

FORM No. HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

F.A.O. No.85740 of 2023

Nasir Ishaq Malik Versus Ch. Hasan Nawaz

Sr. No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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10.11.2025 Ms. Faiza Mustafa, Advocate for the appellant.
Mr. Mushtaq Mehdi Akhtar, Advocate for respondent.

This appeal under section 24 of Cantonment Rent Restriction Act 1963 is directed against order dated 07.12.2023 of learned Addl. Rent Controller, Lahore Cantt. whereby the appellant’s eviction was directed on account of non-compliance of order for deposit of rent under subsection (9) of section 17 of Cantonment Rent Restriction Act, 1963 (the “Act”).

2. For eviction of appellant on the grounds of default in payment of rent and expiry of lease a petition under section 17 the Act was moved by the respondent claiming that appellant was a tenant in the rented premises who had committed default in payment of rent. After filing of reply to the application the learned Addl. Rent Controller vide order dated 02.11.2023 directed deposit of arrears of rent as well as future monthly rent pending decision of the ejectment petition. Later, on 29.11.2023 the respondent filed an application under subsection (9) of section 17 of the Act asserting that the order for deposit of rent was not complied with and that in view of willful default the appellant was liable to forthwith eviction from the rented premises. Despite opportunities the appellant did not file his reply which right was closed and after hearing both sides the learned Addl. Rent Controller vide impugned order dated 07.12.2023 concluded that the rent for the month of June, 2023 was deposited on 20.11.2023 instead

of 08.11.2023 while the rent for the month of December, 2023 had not been deposited, accordingly, the appellant's right of defence was struck off and he was directed to vacate the premises and also pay the arrears of rent at the rate of Rs. 93,885/- per month with 10% annual increase which order is impugned in this appeal.

3. Heard.

4. Submissions made by learned counsel have been duly considered in the light of record available with this appeal and it is observed that for the reasons hereafter the appellant was liable to eviction on account of non-compliance of order of Addl. Rent Controller under subsection (9) of section 17 of the Act. under subsection (8) of section 17 of the Act provides that before issues are framed the Rent Controller shall direct the tenant to deposit in his office before specified date of the rent due from him and also to deposit regularly till the final decision of the case before 5th of each calendar month the monthly rent which subsequently become due and if there be any dispute as to the amount of rent, the Controller shall determine such amount approximately. Sub-section (9) of section 17 of the Act mandates that if the tenant fails to deposit the amount of rent before specified date or as the case may be, before 5th day of the month, his application, if he is a petitioner shall be dismissed or his defence if he is respondent shall be struck off and the landlord shall be put in possession of the building without any further proceedings.

5. From the available documents, it is discernible that the Rent Controller on 02.11.2023 passed the order for deposit of arrears of rent and future monthly rent under subsection (8) of section 17 of the Act directing the appellant to deposit the rent from May 2023 to September

2023 at the rate of Rs. 85,350/- and with 10% annual enhancement with effect from October, 2023 to November, 2023 before 08.11.2023 and to deposit the future monthly rent with 10% annual increase before 5th of each calendar month. On 29.11.2023 respondent filed an application under subsection (9) of section 17 of the Act claiming that the appellant had not complied with the order passed by the Addl. Rent Controller regarding the deposit of rent as directed on 02.11.2023 and that he had committed default in payment of arrears of rent within the stipulated period. The allegation was that the rent for the month of June 2023 was deposited on 20.11.2023 instead of 08.11.2023 and that rent for the month of December, 2023 was not deposited and that the arrears of rent was not deposited in accordance with tentative determination of Rs. 6,14,520/- on or before 08.11.2023. It was also observed by the Addl. Rent Controller that the rent for the month of June, 2023 was towards the arrears of rent which was to be deposited on or before 08.11.2023 instead it was deposited on 20.11.2023 which was default on the part of appellant. Similarly, no receipt for deposit of rent for the month of December 2023 was filed in the court. On being confronted with the findings of Addl. Rent Controller, regarding default in the payment of arrears of rent i.e. for the month of June, 2023 and non-deposit of rent for December 2023, the appellant's counsel could not deny the facts noted supra, nor was there any explanation for non-deposit of rent within time specified in the order. Even on careful perusal of record of appeal as available clearly proves that there was no compliance of order dated 02.11.2023 in respect of month of June, 2023 and non-deposit of rent for December 2023 therefore, the Addl. Rent Controller had no other option except to direct

straightaway ejectment of the appellant in terms of section 17(9) of the Act. Reference can be made to the case of M. H. Mussadaq v. Muhammad Zafar Iqbal and another (2004 SCMR 1453).

6. On this aspect of the matter, the legal position is very clear. According to sub-section (9) of section 17 of the Act, if the tenant fails to deposit the amount of rent before specified date or as the case may be before 5th of the month, his defence shall be stuck off. On its bare perusal, it is manifest that the above provisions are mandatory in nature and even one day's delay in making the deposit would be default within its meaning and Rent Controller has no power to extend time and condone the same. To further fortify, reference can be made to the case of Misbahullah Khan v. Mst. Memoona Taskinuddin (1995 SCMR 287) in which while interpreting scope of section 17 of the Act it was ruled to the effect that tentative rent order can be passed by the Rent Controller even if ground of default is not alleged for seeking eviction. It was also observed that punitive response shall directly visit upon non-compliance with the tentative rent order and in consequence the defence of tenant may be stuck off and even eviction can be granted. In Province of Punjab and others v. Muhammad Jalil ur Rehman (1986 SCMR 1705) it was observed to the effect that the Rent Controller had no power to ignore the delay in making deposit of rent under subsection (6) of section 13 of the West Pakistan Urban Rent Restriction Ordinance (VI of 1959) which is a comparable provision. Similarly Muhammad Yousaf v. Muhammad Bashir and others (1990 SCMR 557) leave to appeal was declined and petition was dismissed and it was maintained that the Rent Controller had no jurisdiction to

condone even default of a day in making deposit of the rent on due date.

7. In the instant case also there was no explanation for late deposit of rent for the month of June, 2023 or non-deposit of rent for the month of December, 2023. So much so no reply to the application for striking off defence was filed by the appellant to explain the late deposit of rent and the default committed by him by not depositing the rent for the month of December 2023. In this view of the matter the order of Addl. Rent Controller is fair, just and in accordance with the jurisprudence enunciated by the superior courts. No ground whatsoever has been made out for interference.

8. Resultantly, this appeal being devoid of any merit is dismissed.

(RASAAL HASAN SYED)
JUDGE

Approved for reporting

JUDGE