

FROILAN LOPEZ, PLAINTIFF AND APPELLEE, VS. SILVESTRE DE JESUS, DEFENDANT AND APPELLANT.*G.R. No. L-334. September 30, 1946*

Ponente: PARAS, J.

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The plaintiff is the owner of an apartment known and identified as No. 2237 Rizal Avenue, Manila. This apartment has been occupied by the defendant since September, 1940, under a verbal contract of lease calling for a monthly rental of P35.00 payable in advance, which was raised by the plaintiff to P44.00 in June, 1945. On April 2, 1945, and again on July 2, 1945, the plaintiff gave notice to the defendant for him to vacate the premises. Defendant's failure to do so led to the filing, on July 9, 1945, by the plaintiff of an action for ejectment in the Municipal Court of Manila which, after trial, handed down a decision in favor of the plaintiff. The defendant appealed, but the Court of First Instance of Manila, in which the parties submitted a stipulation of facts, rendered a judgment for restitution and the payment of the monthly rental of P44.00 beginning June 1, 1945.

Appealing again, the defendant — through his counsel — argues that the action for ejectment was prematurely instituted and that, at least on equitable considerations, he should be allowed to stay.

Section 1 of Commonwealth Act No. 689 provides that "A lease for the occupation as dwelling of a building or part thereof which is not a room or rooms of an hotel, which does not specify any term, shall be considered of six months duration counted from the date of occupation by virtue of said lease at the option of the lessee." It is now the theory of the appellant that since the period of his lease was not specified, he has the right to remain as lessee for at least six months from June 1, 1945, when the rental was increased to P44.00 — an act which resulted in a novation of the original lease.

Counsel for the appellant is mistaken. As the lease did not have a fixed term, it should be considered as one from month to month (the rental being payable monthly) and to have ceased, without the necessity of special notice, upon the expiration of every month. (Article 1581, Civil Code.) Even if, as contended by the appellant, a novation took place when the appellee increased the rent in June, 1945, the lease was still monthly and terminated after said month. Appellee's election to end the lease was unmistakably made known to the appellant when, on July 2, 1945, the latter was asked to vacate. Consequently, after June, 1945, there was no longer any lease that could be affected by section 1 of Commonwealth Act No. 689, which, was enacted only on October 15, 1945, even assuming that said law is applicable to a legal relation that came into being prior to its enactment.

From the equitable viewpoint, appellant's case cannot also prosper. He might have been an old tenant now facing the difficulty of finding another house, but this circumstance cannot nullify the legal rights of the appellee and his family who have been admittedly "compelled to live upon the charity of some friend who generously offered them temporary shelter in his house which is overcrowded, to say the least."

The appealed judgment is affirmed, with costs against the appellant. So ordered.

Pablo, Perfecto, Hilado, and Padilla, JJ., concur.

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