

CANADA / JUDGMENT

Metropolitan Toronto v. Atkinson et al.

[1978] 1 SCR 918

COURT

Supreme Court of Canada

DECIDED

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Metropolitan Toronto v. Atkinson et al.

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Supreme Court Judgments

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1977-06-24

Report

[1978] 1 SCR 918

Judges

Laskin, Bora; Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean; de Grandpré, Louis-Philippe

On appeal from

Ontario

Subjects

Lease

Decision Content

Supreme Court of Canada

Metropolitan Toronto v. Atkinson et al., [1978] 1 S.C.R. 918

Date: 1977-06-24

The Municipality of Metropolitan Toronto (Plaintiff) Appellant;

and

Stephanie Atkinson, et al. (Defendants) Respondents.

1977: May 9; 1977: June 24.

Present: Laskin C.J. and Martland, Judson, Ritchie, Spence, Pigeon, Dickson, Beetz and de Grandpré JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Landlord and tenant—Lease of residential premises—Notices giving two effective dates of termination—Whether ambiguous or uncertain—Form authorised by statute—The Landlord and Tenant Act, R.S.O. 1970, c. 236, ss. 98(1), 99(3), 99(4), 101, 102, 103; Form 4—The Interpretation Act, R.S.O. 1970, c. 225, s. 27.

The respondents, tenants of residential premises on two of the Toronto islands, brought a declaratory action impugning the validity of notices of termination of their yearly tenancies given by the appellant landlord. The notices dated January 10, 1974, were sent by registered mail on or about January 30, 1974, and instructed the respondents to deliver up possession “on the 31st day of August, 1974, or on the last day of the period of your tenancy next following the giving of the notice.” Accompanying each notice was a letter recommending that early arrangements be made by the tenants for ferry transportation of their goods and indicating that tenants could leave prior to the normal expiry date of August 31, 1974. The respondents argued that the notices were defective for uncertainty as to the date of termination and that the leases subsisted until properly terminated; in the alternative, they pleaded that the notices gave the tenants an option to remain until August 31, 1975 and that the leases subsisted until then. This latter position was adopted by the trial judge but the Court of Appeal reversed this decision and held that the notices were invalid for uncertainty.

Held (Martland, Ritchie and Spence JJ. dissenting): The appeal should be allowed.

Per Laskin C.J., Judson, Pigeon and Beetz JJ.: Sections 101 to 103 of The Landlord and Tenant Act, read in the light of s. 98(1)(c), fix the minimum period of notice to be given and do not preclude the giving of a notice of termination which allows a longer period. The requirement that a notice of termination be certain or unambiguous does not mean that technical language must be used but that the proper period of notice must be given so that the tenant will know that he has to vacate at the end of the specified time. The validity of a notice to terminate should not depend on subtleties and technicalities. By virtue of s. 99(3) of The Landlord and Tenant Act a notice is valid even if the stated date and the formula date are both correct and not only where the stated date of termination is incorrect. Here the tenants had an option of two dates of termination and this did not create ambiguity or uncertainty. They could therefore insist on a termination date of August 31, 1975, and the landlord could enforce its notice accordingly.

Per Pigeon and Beetz JJ.: What the Court of Appeal held to be objectionable is in exact conformity with the statutory form. The form was enacted by the Legislature for specified purposes and it can validly be used for those purposes. The failure to specify the effect of a notice given under s. 99(3) and Form 4 of The Landlord and Tenant Act where the two dates are correctly stated does not invalidate such a notice. Two alternative dates were here specified and this is expressly authorized.

Per Dickson and de Grandpré JJ.: When read with the accompanying letter, as it should be, the notice to terminate was not ambiguous. Nothing in the record indicates that the tenants believed that they were being given an option of vacating on August 31, 1974, or August 31, 1975. Even absent the letter, however, the notice is valid. Where the fixed date is correctly stated, by s. 99 of The Landlord and Tenant Act that fixed date prevails and the formula date is irrelevant. The leases were therefore validly terminated on August 31, 1974.

Per Martland, Ritchie and Spence JJ., dissenting: The present case is not concerned with any proposal for a new term. The question here is to construe properly the notice to vacate. Although the form was exactly in accordance with Form 4 set out in The Landlord and Tenant Act, nevertheless it was an ambiguous notice. A notice to vacate is a formal and legalistic demand for possession; it is not the proffering of an option. Difficulty occurs when the time between the date on which the notice is given and the end of the tenancy period exceeds the length of time required for the giving of notice, but this accidental fault in the drafting of the statutory provisions cannot be taken as an intention to vary the principle that a notice to vacate must be unambiguous.

[Sidebotham v. Holland, [1895] 1 Q.B. 378, approved; Silver v. Kelly, [1953] 1 D.L.R. 649; Mital v. Andrews, [1950] 2 D.L.R. 51; Addis v. Burrows, [1948] 1 K.B. 444; Eastaugh v. Macpherson, [1954] 3 All E.R. 214; Dagger v. Shepherd, [1946] 1 K.B. 215, referred to.]

APPEAL from a judgment of the Court of Appeal for Ontario^[1] reversing a declaratory order of Osler J. in the matter of the validity of notices of termination of yearly tenancies. Appeal allowed, Martland, Ritchie and Spence JJ. dissenting.

W.B. Williston, Q.C., and H.W.O. Doyle, for the appellant.

Earl A. Cherniak, Q.C., and Peter Y. Atkinson, for the respondents.

The judgment of Laskin C.J. and Judson J. was delivered by

THE CHIEF JUSTICE—This appeal arises out of a declaratory action brought by more than 200 tenants of residential premises on Algonquin Island and Ward's Island, two of the so-called Toronto Islands in the Toronto Harbour area, impugning, inter alia, the validity of notices of termination of their yearly tenancies given by the appellant landlord. A number of other issues were raised by the respondents on which they were unsuccessful in the Ontario Court of Appeal but that Court, reversing Osler J., found for them on the question of the validity of the notices of termination. It is this issue which was brought here by the appellant with leave of this Court, but

the respondents, as was their right, also argued the matters on which they failed below. This Court did not require a reply on those matters from the appellant, being of the opinion that the Court of Appeal had properly disposed of them adversely to the respondents. Only the main point in appeal need, therefore, be considered.

The yearly leases of the respondents were in common form, and as extended or renewed they contained at the material time the following termination clause:

6. This lease may be terminated on August 31st, 1972, or at the end of any subsequent annual tenancy period by the giving of notice in writing by either of the parties to the other at least 90 days prior to August 31st, 1972, or prior to the end of such subsequent annual tenancy period.

Notices of termination, dated January 10, 1974 were dispatched by registered mail to each respondent on or about January 30, 1974. Each notice was as follows:

You are hereby given notice to deliver up possession of the premises known municipally as Toronto Island, which you hold as tenant of The Municipality of Metropolitan Toronto, on the 31st day of August, 1974, or on the last day of the period of your tenancy next following the giving of this notice.

Accompanying each notice was a letter which, so far as relevant, was in these words:

As directed by the Metropolitan Council on December 11th, 1973, I am enclosing herewith formal notice of termination of the ground lease of the above premises.

Should you wish to use the Island ferry service for moving it is suggested that you contact Mrs. Olga Tataren of the Metropolitan Parks Department, 10th Floor, East Tower, City Hall—telephone number 367-8188—in order to obtain the requisite booking. It is recommended that arrangements be made as soon as possible in order to avoid full bookings in August, 1974.

If you wish to terminate your lease and give up possession of the premises prior to the normal expiry date of August 31st, 1974, please advise Mrs. Tataren at the above address and telephone number so that arrangements may be made for an adjustment of prepaid rent and taxes.

...

The respondents brought their action on July 4, 1974 and in their fresh statement of claim, served on February 28, 1975 they pleaded in para. 11(d) that “the notices [of termination] are defective for uncertainty as to the date upon which possession is required to be given up or in the alternative the notices give an option to the plaintiffs to deliver up possession on August 31, 1975”. A further plea, along the same lines, in para. 12 was as follows:

The plaintiffs plead that no valid notice of termination having been given to them as of June 1, 1974 their leases automatically renew and subsist until properly terminated or, in the alternative, that their leases subsist until August 31, 1975. The action came on for trial in the latter part of April, 1975 and in oral reasons delivered on April 25, 1975 Osler J. concluded that the leases subsisted until August 31st, 1975, thus accepting the alternative claim for relief sought by the respondents. He came to this conclusion on the following considerations:

....It is apparent that the notices given, which appear in the original stencils as Documents 15 and 16, were patterned on Form 4 of the Landlord and Tenant Act and provide, in part, that the tenant is to deliver up possession "on the 31st day of August 1974, or on the last day of the period of your tenancy next following the giving of this notice". It is argued that this notice is ambiguous and that tenants receiving it cannot tell whether they are to vacate on the 31st day of August, 1974 or on the last day of the period of the tenancy next following. The latter eventuality, of course, would mean that August 31st, 1975 was the effective date of termination. It would appear that the Legislature, in providing for the permissive use of such a form, intended to safeguard the parties, and perhaps particularly the landlord, from the formerly fatal consequences of a technically defective notice by providing that, if there was any uncertainty as to the actual date upon which the lease would terminate, the notice should be effective for the last day of the next period of tenancy, be it a weekly, monthly or annual tenancy. In my view, it would be irresponsible to interpret this document as being a nullity, ambiguous though it may be. It is common ground that these notices were served within a period of time that would have made them effective for August 31st, 1974. By virtue of the ambiguity found in the notices, however, I find that they should be interpreted in favour of the tenancy and they are effective as of August 31st, 1975...

The hearing in the Court of Appeal took place in the latter part of January, 1976, and judgment reversing the order of Osler J. was delivered on March 16, 1976. That Court, speaking through Howland J.A., held that the notices of termination were wholly invalid for uncertainty in stating two different dates of termination, each of which standing alone would have been effective. However, because they were conflicting dates, neither one was effective. The learned judge declared that although the notices given were in accordance with Form 4, referred to in s. 99(4) of The Landlord and Tenant Act, R.S.O. 1970, c. 236, and although s. 99(3) provided for notices of termination in the terms used in the present case, the Form was permissive only, and it required amendment in the case of a yearly tenancy to carry out the prescription for alternative dates of termination under s. 99.

The following provisions of The Landlord and Tenant Act are relevant to the issue that must be decided in this case:

98. (1) A weekly or monthly or year to year tenancy may be terminated by either the landlord or the tenant upon notice to the other and, unless otherwise agreed upon, the notice,
- (a) shall meet the requirements of section 99;
 - (b) shall be given in the manner prescribed by section 100; and

- (c) shall be given in sufficient time to give the period of notice required by section 101, 102 or 103, as the case may be.
- (2) Any other kind of tenancy determinable on notice may, unless otherwise agreed upon, be terminated as provided by sections 99 and 100.
- 99. (1) A landlord or a tenant may give notice to terminate either orally or in writing, but a notice by a landlord to a tenant is not enforceable under section 106 unless it is in writing.
- (2) A notice in writing,
 - (a) shall be signed by the person giving the notice, or his agent;
 - (b) shall identify the premises in respect of which the notice is given; and
 - (c) shall state the date on which the tenancy is to terminate or that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice.
- (3) A notice may state both,
 - (a) the date on which the tenancy is to terminate; and
 - (b) that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice,

and if it does state both and the date on which the tenancy is to terminate is incorrectly stated, the notice is nevertheless effective to terminate the tenancy on the last day of the period of the tenancy next following the giving of the notice.

- (4) A notice need not be in any particular form, but a notice by a landlord to a tenant may be in Form 4 and a notice by a tenant to a landlord may be in Form 5. 101. (1) A notice to terminate a weekly tenancy shall be given on or before the last day of one week of the tenancy to be effective on the last day of the following week of the tenancy.
- (2) For the purposes of this section, “week of the tenancy” means the weekly period on which the tenancy is based and not necessarily a calendar week and, unless otherwise specifically agreed upon, the week shall be deemed to begin on the day upon which rent is payable.
- 102. (1) A notice to terminate a monthly tenancy shall be given on or before the last day of one month of the tenancy to be effective on the last day of the following month of the tenancy.
- (2) For the purposes of this section, “month of the tenancy” means the monthly period on which the tenancy is based and not necessarily a calendar month and, unless otherwise specifically agreed upon, the month shall be deemed to begin on the day upon which rent is payable.
- 103. (1) A notice to terminate a year to year tenancy shall be given on or before the sixtieth day before the last day of any year of the tenancy to be effective on the last day of that year of the tenancy.

- (2) For the purposes of this section, “year of the tenancy” means the yearly period on which the tenancy is based and not necessarily a calendar year, and unless otherwise agreed upon, the year shall be deemed to begin on the day, or the anniversary of the day, on which the tenant first became entitled to possession.

The contention of the respondents, which was sustained by the Court of Appeal, that the notices as given contained two valid but conflicting dates depended on a reading of the notices that involved an interpretation of the words “on the last day of the period of your tenancy next following the giving of this notice” as denoting not the tenancy period ending August 31, 1974 but rather that ending the following year. Howland J.A. said this on the point:

...To terminate the lease on August 31st, 1974, by giving notice more than 90 days before August 31st, 1974, the alternative in the notice should have read “on the last day of the current period of your tenancy”, and not “on the last day of the period of your tenancy next following the giving of this notice”, which was August 31st, 1975. Accordingly, the notice as given directed the tenant to deliver up possession on August 31st, 1974, or on August 31st, 1975. If the notices had been given to terminate a weekly or monthly tenancy, the rationale of the view expressed by the Court of Appeal would result in there being in each of such cases only one date of termination. That, however, in the view of the Court of Appeal, could not be so in respect of yearly tenancies under the particular notice. Only if the notice was incorrect as to the first specified date (so the Court of Appeal stated) could the alternative stated in the actual notices be effective, and this because of s. 99(3); in short, the Court of Appeal was of the view there can be only one correct and effective termination date. Howland J.A. expressed himself on this aspect of the issue as follows:

....It is quite clear that the tenancy period is an annual one. If Metro had been authorized to do so, a notice given at least 90 days before August 31st, 1973, similar to the notice which was given, would not have led to any uncertainty or ambiguity. There would only have been one date of termination, namely, August 31st, 1974. If the notice had been given less than 90 days before August 31st, 1974, once again there would only have been one termination date, namely, August 31st, 1975. In this case the alternative clause would have been operative. If the termination date had been incorrectly stated as August 30th, 1974, and notice given at least 90 days before August 31st, 1974, then s. 99(3) would have applied and the date of termination would have been August 31st, 1975, as the lease can only be terminated at the end of an annual tenancy period, that is on August 31st.

The learned judge supported his conclusion by reliance on s. 98(1)(c), which brings in ss. 101, 102 and 103, and by contrasting the reference in ss. 101 and 102 to the following week or month of the tenancy with the reference in s. 103 to that year of the tenancy.

I would not read ss. 101 to 103 as precluding the giving of a notice of termination that allowed a tenant more than one tenancy period to arrange for leaving the premises. I would read those provisions in the light of s. 98(1)(c) which requires that a notice of termination “shall be given in sufficient time to give the period of notice required by section 101, 102 or 103, as the case may be”. Those sections must therefore be taken as fixing the minimum period of notice and not as precluding longer ones.

It is trite that a notice of termination of a tenancy, especially of a periodic tenancy, must be in conformity with the prescriptions for termination, if any, in the lease or must meet the requirements of the law, one of which is that the notice must be certain or unambiguous. This is not so much a matter of using technical language as of ensuring that the proper period of notice is given according to the terms of the lease or the nature of the tenancy, so that the tenant will know that he is required to vacate at the end of the fixed tenancy term (if a notice was stipulated in such a case) or at the end of a period of the periodic tenancy. Such difficulties with notices as arose in many of the English cases were the result of uncertainty as to the date of commencement of periodic tenancies, but it was also an open question until *Sidebotham v. Holland*[2], was decided whether a notice to quit, effective on the anniversary date of commencement of a tenancy, was as effective as a notice to quit expiring on the last day of the period of the tenancy. In approving such an anniversary date notice in that case, which concerned a yearly tenancy, the majority of the Court of Appeal (Lindley L.J. with whom Lord Halsbury concurred) observed (at p. 383):

...The validity of a notice to quit ought not to turn on the splitting of straw. Moreover, if hypercriticisms are to be indulged in, a notice to quit at the first moment of the anniversary ought to be just as good as a notice to quit on the last moment of the day before. But such subtleties ought to be and are disregarded as out of the place...

In the same case A.L. Smith L.J., while doubting that the notice given for the anniversary of the commencement of the term was good, said he would not disagree, and he also referred to the alternative form of notice to terminate a yearly tenancy which became standard in England, as follows (at p. 389):

I would point out that the plaintiff has only himself to blame for the difficulties he is in in this case. Had he added the words which are very ordinarily inserted in a notice to quit, “or at the expiration of the year of your tenancy, which shall expire next after the end of one half-year from the service of this notice”, and which are inserted to avoid such a point as that now taken, all would have been in order;...

The Ontario Courts have followed the principle established in the *Sidebotham* case by holding that a notice to quit on the anniversary date of commencement of a periodic tenancy (when the appropriate length of notice is given) is effective: see *Silver v. Kelly*[3], where, in the case of a monthly tenancy commencing at the beginning of the month, a notice given on December 27, 1951 to quit on July 1, 1952 (a longer period of notice than is obligatory in a monthly tenancy) was held to be good. *Silver v. Kelly* declined to follow a British Columbia case *Mital v. Andrews*[4],

which stood by the requirement that the notice to be good must expire on the last day of the tenancy period; and although this single termination date has been strongly supported (see Note, (1950) 28 Can. Bar Rev. 796), I hold with Lindley L.J. that subtleties and technicalities should be dispensed with.

I take the same attitude to the provisions of The Landlord and Tenant Act, and hence I see no reason why effect should not be given to s. 99(3) of the Act. I repeat its terms here for convenience of reference:

99...

- (3) A notice may state both,
 - (a) the date on which the tenancy is to terminate; and
 - (b) that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice,

and if it does state both and the date on which the tenancy is to terminate is incorrectly stated, the notice is nevertheless effective to terminate the tenancy on the last day of the period of the tenancy next following the giving of the notice.

I do not construe this provision as operative only where an incorrect date of termination is stated. The purpose in such a case is obviously to preserve the effectiveness of the notice in respect of the alternative provision for termination; it does not preclude the effectiveness of the notice if a correct date is given which is then followed by the formulary date, as permitted by s. 99(3).

The result may be, in the case of yearly tenancy, that the tenant has the option of leaving as of the specified date, here August 31, 1974 or of staying on until August 31st, 1975, as being the last day of the period of the tenancy following the giving of the notice. True, this would mean that the tenant has been given two successive dates of termination each of them a valid and effective date, but this does not create either ambiguity or uncertainty. The landlord has offered the option of either date and the tenant is free, under the terms of the notice, to opt for the later date. I cannot accept the position taken by the respondents that if two dates of termination are stated in a notice (one being the formula date) and one is valid and the other is invalid, there is no ambiguity because the valid date is operative, but that if two dates of termination are stated, each of which is valid, an ambiguity is created if both dates are given in the same notice and that the notice is a nullity although both dates are operative dates that can take effect in succession.

I am myself by no means persuaded that the alternative date does not point to August 31st, 1974 as being (if I may rephrase the formula in s. 99(3)(b)) the last day, next following the giving of the notice, of that year of the tenancy (to use the words of s. 103(1)). However, I am content in the present case to say that the tenants could insist on an expiration date of August 31st, 1975 as contended for by them in their statement of claim, and that the landlord could enforce its notice accordingly.

In the result, I would allow the appeal, set aside the judgment of the Ontario Court of Appeal and restore the declaratory order of Osler J. The appellant is entitled to its costs in this Court, but I would make no order as to costs in the Court of Appeal and would affirm the order as to costs made by Osler J. in favour of the plaintiffs, limited however to one set of such costs. The judgment of Martland, Ritchie and Spence JJ. was delivered by

SPENCE J. (dissenting)—I have had the opportunity of reading and considering the reasons for judgment prepared by the Chief Justice and Mr. Justice Pigeon. With respect, I have come to the conclusion that the appeal should be dismissed.

It is surely axiomatic that a notice to vacate must be unambiguous. Williams' Canadian Law of Landlord and Tenant, 4th ed. 1973, at p. 549, s. 119, puts the matter succinctly:

Although no particular form is necessary, the notice to quit must be certain and unambiguous in intimating an intention to put an end to the tenancy at a certain time; but there is an apparent difference of opinion whether a proposal for a new term vitiates the notice.

In my opinion, the present case is not concerned with any proposal for a new term.

In *Eastaugh v. Macpherson*[5], it is said that the notice must be unambiguous when properly construed.

It is my view that the question here is to properly construe the notice to vacate. It is very apparent from the material that the officials of the Municipality of Metropolitan Toronto were instructed to require these tenants to vacate the premises on the 31st day of August 1974 and that such decision was made and the notices to vacate were delivered within plenty of time to require the tenants to vacate on that date. It is also apparent that all the tenancies were yearly and did expire on the 31st of August and that such fact was well known to the officials of Metropolitan Toronto who, therefore, had an opportunity to serve a bare and terse notice to vacate in which the date upon which the tenant was required to vacate could have been tersely described as "on the 31st day of August 1974". Rather than pursue that simple course, the officials, in my view, misinterpreted the provisions of The Landlord and Tenant Act and chose to add the words "or on the last day of the period of your tenancy next following the giving of this notice". I agree that that form of notice was exactly in accordance with Form 4 set out in The Landlord and Tenant Act but I am of the opinion that none the less under the particular circumstances it was an ambiguous notice.

The notices were delivered on or about the 30th day of January 1974. The last day of the period of the tenancy next following that date of delivery was not the 31st day of August 1974 but the 31st day of August 1975. So the document which purported to be a notice to vacate was, in fact, a notice that the tenant should vacate on the 31st day of August 1974 or on the 31st day of August 1975. A notice to vacate is, in essence, a formal and legalistic demand for possession. It is not the proffering of an option.

In my view, *Dagger v. Shepherd*[6], is not a denial of the above stated well known principle. There, a notice to vacate was given in the form of “on or before” a fixed date. Lord Evershed, at p. 222, said:

...its true effect was, first, to give to the tenant an irrevocable notice to determine on March 25, 1945, and, second, to make to the tenant an offer to accept from him a determination of that relationship on any earlier date (of the tenant’s choice) on which the tenant should give up in fact possession of the premises.

I would not apply any such description to the present notice, in view of the fact to which I have already referred, that is, the clear instructions from the elected officials to the servants of the municipality.

The explanation for the apparent inconsistency in the statute and for the error which occurred would quite evidently be that to which counsel for the appellant referred in this Court, that is, the practice adopted in England to permit a proper notice to vacate to be given in those cases in which it was impossible to determine with accuracy the very day on which the tenancy ended. The difficulty occurs under the Ontario statute when the time between the day upon which the notice is given and the end of the tenancy period exceeds the length of time required for the giving of the notice, to wit, well nigh inevitably in tenancies from year to year. I am of the opinion that this accidental fault in the drafting of the provisions of The Landlord and Tenant Act as they then existed, because they have now been replaced by a very different statute, cannot be taken as an intention to vary the ancient principle that a notice to vacate must be unambiguous.

With respect, I agree with the views expressed by Howland J.A. in the Court of Appeal. I would dismiss the appeal with costs.

The judgment of Pigeon and Beetz JJ. was delivered by

PIGEON J.—I agree with the Chief Justice and wish to add the following observations.

Form 4 of The Landlord and Tenant Act reads:

Notice to Tenant

To.....

(Name of Tenant)

I hereby give you notice to deliver up possession of the premises

.....

(identify the premises)

which you hold of me as tenant, on the..... day of..... next, or on the last day of the period of your tenancy next following the giving of this notice.

Dated this..... day of..... , 19.....

.....

(Landlord)

The notices to the tenants read as follows:

You are hereby given notice to deliver up possession of the premises known municipally as

Toronto Island, which you hold as tenant of The Municipality of Metropolitan Toronto, on the 31st day of August, 1974, or on the last day of the period of your tenancy next following the giving of this notice.

Paragraph (d) of s. 27 of The Interpretation Act (R.S.O. c. 225) provides:

27. In every Act, unless the contrary intention appears,

... (d) where a form is prescribed, deviations therefrom not affecting the substance or calculated to mislead do not vitiate it;

It is clear, I think, that in the notices given the slight deviations from the statutory form do not affect the substance. In fact, what the Court of Appeal held to be objectionable namely, the alternative following the stated date, is in exact conformity with the statutory form and, furthermore, expressly authorized by s. 99(3). Even assuming that at common law a notice to quit specifying two otherwise valid alternative dates would be bad, it cannot be so under the Ontario Landlord and Tenant Act as it was at the material time. When the Legislature has enacted that a certain form may be used for specified purposes, this means that it can validly be used for those purposes. Whatever contrary rule may have existed previously is necessarily repealed or amended so far as inconsistent with the authorized form. A fortiori must it be so when, as in the present case, the Legislature has not only authorized the form, but expressly permitted that which the form seeks to accomplish: giving a notice to quit specifying alternative dates.

The difficulty in the present case is that the statute has authorized a form of notice with alternative dates which, in the case of a year to year tenancy, may result in two different dates being specified, s. 103 requiring the notice to be given "on or before the sixtieth day before the last day of any year of the tenancy". The concluding words of s. 99(3) fail to spell out what happens in such case. They provide only that if "the date on which the tenancy is to terminate is incorrectly stated, the notice is nevertheless effective to terminate the tenancy on the last day of the period of the tenancy next following the giving of the notice". The failure to specify what is the effect of a notice given in accordance with s. 99(3) and Form 4 when the specified date is correctly stated and differs from the alternative date cannot, in my view, result in requiring s. 99(3) to be read as subject to an implied qualification. This would be inconsistent with the form. It would make it worse than useless. It would mean that the form could not validly be used unless one made sure that the specified date was incorrect. This would be inconsistent with the obvious

purpose of the alternative which is to protect against possible invalidity, not to make for unsuspected invalidity. I would apply Lord Evershed's observation in *Addis v. Burrows*[7], at p. 456:

It seems to me illogical and, indeed, insensible to suppose that a formula like the present one can only be given life and validity by having immediately in front of it the statement of a date which is quite clearly and obviously erroneous.

It is said that the form could have been modified so that the alternative date would be the same as the stated date. There is no doubt that this could be done because s. 99(4) provides that "A notice need not be in any particular form". However, such modification would be a deviation from the form affecting its substance and, therefore, it would mean not using the statutory form but a different form. To so require would be contrary to the statute which, in expressly authorizing the use of a particular form, means that it can be used in all cases, not in some cases only.

In the English Court of Appeal case where a notice of termination specifying an alternative date was held good (*Sidebotham v. Holland*[8]), the form of notice was such as to exclude the possibility of two alternative valid dates. However, the Ontario Legislature saw fit to authorize a simpler form which does not exclude that possibility. Counsel for respondents opened his argument by stating that there was no case at common law where a notice specifying two dates was held effective to terminate a tenancy. This may be so, but it proves nothing: to uphold the judgment of the court below it has to be shown that such a notice is invalid; none of the cases cited stands for that. If as Osler J. held, the result of a notice specifying two valid termination dates is that the tenants have a choice, how can they complain? They could have quitted on the first date but they chose not to do so and to claim by their action that the notices were invalid or, in the alternative, that their tenancies subsisted until August 31, 1975. The Court having found the notices valid, granted the alternative relief sought. In order to have this judgment reversed and the action dismissed, the appellant contended that, on a proper construction, the alternative date was August 31, 1974, not 1975. It was submitted that the alternative means "that the tenancy is to terminate on the last day of the period of the tenancy which expires next following the giving of the notice". When this wording is compared with the actual notices, the difference is obvious, it is an impossible construction.

I find it equally impossible to disregard the alternative. It is not ambiguous and, in my view, does not make the meaning of the notice doubtful: two alternative dates are specified and this is expressly authorized. Therefore, the mention of alternative dates cannot by itself be said to make the meaning doubtful, and the notice is otherwise perfectly clear. From the letter sent with the notice one may surmise an oversight on the part of the solicitor. I fail to see on what basis this could serve to alter the meaning of the notice and to delete an essential part thereof.

The judgment of Dickson and de Grandpré JJ. was delivered by

DICKSON J.—When read with the letter which accompanied it, the notice of termination mailed by the Municipality of Metropolitan Toronto to each of the respondents is not ambiguous. That letter recommended that arrangements be made “as soon as possible” for use of the Island Ferry Service for moving in order to avoid full bookings in August, 1974. Each tenant was advised that if he wished to terminate his lease and give up possession of the premises prior to the normal expiry date of August 31, 1974, he should advise Mrs. Olga Tataren, of the Metropolitan Parks Department, so that arrangements might be made for an adjustment of prepaid rent and taxes. When the notice is read with the letter, as it should be, there is simply no basis for the claim of uncertainty and ambiguity, or the suggestion that the tenant was being given a choice of vacating either on August 31, 1974, or on August 31, 1975.

It is also of record that, in addition to the letters and notices of termination sent by registered mail to each respondent on or about January 30, 1974, each respondent was served personally with a notice of termination in mid-May of that year. If the landlord truly wished to give the tenants a choice between 1974 and 1975 it was acting very curiously indeed. Nothing in the record leads me to believe that the tenants were under any impression that they were being given the option of vacating on August 31, 1974, or on August 31, 1975. The foregoing, in my view, is sufficient to dispose of the appeal. I am, however, of the further opinion that, absent the accompanying letter, the notice is valid.

Section 98(1) of The Landlord and Tenant Act R.S.O. 1970, c. 236 provides that a year-to-year tenancy may be terminated by the landlord upon notice and that the notice (a) shall meet the requirements of s. 99; (b) shall be given in the manner prescribed by s. 100; (c) shall be given in sufficient time to give the period of notice required by s. 101, 102, or 103 as the case may be. No question arises with respect to (b) or (c). The only issue is whether the notice here in question meets the requirements of s. 99. That section provides that the notice shall state the date on which the tenancy is to terminate, or that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice. The section then goes on to provide that a notice may state both the date on which the tenancy is to terminate and that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice. If it does state both, and the date on which the tenancy is to terminate is incorrectly stated, the notice is nevertheless effective to terminate the tenancy on the last day of the period of the tenancy next following the giving of the notice. The landlord followed the section, and the accompanying form, to the letter. It is now faced with the claim that the notice is nevertheless a nullity. In my opinion, the effect of the section is this: (i) if the fixed date, in this case August 31, 1974, is correctly stated that is the date which prevails and the formula date becomes irrelevant; (ii) if the fixed date is incorrectly stated, or if the notice is served late, then the formula date prevails.

The respondents would have us accept the view that if an error is made in stating the fixed date, a notice is valid, but if the fixed date is correctly stated, the effect is to name two dates and the notice is null and void for uncertainty. I do not believe the Legislature of Ontario intended any such absurdity. The construction for which the respondents contend reduces the legislation to

futility. In my view, the form for which the Act provides is effective to produce the result for which it is manifestly intended, to terminate a tenancy whether that tenancy be weekly, or monthly, or year to year. It is not a mere trap for the unwary.

I would allow the appeal, with costs throughout, and vary the Order of the Court of Appeal to provide that the notices of termination given by the appellant were valid, thereby terminating the leases on August 31, 1974. However, in view of the differences of opinion exhibited in this case, the formal judgment of the Court must be to allow the appeal in accordance with the disposition proposed in the reasons of the Chief Justice.

Appeal allowed, declaratory order restored, with costs, MARTLAND, RITCHIE and SPENCE JJ. dissenting.

Solicitors for the appellant: Fasken & Calvin, Toronto.

Solicitors for the respondents: Lerner & Associates, London.

[1] (1976), 12 O.R. (2d) 401.

[2] [1895] 1 Q.B. 378.

[3] [1953] 1 D.L.R. 649.

[4] [1950] 2 D.L.R. 51.

[5] [1954] 3 All E.R. 214.

[6] [1946] 1 K.B. 215.

[7] [1948] 1 K.B. 444.

[8] [1895] 1 Q.B. 378.

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