

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No: HBC 17 of 2022**

**IN THE MATTER** of Land Transfer Act  
1971 and under Section 169 of the Land  
Transfer Act 1971

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**BETWEEN** : **PUBLIC RENTAL BOARD** a body corporate constituted under the  
provisions of the Housing Act and having its Head Office at Housing  
Authority Building, Saqa Street, Valelevu, Nasinu.

**PLAINTIFF**

**AND** : **ENELE MALELE MOMO** of Block 4 Flat 8, Mead Road Housing Estate,  
Mead Road, Nabua, Suva.

**DEFENDANT**

**Counsel:** Plaintiff: Mr. V. Maharaj

Defendant: In person

**Date of Hearing:** 7.06.2023 (8.30a.m)

**Date of Judgment:** 7.06.2023 (3pm)

**JUDGMENT**

**INTRODUCTION**

1. Plaintiff is Public Rental Board (PRB) a legal entity under section 31(2) Housing Act 1955. Its powers are stated in Section 32 of Housing Act 1955. It has powers inter alia to collect rentals from tenants from Public Rental Estates and such other powers necessary under any written law for the execution of its powers. It had entered in to tenancy agreement with Defendant for three years from 15.10.2018 (executed on 28.5.2019) for a weekly rental of \$33.00. The period under tenancy had come to an end and there was no renewal of tenancy agreement. Apart from that Defendant had failed to pay the rentals and had defaulted several times and had given an opportunity to pay the arrears. Defendant had defaulted rental payments and a notice to quit was issued on 6.1.2021 and tenancy agreement was terminated for breach of non-payment of arrears \$1,786.79 as at 17.11.2020. This was the

basis of termination of the tenancy agreement and eviction, and this action was instituted in 2022. By that time there was no tenancy agreement. Defendant still remains in the property and also refuses to pay the rentals.

2. This action is filled by way of originating summons in terms of Section 169 of Land Transfer Act 1972 seeking following orders.
  1. That Defendant do forthwith deliver vacant possession of the property to the Plaintiff.
  2. That Defendant pay moneys representing unpaid rent in the sum of \$1,786.79.
  3. Costs.

#### ANALYSIS

4. Following facts are not disputed
  - a. Defendant was a Tenant of Plaintiff in terms of Tenancy Agreement entered between the parties.
  - b. Plaintiff is the last registered proprietor of Crown Lease No 4232.
  - c. Defendant was a tenant of PRB Block 4 Flat 18 at Mead Road Housing Estate, Mead Road, Nabua Suva situated on State Lease No 4232, and remains in possession.
  - d. Defendant had defaulted weekly rental payments continuously.
5. Defendant was served legal notice to quit on breach of tenancy agreement for default of payment on 6.1.2021 nearly a year before this action was instituted on 12.1.2022.
6. Defendant had been given ample time by Master before this matter was transferred to this court in November, 2022.
7. Again Plaintiff had accommodated Defendant to enter in to any settlement and several adjournments were granted for this purpose.
8. Defendant appeared *in person* and did not want to file written submissions.
9. Defendant at the hearing said some money he had paid to a commercial entity which was authorized to receive rentals from public, but said payments were not properly recorded in his account. So he refused to pay. This is not a reason to default as the reconciling the account and any discrepancy creates no right to default the primary obligation of tenant to pay rentals.

10. Next issue raised by Defendant is that who should repair a window broken by a natural cause. This is again a trivial issue and I cannot see any evidence to that effect being requested and subsequently complained to the Plaintiff. Even if that issue arose Defendant as the tenant who wants to remain, in the premises cannot refuse to pay the rental on such a trivial issue.
11. Plaintiff had established its rights to institute this action by way of originating summons in terms of Section 169 of Land Transfer Act 1972.
12. Section 169 of Land Transfer Act 1972, states

“169. The following persons **may summon any person in possession** of land to appear before a judge in chambers to **show cause why the person summoned should not give up possession** to the applicant:-

  - (a) the last registered proprietor of the land;
  - (b) a lessor with power to re-enter where the lessee or tenant is in arrear for such period as may be provided in the lease and, in the absence of any such provision therein, when the lessee or tenant is in arrear for one month, whether there be or be not sufficient distress found on the premises to countervail such rent and whether or not any previous demand has been made for the rent;
  - (c) a lessor against a lessee or **tenant where a legal notice to quit has been given** or the term of the lease has expired.”(emphasis added)
13. From the above it is clear that Plaintiff cannot claim mesne profits in this proceedings as this Originating Summons is a special procedure for eviction of person in terms of Land Transfer Act 1972 which is the only issue to be determined for clarity and expediency.
14. Defendant had not shown a ‘right to possession’ in terms of Section 172 of Land Transfer Act 1972 for following reasons
  - a. Defendant had occupied the premises in terms of Tenancy Agreement entered on 28.5.2019 and the time period of tenancy had ended on September, 2021.
  - b. Defendant had continuously defaulted payment of rentals and for that Plaintiff had terminated the tenancy agreement.

## CONCLUSION

15. Plaintiff cannot claim for mesne profits in an originating summons filed in terms of Section 169 of Land Transfer Act 1972. Plaintiff is granted vacant possession of the premises forthwith. Cost of this action is summarily assessed at \$1,000 considering the circumstances of this case.

**FINAL ORDERS**

- a. Defendant do forthwith deliver vacant possession of Block 4 Flat 18 at Mead Road Housing Estate, Mead Rd, Nabua, Suva.
- b. Cost of this action is summarily assessed \$1,000 to be paid by Defendant.

DATED this 7<sup>th</sup> day of June 2023.



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**Justice Deepthi Amaratunga**  
**Judge High Court, Suva**