

SIMEONA FLORES-REYES, PLAINTIFF-APPELLANT, VS. GUILLERMO ZAMORA AND CECILIA REYES, DEFENDANTS-APPELLEES.

G.R. No. L-29431. February 24, 1971

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

A decision having been rendered by the City Court of Manila, in this unlawful detainer case, in favor of plaintiff Simeona Flores-Reyes and against defendants Guillermo Zamora and Cecilia Reyes, the latter appealed to the Court of First Instance of Manila which, in due course, rendered judgment dismissing the case, without costs. Hence, this appeal by plaintiff Simeona Flores-Reyes.

It is alleged in the complaint herein that the plaintiff is the lessee of the land described therein; that plaintiff had subleased a portion of said land to the defendants, on a month-to-month basis; and that despite repeated demands made since October 1965, the defendants had refused and still refuse to vacate the premises in question. Accordingly, plaintiff prayed that the defendants be sentenced to vacate said premises, and to pay the plaintiff the sum of two hundred pesos (P200) as attorney's fees, apart from the costs. In their answer, the defendants admitted the formal allegations of the complaint and denied all other allegations thereof, for lack of knowledge or information to form a belief as to the truth thereof, and averred, by way of special defenses, that they had been "religiously paying their current rental ever since they resided" in the premises in question; that they are builders in good faith; and that not being the owner of the land aforementioned, "plaintiff can not possibly file complaint against the defendants."

After finding for the plaintiff as regards the facts, the Court of First Instance dismissed said complaint, upon the theory that plaintiff had not complied with Section 2 of Rule 70 of the Rules of Court, reading:

"No landlord, or his legal representative or assign, shall bring such action against a tenant for failure to pay rent due or to comply with the conditions of his lease, unless the tenant shall have failed to pay such rent or comply with such conditions for a period of fifteen (15) days, or five (5) days in the case of building, after demand therefor, made upon him personally, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no persons be found thereon."

in that plaintiff's letter of demand to the defendants had merely given them five (5) days, instead of the fifteen (15) days prescribed in said section, within which to vacate the land involved in the dispute. The aforementioned period refers, however, to the time that should transpire from the demand to the date of filing of the action, not to the period to be given in the letter of demand. In the very case of *Gallarde v. Moran*,^[1] cited in the decision appealed from, it was said that the aforementioned provision requires "that the demand be made at least fifteen days x x x before bringing the action." In the case at bar, plaintiff's letter of demand, Exhibit B, dated January 24, 1966, was received by the defendants on February 3, 1966 - according to the registry return card Exhibit B-2 - whereas the complaint was filed on February 28, 1966, or twenty-five (25) days after receipt of said letter of demand. Hence, the Court of First Instance erred in holding that section 2 of Rule 70 had not been complied with and in dismissing the complaint herein.

WHEREFORE, the judgment appealed from should be, as it is hereby reversed, and another one entered sentencing the defendants to vacate the premises in question and to pay to the plain-tiff the sum of two hundred pesos (P200), as attorney's fees, in addition to the costs.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] L-19572, July 30, 1965.

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