

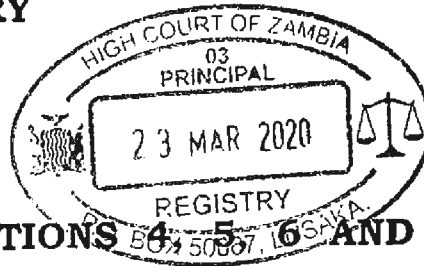
IN THE HIGH COURT FOR ZAMBIA

2019/HP/1806

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



IN THE MATTER OF:

**SECTIONS 4, 5, 6 AND 23 OF THE
LANDLORD & TENANT (BUSINESS
PREMISES) ACT CHAPTER 193 OF THE
LAWS OF ZAMBIA**

IN THE MATTER OF:

**AN APPLICATION FOR A NEW
TENANCY AND ORDER PREVENTING
EVICTION OF THE RIGHTFUL TENANT
FROM PROPERTY KNOWN AS 3RD
FLOOR, PLOT 3062, WOODLANDS,
LUSAKA**

BETWEEN:

JHC LOUNGE

APPLICANT

AND

**EMMANUEL MILINGO
(FORMER ARCHBISHOP OF LUSAKA)**

RESPONDENT

**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO, IN
OPEN COURT, ON 23RD MARCH, 2020.**

For the Applicant:

*Mr. Jonathan Chilamo – Director (Applicant
Company).*

For the Respondent:

Mr. F. C. Zulu – Messrs. MSK Advocates.

JUDGMENT

CASES REFERRED TO:

1. *John W.K. Clayton vs. Hybrid Poultry Farm Limited (2006) Z.R. 70; and*
2. *Afro Butcheries Limited vs. Evees Limited (1987) Z.R. 39.*

LEGISLATION REFERRED TO:

1. *The Landlord and Tenant (Business Premises) Act, Volume 12, Chapter 193 of the Laws of Zambia.*

1 INTRODUCTION

1.1 This is an application by a tenant for a new tenancy, which is opposed by the landlord on the grounds that the tenant did not request for a new tenancy as provided under the law and that it has continuously breached its rental payments.

2 BACKGROUND

2.1 The facts of the case are that the landlord, who is the Respondent herein, served a Notice to Terminate specifying that its decision to terminate the lease was necessitated by the tenant's failure to pay rentals on time and rental arrears.

2.2 The tenant, who is the Applicant herein, moved this Court by way of an Originating Notice of Motion dated 12th November, 2019, seeking the following reliefs against the Respondent: -

1. *A new tenancy commencing on with the same terms and conditions as the tenancy agreement dated and made between the parties;*

2. *An Order restraining the Respondent or his servants or agents or whomsoever from execution of any notice of termination or eviction made by the Respondent pending the determination of the matter;*
3. *A declaration that the verbal notice of termination of the tenancy and 7 day notice to vacate the premises is null and void and ultra vires;*
4. *Any other relief the Court may deem fit; and*
5. *Costs.*

2.3 The property concerned is located on the 3rd Floor of a property situated at Plot No. 3062, Woodlands, Lusaka (the subject property), which the Applicant has occupied since 1st April, 2018.

3 AFFIDAVIT EVIDENCE

3.1 The Notice of Motion is supported by an Affidavit deposed to by the Applicant's Director, Mr. Jonathan Chilamo, who *inter alia* avers the following facts: -

1. *That the parties entered into a yearly tenancy agreement for the property known as 3rd Floor of Stand No. 3026, Woodlands, Lusaka ("the subject property"), commencing 1st April, 2018 at a monthly rental of K3,000.00 to be paid three (3) months in advance;*
2. *That following the expiration of the agreement on 30th March, 2019, the Respondent did allow a*

continuance of the agreement for a further one year under the same terms and conditions as the initial agreement;

- 3. That despite the continued occupation of the premises by the Applicant and adherence to all terms and conditions, on 31st October, 2019, the Respondent's agent Mrs. Maria Milingo, entered the premises and issued a verbal notice of termination of the tenancy agreement. She further demanded that the Applicant vacates the premises within 7 days from the date of the purported termination;*
- 4. That the Applicant has made improvements to not only the portion of the premises being rented but the entire building belonging to the Respondent by painting the entire building, replacing the main entrance grill and sliding doors. It also carried out repairs, maintenance of plumbing works, laying carpets and improved the lighting of the building;*
- 5. That due to the foregoing, the Applicant is very apprehensive and fearful that the Respondent shall proceed to interfere with the quiet enjoyment and smooth running of the Applicant's business and also effect a forceful and illegal eviction of the Applicant from the premises.*

3.2 The Respondent filed herein an Affidavit in Opposition on 9th December, 2019, deposed to by the Respondent, in which it is averred *inter alia*, as follows: -

1. *That the Applicant agreed in the purported tenancy agreement to be paying in advance quarterly rentals of K3,000.00, but has consistently failed to adhere to the terms and conditions of the purported agreement;*
2. *That the Applicant acknowledged their failure to pay the rentals as shown in exhibit marked "EM2" and promised to pay the outstanding rentals, which stood at K22,000.00 as at 1st April, 2019, which prompted the Respondent to take the matter before the Small Claims Court;*
3. *That the Applicant failed to notify the Respondent in writing two months before the determination of the tenancy of its desire of continuing the tenancy agreement as provided under Clause 5 of the purported agreement;*
4. *That the Applicant has further failed to adhere to Clause 2 (vii) of the agreement by altering and carrying on constructions on the said building without first obtaining written consent from the Respondent;*
5. *That the Applicant was given two notices of termination of the tenancy agreement in writing on 1st April, 2019 and 24th June, 2019, as shown by*

exhibits "EM7" and "EM8", which the Applicant failed to respond to, except to acknowledge its indebtedness;

6. That the Applicant has refused to vacate the premises and to pay the outstanding rentals and is indebted to the Respondent in the amount of K20,000.00.

4 SUBMISSIONS

4.1 I scheduled the matter for hearing on 13th February, 2020, at 10:00 hours. When the matter came up for hearing, only the Respondent's Advocates were present before Court. The Applicant's Advocates Mesdames SCPM Legal Practitioners were not in attendance and the Applicant's Director who was in attendance informed the Court that his Advocates have not been responding to his phone calls. Being satisfied that all the parties were aware of the scheduled hearing and considering that the matter is one that can be determined on Affidavit evidence, I proceeded to hear the application.

4.2 Learned Counsel Mr. Zulu, relied on the Affidavit in Opposition filed herein on 9th December, 2019 and prayed that the application be dismissed with costs to the Respondent.

5 FINDING OF FACTS

5.1 I have considered the Affidavit evidence on the record in determining the issues in controversy between the parties.

5.2 From the Affidavit evidence and exhibits attached thereto, I find as a fact that: -

1. There was a yearly tenancy agreement executed by the parties on 1st April, 2018, in respect of the subject property, at the rent of K3,000.00 per month;
2. It was a term of the agreement that the Applicant shall not alter the construction of the leased premises without written consent of the Respondent and that it was mutually agreed between the parties that two months before the expiration of the term agreed, the Applicant would send a notice in writing to the Respondent expressing its option of continuing the tenancy;
3. The Applicant has never expressed its intention of continuing the lease in the manner aforesaid; and
4. The Applicant is indebted to the Respondent in the amount of K20,000.00 being rental arrears.

6 ISSUES FOR DETERMINATION

6.1 As stated above the Applicant's Advocates were not in attendance and had not replied to the Affidavit in Opposition. The Applicant's Director who was in attendance did not advance any credible reason for his

Advocates' absence. In ***John W.K. Clayton vs. Hybrid Poultry Farm Limited***¹, it was held as follows: -

"It is a duty of a defendant to provide a swift response by way of a memorandum of appearance and an elaborate defence within the stipulated period."

The above principle is also applicable to the Applicant. The Applicant has a duty to provide a swift response to the Affidavit in Opposition by way of an Affidavit in Reply. The Affidavit in Opposition was filed on 9th December, 2019. At the time of hearing this matter on 13th February, 2020, the Applicant had not filed its Affidavit in Reply.

- 6.2 Despite making an application for an interim injunction and appearance before this Court on 5th December, 2019, where the Applicant was directed to file its Affidavit in Reply, if any, the Applicant's Advocates made no attempt to file any reply to the Respondent's Affidavit in Opposition or explain their absence at the hearing.
- 6.3 It is not this Court's duty to speculate what transpired between the parties but apply the law to the facts as adduced by either party. In this case, the only evidence on record is the Applicant's Affidavit filed in Support of this Motion and the Respondent's Affidavit in Opposition.
- 6.4 I therefore find that the issues that call for my determination are as follows: -

1. Whether the Applicant is entitled to a new tenancy on the same terms and conditions as contained in the purported tenancy agreement; and
2. The validity of the Respondent's notices purportedly terminating the tenancy agreement held with the Applicant.

6.5 I will address the above issues in the manner that I have identified them.

7 THE LAW

7.1 The Applicant's application is brought pursuant to **Sections 4, 5, 6 and 23 of *The Landlord and Tenants (Business Premises) Act***¹, which provides as follows: -

"4. (1) *A tenancy to which this Act applies shall not come to an end unless terminated in accordance with the provisions of this Act; and, subject to the provisions of section ten, the tenant under such a tenancy may apply to the court for a new tenancy-*

(a) *if the landlord has given notice under section five to terminate the tenancy;*

or

(b) *if the tenant has made a request for a new tenancy in accordance with section six.*

(2) *The provisions of subsection (1) shall not prevent the coming to an end of a tenancy by notice to quit given by the tenant, by*

surrender or forfeiture, or by the forfeiture of a superior tenancy.

(3) *Notwithstanding anything in subsection (1)-*

(a) *where a tenancy to which this Act applies ceases to be such a tenancy, it shall not come to an end by reason only of the cesser, but if it was granted for a term of years certain and has been continued by subsection (1), then (without prejudice to the termination thereof in accordance with any terms of the tenancy) it may be terminated by not less than three nor more than six months' notice in writing given by the landlord to the tenant;*

(b) *where, at a time when a tenancy is not one to which this Act applies, the landlord gives notice to quit, the operation of the notice shall not be affected by reason that the tenancy becomes one to which this Act applies after the giving of the notice.*

5. (1) The landlord may terminate a tenancy to which this Act applies by a notice given to the tenant in the prescribed form specifying the date on which the tenancy is to come to an end (hereinafter referred to as "the date of termination");

Provided that this subsection shall have effect subject to the provisions of section twenty-three as to the interim continuation

of tenancies pending the disposal of applications to the court.

- (2) Subject to the provisions of subsection (3), a notice under subsection (1) shall not have effect unless it is given not less than six months and not more than twelve months before the date of termination specified therein.
- (3) In the case of a tenancy which, apart from this Act, could have been brought to an end by notice to quit given by the landlord-
- (a) the date of termination specified in the notice under subsection (1) shall not be earlier than the earliest date on which, apart from the provisions of this Act, the tenancy could have been brought to an end by notice to quit given by the landlord on the date of the giving of notice under this section; and
- (b) where, apart from the provisions of this Act, more than six months' notice to quit would have been required to bring the tenancy to an end, the provisions of subsection (2) shall have effect with the substitution for twelve months of a period six months longer than the length of notice to quit which would have been required as aforesaid.
- (4) In the case of any other tenancy, a notice under this section shall not specify a date of

termination earlier than the date on which, apart from the provisions of this Act, the tenancy would have come to an end by effluxion of time.

- (5) A notice under this section shall not have effect unless it requires the tenant, within two months after the giving of the notice, to notify the landlord in writing whether or not, at the date of termination, the tenant will be willing to give up possession of the property comprised in the tenancy.
- (6) A notice under this section shall not have effect unless it states whether the landlord would oppose an application to the court under this Act for the grant of a new tenancy and, if so, also states on which of the grounds mentioned in section eleven he would do so.
6. (1) A tenant's request for a new tenancy may be made where the tenancy under which he holds for the time being (hereinafter referred to as "the current tenancy") is a tenancy granted for a term of years certain and thereafter from year to year.
- (2) A tenant's request for a new tenancy shall be for a tenancy beginning with such date, not more than twelve nor less than six months after the making of the request, as may be specified therein:
Provided that such date shall not be earlier than the date on which, apart from the

provisions of this Act, the current tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the tenant.

(3) A tenant's request for a new tenancy shall not have effect unless it is made by notice in the prescribed form given to the landlord and sets out the tenant's proposals as to the property to be comprised in the new tenancy (being either the whole or part of the property comprised in the current tenancy), as to the rent to be payable under a new tenancy and as to the other terms of the new tenancy.

(4) A tenant's request for a new tenancy shall not be made if the landlord has already given notice under section five to terminate the current tenancy, or if the tenant has already given notice to quit or notice under section eight; and no such notice shall be given by the landlord or the tenant after the making by the tenant of a request for a new tenancy.

(5) Where the tenant makes a request for a new tenancy in accordance with the foregoing provisions of this section the current tenancy shall, subject to the provisions of subsection (2) of section eighteen and section twenty-three as to the interim continuation of tenancies, terminate immediately before

the date specified in the request for the beginning of the new tenancy.

- (6) Within two months of the making of a tenant's request for a new tenancy, the landlord may give notice to the tenant that he will oppose an application to the court for the grant of a new tenancy, and any such notice shall state on which of the grounds mentioned in section eleven the landlord will oppose the application.*

23. (1) In any case where-

(a) a notice to terminate a tenancy has been given, or a request for a new tenancy has been made, under this Act; and

(b) an application to the court has been made under this Act; and

(c) apart from this section, the effect of the notice or request would be to terminate the tenancy before the expiration of the period of three months beginning with the date on which the application is finally disposed of;

the effect of the notice or request shall be to terminate the tenancy at the expiration of the said period of three months and not at any other time.

- (2) The reference in paragraph (c) of subsection (1) to the date on which an application is finally disposed of shall be construed as a*

reference to the earliest date by which the proceedings on the application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing has expired, except that if the application is withdrawn or an appeal is abandoned, the reference shall be construed as a reference to the date of the withdrawal or abandonment."

7.2 Sections 10 and 11 of The Landlord and Tenant (Business Premises) Act¹, further provides as follows: -

"10. (1) Subject to the provisions of this Act, on an application under subsection (1) of section four for a new tenancy, the court shall make an order for the grant of a tenancy comprising such property, at such rent and on such other terms as are hereinafter provided.

(2) Where such an application is made in consequence of a notice given by the landlord under section five, it shall not be entertained unless the tenant has duly notified the landlord that he will not be willing at the date of termination to give up possession of the property comprised in the tenancy.

(3) Subject to the provisions of subsection (4), no application under subsection (1) of section four shall be entertained unless it is made not less than two nor more than four months

after the giving of the landlord's notice under section five or, as the case may be, after the making of the tenant's request for a new tenancy.

(4) The court may, for sufficient reason and on such terms as it thinks fit, permit a tenant to apply to the court for a new tenancy under subsection (1) of section four, notwithstanding that the application is not made within the period specified in subsection (3).

11. (1) The grounds on which a landlord may oppose an application under subsection (1) of section four are such of the following grounds as may be stated in the landlord's notice under section five or, as the case may be, under subsection (6) of section six, that is to say:

(a) where under the current tenancy the tenant has any obligations as respects the repairs and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations;

(b) that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due;

- (c) that the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding;
- (d) that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable, having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding;
- (e) where the current tenancy was created by the subletting of part only of the property comprised in a superior tenancy and the landlord is the owner on the termination of the superior tenancy, that the aggregate of the rents reasonably obtainable on

separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purpose of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy;

(f) that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding;

(g) save as otherwise provided in subsection (2), that on termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business carried on by him therein, or as his residence.

(2) The landlord shall not be entitled to oppose an application on the ground specified in

paragraph (g) of subsection (1), if the interest of the landlord, or an interest which has merged in that interest and but for the merger would be the interest of the landlord, was purchased or created after the beginning of the period of five years which ends with the termination of the current tenancy, and at all times since the purchase or creation thereof the holding comprised in a tenancy or successive tenancies has been occupied wholly or mainly for the purposes of carrying on business thereon. (Court's emphasis)

6.3 Regulation 2 (b) of The Landlord and Tenant (Business Premises) Act¹ provides that: -

"The forms in the Schedule, or forms substantially to the like effect, shall be used for the following purposes, that is to say:

- (a) a notice under the provisions of section four of the Act, being a notice terminating a tenancy of the business premises to which the Act applies, shall be in Form 1;*
- (b) a notice under the provisions of section six of the Act, being a tenant's request for a new tenancy of business premises to which the Act applies, shall be in Form 2;..." (Court's emphasis)*

8 ANALYSIS

8.1 In determining the first issue, I have addressed my mind to the Affidavit evidence of both parties. The Applicant alleges that it entered into a tenancy agreement with the

Respondent to rent the subject property at the monthly fee of K3,000.00. It however acknowledges that it is in rental arrears. The Respondent then issued Notices of Termination of the tenancy agreement.

8.2 A close reading of the Affidavits discloses that the Applicant is in fact owing the Respondent unpaid rentals in the sum of K20,000.00. The documents exhibited as "JC5" and "JC7" in the Affidavit in Support and "EM4" to "EM6" in the Affidavit in Opposition show that the Applicant is not up to date with payments of rent. There is further no indication that the accrued amount is objected to by the Applicant who appeared to have made an undertaking to the Respondent that it would settle its debt. The Applicant has not led any evidence suggesting that the Respondent coerced, threatened or forced them to make an undertaking to settle the outstanding rentals. In my considered view, the Applicant is bound by the terms of the tenancy agreement and its undertaking to pay the outstanding rentals.

8.3 A condition precedent to applying for a new tenancy is that the Applicant ought to give the Respondent a request of a new tenancy pursuant to **Section 6 of *The Landlord and Tenants (Business Premises) Act***¹, which I have cited above in paragraph 7 above. This condition is set out in mandatory terms. There is no

evidence on record that suggests that the Applicant issued such a Notice.

8.4 The Respondent averred that when he served the notices to terminate tenancy on 1st April, 2019 and 8th May, 2019, the Applicant acknowledged with its letter dated 8th May, 2019, where it undertook to pay the outstanding rentals, but did not give a written notice within 2 months on whether it was unwilling to give up possession of the premises. The grounds given in the notice to terminate were the persistent failure and delay in paying rentals and rental arrears, based on exhibited rent demand notice and receipts showing a pattern of late payment of rentals during the period of the lease.

8.5 In the case of ***Afro Butcheries Limited vs. Evees Limited***², the Supreme Court stated as follows: -

"In an application for a new tenancy, the onus can never be on a tenant to advance sufficient and convincing reasons to compel the Court to grant a new tenancy of business premises. On the contrary, the tenant must have his new tenancy unless the landlord satisfies the Court on any one or more of the grounds on which a landlord is entitled to oppose the application. The onus is on the landlord to convince the Court on his ground of opposition, and the only "burden" which the tenant can be said to bear is that of demolishing his landlord's ground rather than discharging any primary burden of establishing his own entitlement to a new tenancy. That this is so can be illustrated by a brief

glance through the Act itself: Under section 4, not only does The contractual tenancy not come to an end but, the tenant is allowed to apply for a new tenancy if, for instance, the landlord has served a notice to quit; by the terms of section 5(6) such notice must have specified the ground under section 11 on which the landlord would oppose the tenant's application; and the language of section 11 in stating that "the court shall make an order" makes it abundantly clear that, in order for the court to refuse to grant a new tenancy, the court must have been persuaded by the landlord to accept his ground under section 11 for opposing the tenant's application..." (Court's emphasis)

- 8.6 As can be seen from the above, the Respondent can only oppose the new tenancy on the grounds listed in **Section 11** of **The Landlord and Tenants (Business Premises) Act¹**, which I have reproduced in paragraph 7 above. In *casu*, Learned Counsel for the Respondent argued that the Respondent invoked the grounds of non payment of rentals and rental arrears, in opposing the new tenancy. He relied on the Affidavit evidence and exhibits attached thereto, which revealed that the Respondent had demanded timely payment of rentals and arrears, which had accrued to K20,000.00 as at 1st April, 2019.
- 8.7 When a landlord's opposition to a grant of a new tenancy is based on one of the matters specified under **Section 11** of **The Landlord and Tenants (Business Premises) Act¹**, such as persistent delay in paying rent due and

substantial breaches of obligations under the tenancy, that is a valid right for opposition. I therefore accept Learned Counsel's contention that the Respondent gave a valid reason for his notice of termination. This is because the Respondent has placed sufficient proof before this Court to bring himself within the provisions of **Section 11 (1) (b) and (c) of The Landlord and Tenants (Business Premises) Act¹**. I am satisfied that the persistent delay in paying rent which became due and substantial breaches by the Applicant of its obligations under the tenancy go to the root of the provisions of **Section 11 (1) (b) and (c) of The Landlord and Tenants (Business Premises) Act¹** and such evidence thereof is absolutely vital to a successful opposition to the grant of the new tenancy. For this reason, I find and hold that the Applicant is not entitled to a grant of a new tenancy.

8.8 This now brings me to the last issue of the validity of the Notice to Terminate that was issued by the Respondent. In its Affidavit evidence, the Applicant, averred that the purported Notice to Terminate did not comply with the provisions of the Act. In particular, it averred that said the said notice was verbal and no formal notice, setting out the grounds of termination, was given.

8.9 The Respondent argued that a formal notice was given to the Applicant, which set out the grounds of termination as persistent delays in payment of rental and rental

arrears. The Respondent placed before this Court proof of such notice in the form of letters of Notice of termination of the lease relating to the subject property, which are addressed to the Applicant and dated 1st April, 2019 and 24th June, 2019.

8.10 I have addressed my mind to the provisions of **Section 5 (1) and (2) of The Landlord and Tenant (Business Premises) Act¹** which requires notice terminating a lease to be given in the prescribed form. The relevant part of **Section 5** of the Act are shown underlined for emphasis in paragraph 7.1 above. The "*prescribed form*" referred to under **Section 5 (1)** of the Act is found in the schedule to the Regulations or a form "*substantially to the like effect*" (Regulation 2) and is reproduced here under: -

***"The Lordlord and Tenants (Business Premises) Act
Landlord's Notice To Terminate Tenancy of Business
Premises***

***To:..... of tenant of business premises known as
.....***

- 1. I of Landlord of the above mentioned premises, hereby give you notice terminating your tenancy on the day of 19.....***
- 2. You are required within two months after the giving of this notice to notify me in writing whether or not you will be willing to give up possession of the premises on that date***
- 3. I would oppose an application to the court under the Act for the grant of a new tenancy, or I would***

oppose an application to the court under the Act for the grant of a new tenancy on the ground that (here state ground or grounds)

4. This notice is given under the provisions of Section 5 of the Landlord and Tenants (Business Premises) Act

Dated this day of 19.....

Signed Landlord

..... Address"

8.11 I have had the benefit of examining the notices given by the Respondent dated 1st April, 2019 and 24th June, 2019. As already indicated in this Judgment, the Applicant carries on business on the 3rd Floor of the subject property. The ground given by the Respondent that *"the decision to terminate your lease has been necessitated by your persistent delays in paying rent lawfully due"*, in my view, conveys the same message as envisaged under the cited relevant provisions of the law. I find that even though the Notices were not crafted exactly as provided under the law, I am satisfied that they are in substantial conformity therewith. I cannot, therefore, fault the Respondent as to the form of notice.

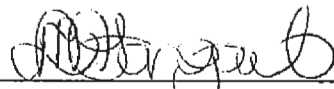
9 CONCLUSION

9.1 In the circumstances I find the notices to be valid and I therefore refuse the grant of the declaration or the grant of a new tenancy sought by the Applicant.

9.2 The action is hereby dismissed with costs to the Respondent, said costs to be taxed in default of agreement.

9.3 Leave to Appeal is hereby granted.

Delivered on the 23rd day of March, 2020.



**P. K. YANGAILO
HIGH COURT JUDGE**