable of being understood in the absence of any other document.

[35] I do not accept that this is authority for the proposition that a notice to quit under s 47(1)(b) of the *Tenancy Act* (NT) should have within the four corners of the document the day the premises were to be vacated.

[36] The *Tenancy Act* of 1979 N° 43 of 1979 which was assented to on 27 April 1979. Section 47(1) provided as follows:

> "A notice to quit premises, being a dwelling house, may not be issued except that it is issued on a ground prescribed in this section and is given for not less than the period prescribed in this section."

[37] This was amended by an act to amend the *Tenancy Act* N° 19 of 1982 assented to on 27 April 1982. The relevant section was amended to read as follows:

> "20. Notice to Quit Premises being a Dwelling-House
>
> Section 47 of the Principal Act is amended –
>
> (a) by omitting sub-section (1) and substituting the following:
>
> '(1) Subject to section 47A, a notice to quit premises, being a dwelling-house, shall –
>
> (a) be issued on a ground prescribed in this section and specify that ground;
>
> (b) be given for not less than the period prescribed in this section and specify the day on which the premises are to be delivered up; and …."

[38] A reading of the Second Reading Speech, with respect to the amendment, does not provide any further assistance other than to state:

> "Clause 20 makes it easier to understand the provisions relating to notices to quit dwelling houses."

[39] Mr Duguid referred to the provisions of s 67A of the *Tenancy Act* which provides for service of the Notice to Quit. His argument on behalf of the respondent is that the section providing service in such wide terms i.e. service on a person apparently over the age of 16 years and apparently residing in the premises, gives force to his argument that s 47(1)(b) was intended to be and should be interpreted very strictly and contain the exact information within the document itself. Mr Duguid argues that for such an important unilateral notice the tenant should not be put in the position of possibly having to rely on information from some other source as to the date of service to enable him to calculate the date when he is required to vacate the premises.

[40] I do not accept this argument. The *Tenancy Act* provides for service in this manner. There is no reason to conclude that because of the liberal provisions of s 67A that s 47(1)(b) should be construed in the way Mr Duguid submits.

[41] I have found the common law principles apply with respect to a Notice to Quit under s 47(1)(b) of the *Tenancy Act*. I have also come to the conclusion that the notice to quit in this matter is expressed in such a way

that it is clear and unambiguous and that a reasonable tenant with information as to the date of service of the Notice to Quit would be able to calculate the date on which he is to vacate the dwelling house.

[42] Accordingly, I have come to the conclusion that the learned stipendiary magistrate fell into error when he found that the date of service should have been within the four corners of the document being the Notice to Quit. The test is not from the position of a person who reads the Notice to Quit but from the perspective of the reasonable tenant who has information as to the date the notice to quit was served.

[43] In the matter before this Court the tenants were served personally with the Notice to Quit it would be quite clear on a reading of the Notice to Quit that they were to vacate the premises within 15 days from the date on which they were served and that the Notice to Quit does specify the day on which the premises are to be delivered up. I am satisfied that the Notice to Quit complied with the provisions of s 47(1)(b) of the *Tenancy Act* and was valid as to its form.

[44] Accordingly, the appeal is allowed.

[45] I will hear further from the parties as to the consequential orders that are sought including the question of costs.

———————————————————