STATUTORY TENANCY UNDER THE CONTROL OF RENT ACT

UNDER general law, when a tenancy is determined, the landlord is entitled to recover possession of the premises from his tenant. However, under all rent control legislation, persons who are contractual tenants are allowed by the legislature, after the expiration of their term, to stay on in their premises against the will of their landlords. The privilege of irremovability[1] conferred by the Legislature on tenants of rent control premises, has resulted in a new class of tenants *viz.* statutory tenants. Although statutory tenants are a creature of the Legislature, "... it is pretty evident that the Legislature never considered as a whole the effect on the statutory tenancy of such ordinary incidents as death, bankruptcy, voluntary assignment, either *inter vivos* or by will, a total or partial subletting... [or] how the legal interest they were granting was affected by those probable events."[2] Consequently, when each of these events has happened the courts have been perplexed by the problem, because the language of the legislation has afforded very little guidance for its solution. As a result, there is much uncertainty in the law. It is proposed in this article to deal with the nature of a statutory tenancy and the rights and obligations of a statutory tenant.

WHO ARE STATUTORY TENANTS?

In Singapore, a statutory tenant is created under section 27 of The Control of Rent Act[3] (hereinafter referred to as "the Act"). Section 27 provides as follows:

> 27. The following persons are statutory tenants under this Act namely:—
>
> (a) any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Act be deprived of such possession by his landlord, and
>
> (b) any sub-tenant becoming a statutory tenant under and by virtue of any of the provisions of this Act.

There are thus two categories of statutory tenants.

It has been laid down by Thomson C.J. in *Khadijah Binte Abdullah* v. *S.I.A. Alsagoff*[4] that for one to be a statutory tenant under paragraph (a) of section 27, four conditions must be fulfilled:

[1] Under all rent control legislation, the landlord can recover rent controlled premises only under certain stated situations. For example, see sections 14 and 15, Control of Rent Act, Cap. 266, Singapore Statutes 1970, Revised Edition.
[2] *Per* Scrutton L.J. in *Roe* v. *Russell* [1928] 2 K.B. 117, 123.
[3] *Supra,* n. 1.
[4] (1957) 23 M.L.J.

(i) he must have been a tenant of the premises;

(ii) his tenancy must have been determined, not assigned or otherwise;

(iii) he must have remained in possession of the premises after the determination of his tenancy; and

(iv) the provisions of the Act must prevent him from being deprived of possession by the landlord of the premises.

Each of these conditions will be discussed in detail.

(i) Contractual Tenant

It is clear then, that the first requirement before one can become a statutory tenant, is that he must first be a contractual tenant of the premises concerned. So, although the Statutory tenant is a creature of the Act, he "... derives his new status from a previous contractual tenancy."[5]

(ii) Tenancy Must Be Determined

The second requirement is that the contractual tenancy must have been "determined by any means". Although it is not explicitly stated, determination here, must refer to determination of the tenancy under common law. At common law, the two most common ways of determining a lease are by effluxion of time and by a notice to quit. A lease is determined by effluxion of time in the case of a lease for a fixed period, when the period expires. Under general law, when a tenant holds over, after the expiration of a fixed term lease, subsequent acceptance of rent by the landlord raises an inference of a new contractual tenancy. The nature of this tenancy depends on the period by reference to which rent is measured. The position under the Act is a little different. It was held by the Singapore Court of Appeal in *Lloyd, Sir Hugh* v. *Yeap. Lian Seng & Ors.*[6] that the acceptance of rent by a landlord from a tenant who holds over after the expiry of a term does not by itself give rise to the inference that a new contractual tenancy has been created. But rather the tenant had become a statutory tenant, after the expiration of his lease. For a new contractual tenancy to arise, it must be shown that, "... rent was paid and accepted in pursuance of, or with the mutual intention to create, a fresh agreement of tenancy."[7]

Periodic leases on the other hand, must be determined by a notice to quit; the period of notice required depends on the type of periodic lease.

An interesting problem that has arisen in connection with a notice to quit is the relationship between section 7(2) and section 27 of the Act. Under the Act, rent of controlled premises can only be increased in certain situations laid down in section 7(1). And section 7(2) provides that: "Nothing in this section shall be deemed to relieve a landlord from the necessity of determining the tenancy according to law prior to increasing the rent."

[5] See T.T.B. Koh, "Rent Control in Singapore" (1966) 8 Mal. L.R. 176, 226.
[6] (1948-49) M.L.J. Supp. 76.
[7] *Ibid.,* at p. 81.

This sub-section has been interpreted to require the landlord to determine the tenancy according to law before making an application to the Rent Conciliation Board (hereinafter referred to as "the Board") for an increase in rent.[8] The issue that arises is that, if a notice to quit is served on a tenant, not in order to take ejectment proceedings against him, but for the purpose of applying to the Board to fix the new rent, does this make the tenant a statutory tenant, or is there a continuation of the contractual tenancy at the new rent? In the English Court of Appeal case of *Summers* v. *Donoghue,*[9] the Court decided that, where a notice to quit is served on a tenant as a preliminary to an increase in rent, the tenant becomes a statutory tenant. In that case, the plaintiff was the owner of certain premises under the Rent Restrictions Acts. In 1920, the defendant's father was a tenant of the premise, when the rent was increased to the amount permitted under the 1920 Act. After the father died in 1927, his widow continued in occupation under section 12(1)(g) of the 1920 Act. In 1944 the widow, the defendant's mother died and the defendant, who was her only relative living with her in the house, continued in occupation. The plaintiff brought ejectment proceedings against the defendant. There were two issues before the Court of Appeal. One was whether the defendant was a tenant within the meaning of section (1)(g) of the 1920 Act and the other was whether in view of section 3(2) which provides that there can be no increase in rent until after the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent, the County Court Judge was correct in inferring, though strict proof of it was lacking, that a notice must have been properly served on the defendant's father in 1920 prior to the increasing of the rent. The Court of Appeal upheld the County Court Judge's ruling on this point and concluded that "... the result of that is that when the father died in 1927, he was a statutory tenant."[10]

Besides this authority, it would seem that the situation above, falls within the plain language of section 27 and fulfills all four conditions which the section has imposed for the creation of a statutory tenant of rent controlled premises. Despite this, the Singapore courts have held to the contrary, and have decided that, where a notice to quit is given to the tenant pursuant to section 7(2), then after the new rent has been fixed, the tenant continues as a contractual tenant and does not become a statutory tenant. In *Teo Ee Hup* v. *Syed Hussain bin Abdul Rahman Alkaff,*[11] the tenant was served a notice to quit, prior to the landlord's application to the Board to increase the rent. Counsel for the landlord argued that this made the tenant a statutory tenant with section 27 of the Act. Rajah J. rejected this contention on the ground that "... it was a notice to quit not intended to terminate the tenancy, but it was a step in the process prescribed by the Act to bring about a permitted increase of rent."[12] It is respectfully sub-

[8] See, *e.g., Chiang Yik Mun t/a Bunny Tailor* v. *CYC Shanghai Shirt Co. Pte. Ltd.* [1983] 1 M.L.J. 14, *Ng Chik Puah* v. *Chop Hoe Thong* (1962) 28 M.L.J. 349, and *The Happy World Ltd.* v. *Estate & Trust Agencies (1927) Ltd. & Anor.* (1958) 24 M.L.J. 155. For cases stating a contrary view, see *Sim Bang Hock* v. *Lim Kwong Sin* [1970] 1 M.L.J. 124, and *Kong Seng Whum* v. *Tengku Besar Zabaidah* [1970] 1 M.L.J. 179. The discussion of this controversy will have to be set aside for a later date.

[9] [1945] 1 All E.R. 599.

[10] *Per* Mackinnon L.J., *ibid..,* at p. 601.

[11] [1982] 2 M.L.J. 142.

[12] *ibid.,* at p. 144.

mitted that this is an erroneous view of the law. Whether it is in fact necessary to give a notice to quit prior to an application to the Board for an increase in rent is not the object of this article to pursue,[13] but even assuming that such a step was necessary, it is clear from section 7(2) itself that the tenancy is determined or terminated. Rajah J. went on to hold that sections 27 and 28 were not applicable to the case because under these sections a statutory tenant continues to hold the tenancy from month to month on the same terms and conditions of his original tenancy; whereas in the instant case, after the Board has fixed the new rent in the landlord's application, the tenant "… was not holding the premises on the same terms as before: the most important term in a controlled tenancy, namely rent, was not the same."[14] Therefore his Lordship concluded that the tenant was not a statutory tenant but remained a contractual tenant. This, it is submitted, is also erroneous. It is true that section 28 of the Act states that a statutory tenant shall observe and be entitled to the benefit of all the terms and conditions of his original tenancy, but this does not mean that a statutory tenancy can exist only if the rent is the same as that of the contractual tenancy. In fact, the Act does not prohibit the increase in rent of statutory tenancy, provided the increase is permitted under section 7(1). To follow Rajah J.'s reasoning to its logical conclusion would mean that if the rent of a statutory tenancy is increased, this would either destroy the tenancy or convert the statutory tenancy back to a contractual tenancy since this important term is no longer the same. The proposition needs only to be stated to show that it is unsupportable in law. The case of *Summers* v. *Donoghue* did not seem to have been cited to Rajah J.

Counsel for the landlord in the above case, made a renewed effort to convince Rajah J. that a statutory tenancy should result in the above scenerio, in *The Great Eastern Life Assurance Co. Ltd.* v. *Goh Ah Kew t/a Singapore Dry Cleaners & Anor.*[15] This time, *Summers* v. *Donoghue* was quoted to his Lordship, but still his Lordship was not convinced and declined to follow the case on the ground that "...section 3(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act (English Act) with regard to increase of rent of premises to which the English Act applies is not the same as in section 3(1) of our Act with regard to increase of rent of controlled premises."[16] This is true, but with respect, it is difficult to see the relevance of this distinction with regard to the issue at hand, which is the determination of the nature of the relationship between the landlord and the tenant after the former has given a notice to quit to the latter prior to an application to increase rent. It was not because of section 3(1) of the English Act that the Court in *Summers* v. *Donoghue* reached the conclusion that the tenant in such circumstances becomes a statutory tenant, but rather the court was laying down a general principle of law.

The same issue arose in the recent case of *Chiang Yik Mun t/a Bunny Tailor* v. *CYC Shanghai Shirt Co. Pte. Ltd.*[17] In this case, Eastern Realty Co. Ltd., the owners of the rent controlled premises in question, in 1960 served a notice to quit on one Foo who was a

[13] See n. 8.
[14] *Supra,* n. 11 at p. 144.
[15] [1980] 1 M.L.J. 277.
[16] *Ibid.,* at p. 278.
[17] [1983] 1 M.L.J. 14.

monthly tenant of the premises. The notice to quit served on Foo was not to take ejectment proceedings against him, but for the company to apply to the Board to fix the rent of the premises. The increase in rent fixed at $75.79 by the Board was accepted by both parties. In 1965, Foo sublet the ground floor of the premises at a monthly rent of $170 to the defendant. Foo died in 1977. In 1978, the company obtained default judgment against the widow of Foo in an action to recover possession of the premises, on the ground that rent in excess of the maximum permitted under section 15(1)(g) of the Act was charged on the sub-tenant. In 1979, the company sold the premises to the plaintiffs. The plaintiffs then commenced proceedings to recover the premises from the defendant sub-tenant, on the ground that on the expiry of the notice to quit given to Foo by the company in 1960, Foo became a statutory tenant and therefore, could not sublet the ground floor to the defendant. It was argued that there was nothing in the Act which provided that once the Board had increased the rent, there was created a new contractual tenancy. Counsel for the landlord relied on *Summers* v. *Donoghue*. It was contended that the defendant was consequently a trespasser and the plaintiffs were entitled to recover possession of the premises.

Sinnathuray J. rejected the arguments of the landlord on the ground that "... it does not follow that because there is nothing in the Act a tenancy cannot be created between the parties consequent upon the increase of the rent by the Board."[18] His Lordship refused to follow *Summers* v. *Donoghue* on the ground that the case was not an authority on this point as no submissions were made to the court on this question. His Lordship felt that Mackinnon L.J.'s statement that the tenant became a statutory tenant after the notice to quit, was *obiter* and therefore was not an authority on this point. It is submitted that this conclusion is rather doubtful. As stated earlier (and also noted by Sinnathuray J.), one of the issues in *Summers* v. *Donoghue* was whether the defendant was a tenant within the meaning of section 12(1)(g) of the 1920 Act. The material words of the definition are:

> The expression 'tenant' includes the widow of a tenant dying intestate who was residing with him at the time of his death, or where a tenant dying intestate leaves no widow... such member of the tenant's family so residing as aforesaid....

The status of the defendant's mother when she continued occupation after the death of her husband (the tenant) was therefore important. And her status depended on the tenant's status just before his death. If the tenant died a contractual tenant, then the widow would inherit the contractual tenancy, and she would then be the contractual tenant, in which case the defendant would be protected pursuant to the definition of "tenant". But if the father died a statutory tenant, the widow would herself only be protected because she fell within the definition, in which case the defendant would not be protected. Therefore, the determination and the court's conclusion on the status of the tenant before his death was not *obiter*.

Another point worth noting about Sinnathuray J.'s decision was that although the case would seem to be on all fours with the earlier case of *The Great Eastern Life Assurance Co. Ltd.* v. *Goh Ah Kew*

[18] *Ibid.*, at p. 17.

(which was quoted and argued before his Lordship), his Lordship did not rely on it in reaching the conclusion that Foo, when he died, was a contractual tenant because, when the Board approved the increase of the rent, the order of the Board constituted an offer by the company of a new tenancy to Foo; and when Foo paid the increased rent, a new contractual tenancy was created. One reason for Sinnathuray J.'s reluctance simply to rely on *The Great Eastern Life Assurance Co. Ltd.'s* case was that he (as noted) disagreed with Rajah J.'s distinction of *Summers* v. *Donoghue.* Another reason could be that His Lordship was referred to a contrary, unreported decision of Chua J., who rejected the appeal of the tenant that a new contractual tenancy was created when, after the order of the Board, the tenant paid and the landlord accepted the new rent.[19] Unfortunately, there is no written judgment and we do not know the reasons which prompted Chua J.'s decision, although it is submitted that this is the correct legal conclusion. It should also be noted that section 27 of the Act was not cited to Sinnathuray J.

The combined result of the three cases is that section 27 must be read with a qualification that, a statutory tenancy will result only if the tenancy is determined with a view to ejectment proceedings being taken against the tenant and not when it is given as a preliminary step to an application to the Board to increase rent. This, it is submitted, is reading into the section something that is not there.

An interesting argument raised by counsel for the landlord in *The Great Eastern Life Assurance Co. Ltd.'s* case, which the court did not seem to appreciate and consequently did not address itself to, was that, since "... in all cases under section 7 of the Act where it is necessary for the Board to intervene to fix rent, the tenant who continues his tenancy after such fixing, is a statutory tenant and continues to be one [...], in such a case, it is not possible for the parties by consent to alter this position."[20] The point, which the writer gathers, counsel was trying to make, was that, if the Act (under section 27) lays down that the tenant in a certain situation has become a statutory tenant and is in possession as such as a matter of law, his position cannot by agreement be turned into that of a contractual tenant. Actually, it is not even clear if counsel himself appreciated the thrust of this argument, for he is reported to have relied on *Summers* v. *Donoghue* for this proposition. It lays down no such principle. Moreover, from the report of *The Great Eastern Life Assurance Co. Ltd.'s* case, it is not clear whether this argument was actually pertinent. The point would in fact have been directly relevant in the earlier case of *Teo Ee Hup* v. *Syed Hussain Bin Abdul Rahman Alkaff,* where the notice to quit served by the landlord on the tenant contained an offer by the landlord which read, "Our clients are prepared to enter into a *fresh tenancy* (the Court's emphasis) with you as from the first day of February 1974 on the same terms save that the monthly rent will be $278.60, an increase of $54.20, subject to the approval of the Rent Conciliation Board to whom we are applying in due course."[21] This notice indicated a clear intention of the parties to enter into a contractual tenancy. The question that arises is, if one accepts the view that whatever may be the reason for determining the tenancy, once

[19] This can be found in Sinnathuray J.'s decision, *ibid.*, at p. 16.
[20] *Id.*
[21] *Supra,* n. 11 at p. 144.

determined, the situation is covered by section 27 (which lays down that a statutory tenancy would result), can the parties by agreement turn the tenancy into a contractual tenancy? In *The Great Eastern Life Assurance Co. Ltd.'s* case, there is no evidence that the notice to quit bore such an offer by the landlord.

In the English Court of Appeal's decision in *The Bungalows (Maidenhead) Ltd.* v. *Mason*,[22] the Court held that the position of a statutory tenant could by agreement be converted into that of a contractual tenant. On the facts, the court could draw the conclusion that such a conversion took place because the landlord's agent and rent collector called at the premises (after the death of the tenant) with a new rent book, and it was agreed between him and the tenant's daughter, acting as the widow's agent, that the widow should become the new tenant (she having become a statutory tenant after the tenant's death). Her name was put on the rent book, which contained conditions differing from those in the previous rent book. The court rejected the suggestion that the parties could not by agreement turn the statutory tenancy into a contractual one.

The Act is silent on this point, but in principle, the court's position seems unassailable. The creation of a statutory tenancy under rent control legislation is to protect the tenant and prevent him from being evicted after the end of his contractual tenancy, so if the parties agree to a new contractual tenancy subsequent to the determination of the prior contractual tenancy, there seems to be nothing in principle against this; the tenant is entitled to remain on the premises. However, this position can only come about where there is unequivocal evidence of the parties' intention to enter into a new contractual tenancy. And it is on this ground that the result of *Teo Ee Hup* v. *Syed Hussain Alfaff* is supportable. On the other hand, the mere fact that the notice to quit was served by the landlord as a preliminary to an application to the Board to increase the rent and not to evict the tenant, is not unequivocal evidence of an intention to create a new contractual tenancy. As such, the decisions of *The Great Eastern Life Assurance Co. Ltd.* v. *Goh Ah Kew* and *Chiang Yik Mun* v. *CYC Shanghai Shirt Co. Pte. Ltd.* are not supportable.

The discussion on this point has been a rather protracted one, but that is only because it is one of importance, for whether a tenant is a statutory or contractual one, will affect his rights and liabilities as well as determine the persons who may be protected under section 16(c) of the Act.

(iii) Tenant Must Remain In Possession

The third requirement for the creation of a statutory tenancy is that the tenant must remain in possession of the premises after the determination of his contractual tenancy. What would amount to remaining in possession of the premises? It is clear that we are here concerned with "… actual possession or occupation by the tenant as opposed to legal possession".[23] Therefore, physical occupation of the premises by the tenant would amount to such possession. However, this does

[22] [1954] 1 All E.R. 1002.
[23] *Per* Kulasekaram J. in *Tang Joo Sim* v. *Lee Soo Huang & Ors.* [1975] 2 M.L.J. 15. See also, *Brown* v. *Brash And Ambrose* [1948] 2 K.B. 247, 255.

not mean that every tenant who, for however short a time, or however necessary a purpose, or with whatever intention as regards returning, absents himself from the premises, is deemed not to be in occupation and possession. "To retain possession or occupation for the purpose of retaining protection, the tenant cannot be compelled to spend twenty-four hours in all weathers under his own roof for three hundred and sixty-four days in the year."[24] So, absence of physical occupation for a short period where there is an intention to return does not constitute a cesser of possession of the premises. Nevertheless, absence may be sufficiently prolonged or intermittent to compel the inference, *prima facie,* of a cesser of possession or occupation. The question is one of fact and degree.

In a situation where the tenant's absence is sufficiently prolonged to raise the inference of non-occupation or non-possession, the tenant in order to dispel it must establish a *de facto* intention on his part to return after his absence and must show some formal, outward and visible sign of that intention.[25] This can consist of installing in the premises some caretaker or representative, with the status of a licensee and with the function of preserving the premises for his ultimate homecoming. It was held in the case of *Tang Joo Sim* v. *Lee Son Huang & Ors.*[26] that mere occupation by the licensee is not sufficient but "... it must be the function of the licensee... to preserve the premises for the said deceased (the tenant)'s own ultimate home-coming." Thus, the court held that, where the tenant had never resided in the premises and never showed any intention of doing so, her granddaughter's occupation could not be considered constructively her occupation and therefore she could not be a statutory tenant.

Would it make a difference to the above situation if the licensee in occupation is a member of the tenant's family as defined in section 2 of the Act? This question arises because of section 16(c) of the Act. As noted elsewhere,[27] section 16(c) was intended to give the landlord an additional ground to recover domestic premises from the tenant by providing that an order for possession may be made,

> (c) where neither the tenant nor any member of his family is residing in the premises or any part thereof.

However, a number of cases have concluded that: "It follows by necessary implication, that the landlord has no right in such circumstances to recover possession if either the tenant or any member of his family resides therein... ."[28]

[24] *Per* Asquith L.J. in *Brown* v. *Brash And Ambrose, Supra.*

[25] See *Brown* v. *Brash And Ambrose, supra.* This principle has been accepted locally, see *Kassim Bin Adam & Anor.* v. *G.E. Bandukwala & Anor.* (1958) [24] M.L.J. 226, *M. Weinberg* v. *Lim Seow Peng* (1955) 21 M.L.J. 152, *Chartered Bank (Malaya) Trustee Ltd.* v. *Abu Bakar* (1957) 23 M.L.J. 40. In *The Mercantile Bank of, India (Trustees) Ltd.* v. *Ruth Nicholas* (1949) 15 M.L.J. 104, Bostock Hill J. expressed the view that "possession" in the English rent control legislation is used in the same sense as the Malaysian's Control of Rent Ordinance, 1948. This is equally true of the Singapore Act.

[26] *Supra,* n. 23 at p. 18.

[27] See the writer's "The Control Of Rent (Exemption) Notification And 'Members Of The Family' Of A Tenant" (1983) 25 Malaya Law Review 154, 157.

[28] See, *e.g.,* Winslow J. in *Hoo Yang Meng* v. *Esah* [1970,] 1 M.L.J. 126, 127.

In addition to this it has been held by a majority of the Court of Appeal in *Khadijah Binte Abdullah* v. *S.I.A. Alsagoff*[29] that because of section 16(c)

> ... so far as the creation of a statutory tenancy is concerned, it is... not necessary for the tenant to remain in occupation of domestic premises either in person or through a licensee who is there to preserve them for his return; so long as a member of his family is residing there, it is enough if the tenant leaves on the premises a licensee who may be the very member of his family in residence and who need not have any intention of preserving them for his return but through whom he has legal possession of the premises.[30]

In this case, the plaintiff, a tenant of rent controlled premises, brought an action to recover possession of the premises and for trespass against his former wife. She had continued to occupy the premises with their five children, one of whom was eighteen, since the plaintiff left in 1951. For a period of four years, the plaintiff never set foot on the premises although he continued to pay the rent. The Court found that throughout this period he had abandoned any intention of returning to reside in the premises until he changed his mind at the end of 1954. The plaintiff claimed possession on the ground that he became a statutory tenant when his landlord gave him a notice to quit in 1953. This depended on whether he had possession, which (since he was not in physical occupation) in turn depended on whether he could rely on the occupation of his eighteen year old daughter as a "member of his family" within section 16(c). The majority held that he could, even though neither his ex-wife nor his children was preserving the premises for his ultimate return. As a result, the plaintiff succeeded in his action for possession and trespass against his ex-wife. In the Court's view, if the landlord had tried to obtain possession of the premises, he would fail as the plaintiff's daughter aged eighteen was residing in the premises, thus falling within section 16(c). It followed in the majority's view that if the plaintiff had sufficient right or interest in the premises to enable him to resist a claim by the landlord for possession, this right or interest was also sufficient to support an action for trespass. This principle of law is undeniably correct and is supported by the English Court of Appeal's decision in *Thompson v. Ward*,[31] but the premise is not applicable here. If the landlord had attempted to repossess the premises, the tenant could not resist this action, because he was neither a contractual not statutory tenant since he did not have actual nor constructive possession necessary for a statutory tenancy, but rather the action would be successfully resisted by the tenant's daughter, because of section 16(c).

This was also the view of the dissenting judge, Thomson CJ. His Lordship was of the view that section 14 of the Act prohibited the recovery of possession of rent controlled premises "comprised in a tenancy" except as set out in sections 15 and 16 of the Act. But section 14 does not apply to a situation like in *Khadijah's* case because there was no tenancy of the premises concerned. Therefore, the landlord could have recovered possession as against the plaintiff.

[29] (1957) 23 M.L.J. 90.
[30] *Ibid*., at p. 98.
[31] [1953] 2 Q.B. 153.

In the case of *Thompson* v. *Ward,* on facts which were almost identical to *Khadijah's* case, save that it was the mistress and not the wife whom the tenant left behind, the English Court of Appeal held that the tenant could not maintain trespass against her, since by having abandoned the premises with no intention of returning, he had forfeited his status as a statutory tenant. Her presence in the premises as his licensee was not sufficient to retain possession for him, since she was not installed with the intention of preserving the premises for the tenant's homecoming. Whyatt CJ. apparently distinguished *Thompson* v. *Ward* on the ground that the United Kingdom's Rent Restriction Acts applied to dwelling houses only and not, as in Singapore, to dwelling houses and business premises, and the Rent Restriction Acts did not protect the tenant unless the possession amounted to residence; if the tenant was not residing in the premises, the right of the landlord to recover possession from the tenant was governed by the common law.[32] With due respect, this is not an accurate exposition of the English law. Under the Rent Restriction Acts, a tenant shall so long as he "retains possession" of the premises be entitled to the protection of the Acts. The English courts have interpreted that to require that if reliance is placed on a licensee in possession, he must be on the premises to preserve it for the tenant's return.[33] This, it is submitted, is equally applicable to the interpretation of the requirement of "possession" under section 27 of the Act, for the creation of a statutory tenancy. Tan Ah Tah J., on the other hand, distinguished *Thompson* v. *Ward* on the basis that "... there is no provision in the English Rent Restriction Acts corresponding to paragraph (c) of Section 16... ,"[34] This brings us closer to the substance of the matter, but, it is submitted, is not really pertinent to the issue at hand. Section 16(c) merely has the effect of protecting members of the family of the tenant and is not intended to affect section 27 of the Act, neither is it expressed to have any such effect.

This interpretation of section 16(c) can be supported by the case of *The Mercantile Bank of India (Trustee) Ltd.* v. *Ruth Nicholas*.[35] In this case, the landlord sought possession against the sister of the tenant. The tenant had left the premises leaving the sister in occupation. Under the Malaysian Ordinance, section 13(1) which is similar to section 16(c) of the Act, enables the landlord to recover the premises "where the tenant or any member of his family is not in occupation of the premises... ;" it was argued by the landlord that because of this, a definite class of licensees had been given protection

[32] Thomson J. (as he then was) expressed a contrary view in *M.K. Ramasamy Pilial* v. *Meyappa Chettiar* (1955) 21 M.L.J. 105, 107. His Lordship stated that it was settled law that the English Acts only afford protection to a person who was in actual occupation of the premises and that the word "possession" in section 15(1) of the English Acts of 1920 meant actual possession and did not include any sort of constructive possession by a sub-tenant or assignee or licensee of the whole of the premises. Whether or not that was the correct exposition of the English law at that time, it is clear that it is no longer the law now. But what is important is his Lordship's view that, although our Act applies to a much wider class of premises viz. both domestic and business, than the English Acts which only apply to domestic premises, "... this consideration does not detract in any way from the validity of the principle... deduced from the English authorities." This is equally true of the present English position as stated in the text of this article.

[33] See, *e.g., Brown* \. *Brash And Ambrose,* and *Thompson* v. *Ward.*

[34] *Khadijah binte Abdullah* v. *S.I.A. Alsagoff, supra,* n. 29 at p. 99.

[35] (1949) 15 M.L.J. 104.

by the Ordinance and since a sister was not included as a member of a tenant's family, she could not hold possession on behalf of the tenant. The court rejected this on the ground that "...section 13(1) of the Ordinance merely sets out cases where judgment for the recovery of possession may be given; it does not purport to decide what amounts to possession by the tenant.... It does not... introduce a new principle as to the determination of what possession by the tenant through an agent or licensee means."[36]

This, it is submitted is the correct position and once it has been concluded that possession can be retained on behalf of the tenant by his agent or licensee, then the general principles outlined in the English cases cited above are applicable.

Khadijah's case would seem to be inconsistent with *Tang Joo Sim* v. *Lee Huang,* but the former case, which is binding on the High Court was not argued or quoted therein and the latter must to this respect be considered *per incuriam* although it is far sounder in law.

Besides installing a licensee on the premises, what other outward and visible sign would be sufficient as a manifestation of an absent tenant's *de facto* intention to return to the premises? It is clear from *Khadijah's* case that the continuation of the payment of rent is insufficient; for it is not unequivocal and, for instance, could be equally consistent with an absent husband's maintenance of his family. In the English case of *Brown* v. *Draper*,[37] the Court suggested that leaving furniture on the premises may have the same effect as leaving a licensee on them, that is, as a symbol of possession. This has not been universally accepted. In *Chartered Bank (Malaya) Trustee Ltd.* v. *Abu Bakar*,[38] Whitton J. doubted its applicability, and even in England, it has also not been universally accepted. In *Brown* v. *Brash and Ambrose*,[39] the Court was non-committal about its correctness, but in any event held that there was no evidence to show that three items of domestic furniture left on the premises were intended as symbols of continued possession by the tenant. If one looked at the policy considerations which prompted the passing of rent control legislation, *viz.* to make the best use of limited housing resources and to protect tenants against exorbitant demands for rent, leaving behind furniture on the premises should not be treated as sufficient for the continuation of the tenancy, for there is no utility in the housing accommodation being left in this way.

Does it make any difference to the above principle if the premises involved are business as opposed to domestic premises? The first obvious difference is that section 16 is not applicable to business premises, but as was contended earlier, section 16 should not affect the issue of possession in the first place, regardless of the nature of the premises. At the same time, "... it is generally easy to decide whether a party is in occupation by way of residence, whereas it may not be so easy to decide whether he is in occupation by way of carrying on business."[40] Clearly, physical occupation is not required to amount

36 *Per* Bostock Hill J., *ibid*., at p. 106.
37 [1944] K.B. 309.
38 (1957) 23 M.L.J. 40, 43.
39 *Supra,* n. 23 at p. 255.
40 *Per* Thomson J. in *M.K. Ramasamy Pillai* v. *Meyappa Chettiar & Anor.* (1955) 21 M.L.J. 105, 107.

to possession of business premises; so long as business is conducted or carried on in the premises, that would suffice. Can an owner of business premises continue possession through a licensee? In *Chartered Bank (Malaya) Trustee Ltd.* v. *Abu Bakar*,[41] this issue arose for discussion in a situation where the premises were let to a partnership consisting of two partners, one of whom (the tenant) absconded, leaving the defendant (who joined the partnership after several changes) to pay the debts of the partnership. The plaintiff claimed possession of the premises from the defendant after giving a notice to quit to the partners. The three judges went on the premise that the remaining partner could in principle maintain possession for the other partner as his licensee, but a majority felt that the circumstances of the tenant's departure from the premises *viz.* to avoid his liabilities, indicated an intention to abandon his possession and therefore the inference of a licence could not be drawn, for "… a man who claims rights of tenancy through one who has by any ordinary criterion abandoned his tenancy must established positively that he himself holds or retains authority from the departed tenant which legally entitles him to retain possession."[42] The dissenting judge, Mathew C.J., felt that "… so long as the business was continued in the premises he is for the purposes of the Ordinance in possession."[43] This is probably too wide because, for one to act as licensee and to hold possession on behalf of another, one must surely have to be authorised, either expressly or impliedly, by that person, and in this case there was clearly no authorisation; therefore the remaining partner was really carrying on business on his own account in the firm's name and could not claim to be in possession.

In addition to this, Knight J. opined (as an alternative ground) that, "… no partner, agent or licensee can hold over in Singapore for an absent partner in business premises, and thus acquire for him a statutory tenancy."[44] This is perhaps too sweeping and there is neither authority nor reason why this should be so and the majority view seems preferable.[45]

The above discussion shows that it is difficult for a landlord to recover possession of the premises against a statutory tenant, on the ground that he did not have possession of the premises. The landlord's task has been made even more difficult because the courts have adhered to a procedural point that a "… court has no jurisdiction to make an order for possession against a licensee unless the tenant is a party and an order is made against him as well."[46]

The effect of this rule can be seen in the case of *Kassim bin Adam & Anor.* v. *G.E. Bandukwala & Anor.*,[47] where the landlord

41 (1957) 23 M.L.J. 40.
42 *Per* Whitton J., *ibid.*, at p. 43.
43 *Ibid.*, at p. 40.
44 *Ibid.*, at p. 42.
46 Besides, this view is not shared by the Federal Court in *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.* (1964) 30 M.L.J. 71, where the tenant of rent controlled premises carried on business on the premises; he left the premises and went to India and in fact never returned to Singapore. Thomson L.P. expressed the view that the tenant, "… had long ceased to occupy the premises although no doubt he was in possession of them by his agents for the purposes of his business."
46 *Per* Tan Ah Tah F.J. in *United Overseas Bank Ltd.* v. *Sin Bian Sea Transport* [1968] 2 M.L.J. 69.
47 (1958) 24 M.L.J. 227. See also, *M. Weinberg* v. *Lim Seow Peng* (1955) 21 M.L.J. 152.

sought possession of the premises against the tenant and his licensee. The writ of summons described the tenant as "presently of Bombay at an address unknown" and was never served on the tenant. Wee Chong Jin J. (as he then was) held that since the tenant was not served and consequently did not come before the court, the court could not adjudicate on his rights and more specifically, "… it cannot adjudicate on whether he has forfeited his status as statutory tenant by cesser of possession or occupation."[48] From this and following the English case of *Brown* v. *Draper*,[49] his Lordship concluded that "… the court has no jurisdiction to make an order for recovery of possession against the second defendant who claims to be in occupation as the licensee of the first defendant (the tenant) unless the first defendant is properly before the court and an order is made against him as well."[50] Wee J. also held that, as a result of the court's inability to adjudicate on the status of the tenant, "… no presumption can arise against him of cesser of possession or occupation and that he must be deemed to remain in possession and not to have forfeited his status as a statutory tenant."[51]

This case at first sight seems inconsistent with the *Chartered Bank (Malaya) Trustee Ltd.'s* case discussed earlier. There, the fact that the tenant was away in India did not prevent the court from adjudicating on his position and granting possession to the landlord. Wee J. distinguished it on the ground that "… the court never considered the question whether the presumption against the tenant of cesser of possession or occupation could arise when the tenant was not a party to the proceedings."[52] It is true that the court in the *Chartered Bank (Malaya) Trustee Ltd.'s* case did not explicitly deal with the question of whether it had jurisdiction to adjudicate on the rights of the tenant who was not before the court, but it assumed that it had jurisdiction.

Tan Ah Tat F.J. distinguished the *Chartered Bank (Malaya) Trustee Ltd.* case on another ground in *United Overseas Bank Ltd.* v. *Sin Bian Sea Transport*.[53] In this case, the landlord sought possession against a licensee of the statutory tenant. The latter was not made a party to the proceedings and Tan Ah Tat F.J. held that the court had no jurisdiction to make an order for the recovery of possession. His Lordship distinguished *Chartered Bank (Malaya) Trustee Ltd.'s* case on the ground that, in that case the court had decided that the defendant was not the tenant's licensee and thus could order possession against the tenant. This, it is submitted, is not a valid distinction at all, because the very question of whether the occupant is a licensee of the absent tenant affects the rights of the tenant and if he is not before the court, it has no jurisdiction to adjudicate on this. Therefore the *Chartered Bank (Malaya) Trustee Ltd.'s* case must be seen as a case where the point was not argued and not as authority that the court has jurisdiction to adjudicate on the rights of an absent tenant.

There is no real hardship on the landlord in the *United Overseas Bank Ltd.'s* case type of situation, because the tenant was in Singapore

[48] *Ibid.,* at p. 228.
[49] [1944] K.B. 309.
[50] *Supra,* n. 47 at p. 229.
[51] *Supra,* n. 47 at p. 228.
[52] *Id.*
[53] *Supra,* n. 46.

and it was only by oversight or ignorance that he was not served. But in a situation like *Kassim bin Adam's* case, this rule seems a little harsh on the landlord because the tenant is out of the jurisdiction and his whereabouts unknown. Furthermore, in such a situation, substituted service of the writ will not be permitted because before substituted service may be effected,[54] at the time of the issue of a writ for service within the jurisdiction, it is required that there could at law have been personal service. But if at the time of issue of the writ, personal service of such writ could not at law have been made, then substituted service cannot be ordered.[55] This would be the case where, when the writ was issued, the defendant was already out of the jurisdiction.[56]

The only possible way out of this, is for the landlord to apply for service of the writ out of jurisdiction under Order 11 of the Rules of the Supreme Court 1970. There should be no difficulty in obtaining the order under either paragraph (a) or (b) of Rule 1 of the same Order, which covers disputes over immovable property, or under paragraph (j), where the person out of the jurisdiction is a necessary or proper party to the action. The only difficulty is that Rule 5(3) of the Order states that,

> 5(3) A notice of a writ which is to be served out of the jurisdiction need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected.

So the end result is that, if the landlord does not know the exact whereabouts of the tenant, he can succeed only if the country where the tenant is does not require personal service of the writ.

However, in a situation where no person appears to be in possession of the immovable property, and service of the writ cannot be otherwise effected on any defendant, the court can, under Order 10 Rule 4 of the Rules, order that service be effected by affixing a copy of the writ to some conspicuous part of the immovable property. This Rule however does not cover a situation where a licensee is in occupation.

One other interesting point about the requirement of possession is, how can possession be shown in the case of a person who holds the premises in an official capacity, for example, an Official Assignee who takes over a tenancy after the bankruptcy of the tenant? In *M.K. Ramasamy Pilled* v. *Meyappa Chettiar*,[57] a tenant of rent controlled premises was adjudicated bankrupt and his rights under the contract of tenancy passed by virtue of the law of bankruptcy to the Official Assignee. The tenant however, continued in occupation of the premises with the Official Assignee's permission. The landlord gave the Official Assignee a notice to quit; the Official Assignee did not respond to the notice and the tenant remained in possession. The landlord sued to recover possession. The court held that the Official Assignee did not become a statutory tenant, since he did not have possession. Although

[54] See Order *62* Rule 5, Rules of The Supreme Court, 1970.
[55] See *Fry* v. *Moore* (1889) 23 Q.B.D. 395.
[56] See *Wilding* v. *Bean* [1891] 1 Q.B. 100. For a more detailed discussion, see The Supreme Court Practice, 1982, Volume 1, Centenary Edition (Sweet & Maxwell Ltd. Stevens & Sons Ltd.), p. 1137.
[57] *Supra,* n. 40.

initially by refusing to disclaim the tenancy, he had displayed an *animus possidendi,* the court felt that this had disappeared before the commencement of the proceedings by the passive attitude taken, when he informed the court that he neither opposed nor admitted the claim. In addition, the court felt that there was not "… a single act on his part that could by any stretch of the imagination be construed as an act of occupation...."[58] It seems strange at first sight that the court did not consider the act of allowing the bankrupt to stay on the premises as sufficient assertion of possession. But this was because the court followed what it thought was the English law at that time, which was that "possession" in that regard meant actual possession and did not include constructive possession by an assignee or licensee. Whether or not that was a correct exposition of the law at that time, it certainly is not the law now,[59] so that clearly if the same situation arises, the Official Assignee must be deemed to have constructive possession through the bankrupt's occupation.[60] This would be true of persons who hold the premises in an official capacity; the existence of an *animus possidendi,* plus some outward manifestation of the *animus* should suffice to constitute possession.

(iv) Deprivation Of Possession

The fourth and final requirement is that the person claiming to be a statutory tenant cannot be deprived of his possession of the premises. From this, it is clear that a tenant remaining in possession after the determination of his contractual tenancy by notice or otherwise, does not necessarily become a statutory tenant. He only does so if he cannot by reason of the provisions of the Act be deprived of possession by his landlord. The protection against deprivation of possession which is ordinarily given by section 14 does not apply if the landlord can satisfy any of the causes set out in section 15 or 16 of the Act. At one time, it was thought that although the tenant may be turned out by an order of the court upon the landlord satisfying one or other of the ten causes set out in section 15, the tenant cannot be ejected "… by the private action of the landlord without the aid of the court."[61] The effect of this view is that upon determination of the contractual tenancy, the tenant becomes a statutory tenant, even if possession can be obtained against him under section 15; his statutory tenancy remains until a court order for possession is made against him. The practical significance of this is that it was thought that it was therefore necessary to determine his statutory tenancy pursuant to section 27(b) before applying to the court for an order of possession.

This view has rightly been rejected in *Ida Fernandez (m.w.)* v. *M. Murugiah*,[62] where the High Court held that a person whose contractual tenancy had been determined by his landlord, who at the

[58] *Ibid*., at p. 108.

[59] See, for example, *Brown* v. *Brash And Ambrose, Thompson* v. *Ward,* and *Dixon* v. *Tommis And Anor.* [1952] 1 All E.R. 725.

[60] Thomson J. took a different view in *Meenachi Sundram & Anor.* v. *Kunjan Pillai* (1955) 21 M.L.J. 128, where his Lordship expressed the view that, "So long as the Official Assignee was the tenant and allowed the respondent [the bankrupt] to remain on the premises the respondent was entitled to do so as his licensee."

[61] See the District Court case of *Hodge* v. *Parrish* (1950) 16 M.L.J. iii.

[62] (1950) 16 M.L.J. 83. This case has been followed in *K.S. Mohamed Ismail* v. *Choo Pin* (1954) 20 M.L.J. 183.

date of such determination was entitled to obtain an order or judgment of a court for the recovery of possession under section 15, did not become a statutory tenant at all.[63]

It was sought to be argued in *Wong Ser Seng* v. *C.V. Sankaran Nair*[64] that where the contractual tenancy was for a fixed term and after the expiration of the tenancy, the tenant refused to deliver possession, he had in fact breached an obligation of the tenancy, thus bringing him within section 15(1)(b), which enabled the landlord to recover possession against him and therefore he could not be a statutory tenant. This interpretation if given force, would render the whole Control of Rent Act nugatory and was rightly rejected by the court on the ground that the obligation of a contractual tenant to give up possession at the end of the term was not one of the breaches envisaged by the legislature in the Malaysian equivalent of section 15(l)(b). In any event, section 15(l)(b) of the Act only allows recovery of possession for a breach of any obligation of the tenancy, only in so far as the obligation is consistent with the provisions of the Act.

SUB-TENANTS AS STATUTORY TENANTS

The second category of statutory tenants is provided under section 27(b) of the Act, which includes as statutory tenants,

> (b) any sub-tenant becoming a statutory tenant under and by virtue of any of the provisions of this Act.

Under general law, when the tenancy of the principal tenant is determined, automatically any sub-tenancy created by him is equally determined; for "… every subordinate interest must perish with the superior interest on which it is dependent."[65] The position under the Act, as can be expected, is a little different. As one of the purposes of the Act is to protect those who had obtained lawful possession of premises, to allow determination of a main lease to also determine a sub-lease is an erosion of this protection. To prevent this, the Act protects the sub-tenant by making him a statutory tenant, where section 27(1)(b) is satisfied.

In *Guan Seng Kee Ltd.* v. *Buan Lee Seng Ltd.*,[66] the Privy Council held that a sub-tenant of premises lawfully sub-let to him and against whom an action for possession was brought by the landlord after the latter had by notice to quit determined the tenancy of the chief tenant, was a "tenant" within the meaning of the present section 27(a) and was therefore a statutory tenant. This is certainly correct in view of the definition of "tenant" in section 2 to include a sub-tenant. Therefore, if the four requirements discussed above are satisfied, a sub-tenant can become a statutory tenant.

The reason why the Privy Council did not apply section 27(b) was because it did not cover the fact situation in *Guan Seng Kee Ltd.'s* case.

63 In any event, the effect of *Hodge* v. *Parrish* has been overruled by the subsequent interpretation placed on section 27(b) viz. that it does not impose an obligation on the landlord to give the statutory tenant a month's notice to terminate his tenancy. See *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.* (1964) 30 M.L.J. 71, *infra.*

64 (1952) 18 M.L.J. 121.

65 *Per* Romer L.J. in *Bendall* v. *McWhirter* [1952] 2 Q.B. 466, 487.

66 (1954) 20 M.L.J. 34.

At that time, section 27(b) covered "any sub-tenant becoming a statutory tenant under and by virtue of *any of the provisions of Sub-section (2) of Section 15"* rather than (as it stands now) "any sub-tenant becoming a statutory tenant under and by virtue of *any of the provisions of this Act"* (emphasis added). The then section 15(2) is the present section 26(2). Section 26 provides as follows:

> 26. (1) Where *any order or judgment* for the recovery of possession has been obtained against any tenant of premises, the order or judgment shall not be enforceable against any sub-tenant of the tenant unless the court is satisfied that the tenant was prohibited by the terms of his tenancy from subletting or that the sub-tenant has used the premises for illegal or immoral purposes. Every order or judgment for possession made against any tenant shall declare whether it shall be enforceable against any sub-tenant or not.
>
> (2) Any sub-tenant against whom the *judgment or order* is not enforceable shall, if he remains in possession after notice of the judgment or order has been served on him, cease to be a sub-tenant of the tenant and become a statutory tenant of the landlord in respect of the premises comprised in his sub-tenancy, (emphasis added)

It did not cover *Guan Seng Kee Ltd.'s* case because there was no order or judgment against the chief tenant as required by the section. The chief tenant in that case (although it was not explicitly stated in the judgment), probably surrendered his tenancy after a notice to quit was served on him by the landlord. The landlord brought the action against the sub-tenant; the Privy Council held that the sub-tenant was protected as he had become a statutory tenant. Section 27(b) as noted, was subsequently amended probably with this decision in mind, so that now a sub-tenant can become a statutory tenant where the Act so provides, which in effect covers only sections 26 and 27(a) themselves.

An important point to note is that where a landlord can recover possession against the chief tenant but not against the sub-tenant, the latter becomes the statutory tenant of the *landlord.* This is specifically provided in section 27(2). Of course, where the chief tenant remains, then where the sub-tenant becomes a statutory tenant under section 27(a), he is a statutory tenant of the chief tenant and not the landlord.

In view of the rather clear judgment of the Privy Council in *Guan Seng Kee Ltd.'s* case, it seems surprising that Kulasekaram J. expressed the view that,

> *Guan Seng Kee's* case is not authority for the proposition that 'at the end of the expiry of a notice to quit by the landlord to the chief tenant, a sub-tenant lawfully remaining in occupation becomes a statutory tenant, holding as a tenant from the landlord and enjoying the protection of the said Ordinance' but only for the proposition that such a sub-tenant's possession of the premises would be subject to the protective provisions of the said Ordinance.[67]

[67] *Saint Andrew's Mission Hospital* v. *Wah Hin & Co. Ltd.* [1968] 2 M.L.J. 169, 172.

It is not clear if there is a real distinction between the two situations drawn by his Lordship. Certainly, the Privy Council did not make any such distinction. And it is all the more surprising in view of his Lordship's earlier pronouncement that,

> … if a sub-tenant remains in possession of the premises or any part thereof, then he cannot be deprived of that possession by the landlord, merely by obtaining an order for possession against his chief tenant. Now Sub-section (2) of Section 26 provides that if he remains in possession after notice of the judgment or order in respect of the tenant he becomes a statutory tenant of the landlord.[68]

One can only conclude that the distinction sought to be drawn is of no significance and his Lordship's reading of *Guan Seng Kee Ltd.'s* case is erroneous.

PROCEDURE TO BE TAKEN TO RECOVER POSSESSION AGAINST THE TENANT AND THE SUB-TENANT

A sub-tenant can thus become a statutory tenant either by satisfying the four conditions of section 27(a), which have already been discussed, or under section 26, which must now be examined in greater detail. Under section 26, in order to further the policy of protecting tenants who are in occupation of rent controlled premises, it is provided that an order or judgment for the recovery of possession made against a tenant shall not be enforceable against the sub-tenant of the premises, except in the two situations mentioned therein, namely:

(i) where the court is satisfied that the tenant was prohibited by the terms of his tenancy from sub-letting; or

(ii) where the court is satisfied that the sub-tenant has used the premises for illegal or immoral purposes.

The provision does not expressly require that notice of the proceedings should be given to the affected sub-tenant. However, it is also clear that, "… the court should not declare any judgment enforceable against sub-tenants unless it has reason to be satisfied that they are not entitled to protection." But no court "… can be satisfied without hearing them."[69] Therefore, if the sub-tenant was never a party to the proceedings for the recovery of possession against the chief tenant then, "… the court was not required to… nor could it, in fact direct its mind to whether its order for recovery of possession against the tenant… should be made enforceable against the sub-tenant."[70]

[68] *Ibid.*, at p. 171.

[69] *Per* Sir Charles Murray-Aynsley C.J. in *Ng Eng Kong* v. *R. Sitharam & Anor.* (1954) 18 M.L.J. 155, 156. See also, *Tan Joo Eng (m.w.)* v. *Siang Heng & Co. Ltd.* (1957) 23 M.L.J. 18.

[70] *Per* Winslow J. in *Eastern Enterprises Ltd.* v. *Ong Choo Kim* (1969) 1 M.L.J. 236, 237. Although the High Court in *Lim Boon Hiok & Ors. v. Loke Wan Tho* (1955) 21 M.L.J. 21 made an order for recovery of possession enforceable against the sub-tenants without the latter having been informed of the proceedings or given an opportunity to be heard, it was on the basis of a tenancy agreement in writing which prohibited subletting. This case is probably erroneous, see T.T.B. Koh "Rent Control In Singapore", *supra,* n. 5 at p. 225.

It has also been stated by Winslow J. in *Eastern Enterprises Ltd.* v. *Ong Chee Kim*[71] that, "… in the absence of a declaration that the order was enforceable against the sub-tenant, the order was, in effect, unenforceable against him even though the order does not say so in positive terms."

On the authority of *Tan Joo Eng (m.v.)* v. *Siang Hong Co. Ltd. & Ors.*,[72] a sub-tenant who has not been given notice of the proceedings, on receiving notice of the order could have applied for leave to appear and defend the action which leave would ordinarily have been granted on his showing that he was in possession of the premises in respect of which an order had been signed and that he had been given no notice of the proceedings before judgment. It is not necessary for his affidavit to deal with the merits of his case. In this regard, Winslow J. expressed the view that the court which originally made the order against the chief tenant is the court which should hear any application under section 26 and that if no action is taken to invoke that court's jurisdiction against the sub-tenant after it has heard the tenant, then the proper course is not to commence fresh proceedings in another suit against the sub-tenant as a tenant, but to bring him before the court in the same original suit and, if possible, before the same judge who made the order against the tenant in the first place.[73]

It is important to bear in mind that the decision to apply for leave to appear and defend the action is only an option available to the sub-tenant; he is under no obligation to do so, so long as the order does not contain a declaration enforceable against him.[74] But where, as in *Ng Eng Kang* v. *R. Sitharam & Anor.*,[75] there was such a declaration against the sub-tenant, then, even if it was made in excess of the court's jurisdiction, the sub-tenant was under an obligation to apply for leave to defend the action and set aside the order by invoking the prerogative writs.[76]

Under the Rules Of The Supreme Court 1934, Order 12 Rule 12 enabled:

> 12(1) Any person not named as a defendant in a writ of summons for the recovery of immovable property may, by leave of the court or a judge, appear and defend, on filing an affidavit showing that he is in possession of the immovable property either by himself or his tenant.

It is this Rule that was relied on by the court in *Tan Joo Eng's* case to allow the sub-tenant to defend the action. This rule was however repealed and does not appear in The Rules Of The Supreme Court 1970. This is rather unfortunate, but it is submitted that this does not remove the right of the sub-tenant, who has not been given notice of the proceedings by the landlord against the chief tenant, to intervene in those proceedings. The court can grant leave for the sub-tenant to appear and defend the action under its inherent jurisdiction,[77] and

71 *Ibid.*, at p. 237.
72 *Supra,* n. 69.
73 See *Eastern Enterprises Ltd.* v. *Ong Choo Kim, supra,* n. 70 at p. 238.
74 *Ibid.*, at p. 237.
75 *Supra,* n. 69.
76 See *Eastern Enterprises Ltd,* v. *Ong Choo Kim, supra,* n. 70 at p. 237.
77 See Order 92 Rule 4, Rules Of The Supreme Court, 1970.

in fact should do so on the same criteria as before, so as to prevent injustice to the sub-tenant and subsequent complexity and duplicity of proceedings.

To prevent all those procedural difficulties from arising, one cannot but agree with Winslow J. that,

> ... the proper course... in all cases for recovery of possession where Section 26 of the Ordinance is likely to be invoked against a sub-tenant, a firm application should be made to the court of trial for a sub-tenant who has not already been joined as a defendant to be added as a defendant in order that the question whether an order against the tenant should be made enforceable against the sub-tenant may be considered and if necessary made.[78]

SUBSTANTIVE LAW GOVERNING THE RECOVERY OF POSSESSION AGAINST THE TENANT AND THE SUB-TENANT

To succeed in an action for the recovery of possession of the premises against the chief tenant, the landlord must satisfy one of the ten causes stated in section 15 of the Act. However, having done that, the order for possession is enforceable against the sub-tenant if the landlord satisfies the court that the chief tenant was prohibited by the terms of his tenancy from subletting or that the sub-tenant has used the premises for illegal or immoral purposes.

In the *Eastern Enterprises Ltd.'s* case, Winslow J. upheld the contention of counsel for the sub-tenant that, where the judgment obtained by the landlord against the chief tenant did not contain any declaration against the sub-tenant, then under any subsequent proceedings under section 26 against the sub-tenant, "... evidence of acts prior to that date *[i.e.* the date of the judgment against the chief tenant] should be excluded from consideration in the present action"[79] *(i.e.* against the sub-tenant). On this basis, the court excluded evidence of alleged acts of immoral or illegal user of the premises by the sub-tenant. It is not apparent why this should be so, and the court did not allude to the reasons for the holding. It seems a little unfair to the landlord that an error in the procedure taken can lead to this result, and justice to the sub-tenant only requires that he be given a chance to be heard, not that he be given an advantage of having acts done previously being disregarded.

Illegal or immoral user of the premises also constitutes a ground for recovery of possession under section 15(l)(d) of the Act. Cases interpreseting this phrase would be equally applicable under section 26. "Illegal purposes" *prima facie* means contrary to law.[80] It has been

[78] See *Eastern Enterprises Ltd.'s* case, *supra,* n. 70 at p. 238.

[79] *Id.*

[80] In *KM. Oh Mohamed* v. *Sim Soo Phuang & Anor.* (1963) 29 M.L.J. 13, the Court of Appeal decided that having regard to section 15(l)(h) of the Act, matters arising under the Municipal Ordinance and the Local Government Ordinance were intended to be excluded from the purview of section 15(l)(d), otherwise section 15(l)(h) would be rendered redundant. Translated into the present context, it means that matters arising under the Environmental Public Health Act or the Local Government Integration Act or of any regulation made thereunder would not be covered. It is a point of some niceties, whether this interpretation equally applies to "illegal purposes" as used in section 26. It is submitted that it does not, as the same consideration does not apply.

held by Winslow J. in the *Eastern Enterprises Ltd.'s* case that for a plaintiff who alleges facts in a civil proceeding which constitute a crime, he has to establish his allegation against the defendant on a balance of probability subject to the qualification that in titling the balance against the defendant, he must attain a higher degree of probability than is required in an ordinary case of civil negligence though not the very high standard of the criminal law.

With regard to the situation where the tenant sublets regardless of the prohibition against subletting, it has been held that the prohibition must have existed at the time of the sub-letting.[81] Any subsequent imposition of a prohibition against subletting does not affect the existing sub-tenant.

If the landlord does not proceed against the sub-tenant under section 26, then on obtaining the order against the chief tenant, the sub-tenant becomes the statutory tenant of the landlord. Subsequently however, the landlord can obviously recover possession against the new statutory tenant if he can satisfy one of the ten causes listed in section 15. This would be a totally different proceeding, and is not governed by section 26.

Is NOTICE To QUIT To THE STATUTORY TENANT A NECESSITY?

Section 28 (b) of the Act provides that a statutory tenancy,

> shall be subject to be determined by such notice as would have been required by law to determine a monthly tenancy of the premises containing the express provision for determination.

Does this require a landlord to give a statutory tenant a month's notice to terminate his tenancy and recover possession? It was held by the Federal Court[82] that such notice was unnecessary because so long as the tenant was and remained a statutory tenant (by fulfilling the four conditions discussed above) *ex hypothesi* his statutory tenancy could not be determined by his landlord giving notice to him. But once he ceases to fulfil one of the four conditions, his tenancy ceases to be a statutory one and section 28 (b) has no application because it only applies to statutory tenancies.[83] The obvious purpose of section 28 (b) is to permit the statutory tenant to determine the tenancy, by giving notice to the landlord.

NATURE OF STATUTORY TENANCY

It is proposed now to deal with the nature of a statutory tenancy and the rights and obligations of a statutory tenant. The English Court of Appeal had, as long ago as 1924, stated that a statutory tenant's right "... is a purely personal one...."[84] This has been followed not only in England, but locally as well;[85] so that Rajah J. was able

[81] See *Re Noordin (Petitioner)* (1954) M.L.J. 213, and *Ng Eng Kong* v. *R. Sitharam & Anor. supra,* n. 69.

[82] See *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd. supra,* n. 45.

[83] This has been followed in Singapore in *Saint Andrew's Mission Hospital* v. *Wah Hin & Co. Ltd. & Ors. supra,* n. 67.

[84] *Per* Bankes L.J. in *Keeves* v. *Dean* (1924) 1 K.B. 685, 690.

[85] It was first followed in *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd. supra,* n. 45. Thomson L.P. stated that there was no difference between a statutory tenant under our legislation and a statutory tenant under the English Rent Acts and went on to cite with approval the position of such a tenant as described by Bankes L.J. in *Keeves* v. *Dean id.*

to declare that, "It is settled law now that a statutory tenancy, which is the creation of the Rent Act, is a purely personal right and that such right ceases with and on the death of the statutory tenant, unless the provisions of section 16 of the Rent Act become applicable."[86] Despite such emphatic pronouncement on the nature of statutory tenancy, doubts still exist as to what rights and obligations are incident to a statutory tenancy. The only clue to these doubts provided by the Act is section 28 which states that:

> 28. A statutory tenant shall hold the premises of the landlord upon the following terms and conditions, namely:
>
> (a) he shall be deemed to hold as tenant from month to month and subject thereto, shall observe and be entitled to the benefit of all the terms and conditions of his original tenancy or sub-tenancy as the case may be, so far as they are consistent with the provisions of this Act and with a holding from month to month.

The effect of this, is that a statutory tenant must observe and is entitled to the benefit of all the terms and conditions of the original contract of tenancy[87] so far as they are consistent with the provisions of the Act.[88]

Statutory Tenancy Is Not A Proprietary Interest

The principle that a statutory tenancy is a personal privilege in effect means that a statutory tenant has no estate or property as a tenant but merely a personal right to retain possession of the property and a status of irremovability conferred by the Act.

However not being a proprietary interest, it could not, for example, pass to his trustee in bankruptcy if he becomes a bankrupt. This was held in *Sutton* v. Dorf,[89] where the court expressed the view that a statutory tenancy was not "property" as defined in the Bankruptcy Act 1914, and therefore did not pass to the trustee in bankruptcy. The effect of this is that the tenancy does not pass to the trustee in bankruptcy and the bankrupt is entitled to remain on the premises so long as he retains possession.[90] Under our Bankruptcy Act,[91] "property" is defined in the same way as under the English Act and therefore *Sutton* v. *Dorf* is likely to be followed. In the Malaysian case of *Meenachi Sundram & Anor.* v. *Kunjan Pillai*[92] the defendant tenant argued that upon the change of ownership of the premises, he had become a statutory tenant and thus his subsequent adjudication as a bankrupt did not affect his status as a statutory tenant. This was

[86] In *Ang Bock Chwee* v. *Urn Huan Hee & Ors.* [1982] 1 M.L.J. 174, 176.
[87] "Original contract of tenancy" refers to the tenancy under which the tenant was holding immediately before he became a statutory tenant; see *Oxley* v. *Regional Properties Ltd.* [1944] 2 All E.R. 510.
[88] For a discussion of the terms and conditions that have been held to apply to a statutory tenancy under the English equivalent of this sub-section, see, Halsbury's Laws Of England Fourth Edition (Butterworths) Volume 27 p. 478.
[89] [1932] 2 K.B. 304.
[90] This is unlike a contractual tenancy, even if it is one of rent controlled premises, it will pass to the trustee in bankruptcy, since it is then part of the "property" of the debtor as defined in the Bankruptcy Act, 1970. See *Meenachi Sundram & Anor.* v. *Kunjan Pillai supra,* n. 60.
[91] Cap. 18, Singapore Statutes, Rev. Ed. 1970.
[92] See *supra.* n. 60.

upheld by the lower court but the High Court reversed the decision on the ground that the tenant never became a statutory tenant. However, the court implicitly accepted the principle that a statutory tenancy was not affected by the bankruptcy of the tenant and remained with him.

It has also been held by the Singapore Court of Appeal in *Cheng Lan Lim & Ors.* v. *Hoe Kheng Hin &* Ors.,[93] that a statutory tenancy cannot be a partnership asset. In this case the plaintiff and defendant were partners and they carried on business in the premises concerned which were subject to a tenancy in the name of the defendant. The plaintiff sought a sale of the tenancy and a division of the proceeds on the ground that it was a partnership asset. This was rejected by the court because, "... if a statutory tenancy is not to be considered 'property' or an asset of a bankrupt statutory tenant, it cannot be considered as an asset of the partnership...."[94] To do so in the court's view would be "... to cause rights given to protect occupation to ensure for the benefit of those who do not occupy ... [which] would involve changing the nature of the rights created by the statute...."[95] This latter, reason, it is submitted, is not really valid, for in the case of business premises, as argued above, possession does not necessarily require physical occupation.

TRANSFER OF STATUTORY TENANCY

It has been held by the English Court of Appeal in *Keeves* v. *Dean*,[96] that a statutory tenancy being a personal right to retain possession of the premises cannot be assigned. A related consideration is that section 15(1) of the English Increase of Rent Act, 1920, (which is in *pan materia* with section 28(a) of the Act) states that a statutory tenant, "shall observe and be entitled to the benefit of all the terms and conditions of his original tenancy...." This has given rise in the English courts to the question of whether a right to assign is a term and condition of a tenancy. If it is, then the like of section 28(a) would seem to have preserved this right for the statutory tenant. A majority of the court in *Keeves* v. *Dean* decided that the right to assign is not a term or condition of a tenancy but rather is a right incident to the estate. Scrutton L.J. disagreed with the majority's view "... that the expression 'terms and conditions' of the contract of tenancy... is to be construed so strictly as to exclude incidents of the tenancy."[97]

The Malaysian courts have held to a similar effect. In *Thong Seong Poh & Anor.* v. *Thong Meng Tee*,[98] the first defendant was a tenant of rent controlled premises; he was given a notice to quit, which made him a statutory tenant. Subsequently, he assigned his business which was carried on at the premises to his son, the second defendant. The trial judge found that the transfer of business included a transfer of the tenancy. On this ground, His Lordship held that the statutory tenant only had a "... purely personal right of occupation. Such personal right is non-assignable. Once he had made an assign-

93 (1953) 19 M.L.J. 207.
94 *Per* Storr J., *ibid.*, at p. 209.
95 *Per* Murray-Aynsley C.J., *ibid.*, at p. 208.
96 *Supra,* n. 84.
97 *Ibid.*, at p. 695.
98 [1967] 1 M.L.J. 23.

ment to a third party which left him no personal right to remain in occupation by himself, the statutory tenancy is destroyed."[99]

In the Singapore Court of Appeal's decision in *Lloyd, Sir Hugh* v. *Yeap Lian Seng & Ors.*,[1] the court assumed without argument, because it was agreed by the parties, that a statutory tenant could not assign his tenancy and if he attempted to do so and left the premises to the assignee, the tenancy would come to an end. A more helpful case on this point is *Tan Eng Seng* v. *Teo Soon Kiat & Ors.*[2] In this case, the plaintiff let the premises to a chief tenant, who sub-let the ground floor to the defendant. The plaintiff gave the chief tenant a notice to quit, which in the court's view, made both the chief tenant and the sub-tenant, statutory tenants. Then the chief tenant decided to leave the premises, but before she left, she entered into a new arrangement with the sub-tenant to give him possession of the first floor in addition to the ground floor. Although the court called this arrangement a "tenancy", it is clear that in law it is an assignment of the tenancy by the chief tenant.[3] The court held that, by the arrangement, the sub-tenant had surrendered the sub-tenancy of the ground floor to the chief tenant, but the chief tenant's purported assignment of his tenancy to the sub-tenant was abortive, "... since the chief tenant, being herself a statutory tenant... had no legal estate out of which she could grant a common law tenancy of any kind."[4] This was because by non-occupation, the chief tenant had lost his statutory tenancy and consequently, he could not confer any rights on anyone.

99 *Ibid*., at p. 24. This decision was upheld by the Federal Court in [1967] 2 M.L.J. 153.

1 *Supra,* n. 6.

2 (1956) 22 M.L.J. 146.

3 Since the distinction between an assignment and a sub-lease is one of substance and not form, if a tenant disposes of the whole residue of his estate, it amounts to an assignment even though the parties intend it to operate as a sub-lease. See *Hicks* v. *Downing* (1696) 1 Ld. Raym 99, *Palmer* v. *Edwards* (1783) 1 Doug. K.B. 187, *Milmo* v. *Carreras* [1946] K.B. 306. In *Teo Chwee Geok* v. *Ng Hui Lip & Company* [1967] 1 M.L.J. 245, the Singapore Court of Appeal would seem to have decided to the contrary. In this case the plaintiff (who was the tenant) sublet the ground floor of the premises to a company. The company allowed the defendant to move into the ground floor under an arrangement, which the Court found to be a sub-tenancy and not an assignment of its tenancy. The Court found that it was the intention of the parties to create a landlord and tenant relationship because, they were at pain to ensure that the rental paid by the defendant to the company was exactly the permissible maximum of 110 per centum of the rent paid by the company which the Act provides in the case of sublettings.

This decision is actually an exception to the general rule that, if a tenant disposes of the whole residue of his estate, he is assigning his interest whatever the parties may intend. This exception is recognized in English law in *Pollock & Anor.* v. *Stacy* 115 E.R. 1570. It arises when the arrangement effected cannot amount to an assignment because the legal formalities have not be complied with. See section 53, Conveyancing and Law of Property Act, Cap. 268, Singapore Statutes, Rev. Ed. 1970 and section 3, Statute of Frauds 1677. The basis of the exception lies in the maxim, *ut res magis valeat quam pereat.*

Teo Chwee Geok's case can be explained on the ground that the arrangement between the company and the defendant was not in writing and therefore could not be an effective assignment of the tenancy. It is not clear whether the new arrangement between the chief tenant and the sub-tenant in *Tan Eng Seng's* case was in writing or otherwise.

4 *Supra,* n. 2 at p. 148.

Professor T.T.B. Koh agrees with this because, "… the status of statutory tenancy requires that the statutory tenant remains in possession of the premises. As soon as he divests himself of possession, he loses his status."[5] With due respect, to argue this way is to place the cart before the horse. If a statutory tenancy is otherwise assignable, the fact that by leaving the premises he will cease to become a statutory tenant is irrelevant, since it has already been assigned to the new tenant. The real objection to an assignment of a statutory tenancy is the earlier principle that it is a personal right and therefore is incapable of being assigned.

In Singapore, Scrutton L.J.'s view that "terms or conditions" of the original tenancy should include incidents of the tenancy, like the right to assign, has even less force because one of the reasons for his Lordship's view is that a right of distress is not a term or condition of a tenancy, yet, "… is the landlord to have no right of distress in the case of a statutory tenant because that right is only an incident of the tenancy?"[6] However, in Singapore, the right to distrain for rent is expressly provided for in section 28(c) of the Act. One can argue therefore, that the legislature envisaged that it is not or cannot be covered by the phrase "terms and conditions" under section 28(a); which is not intended to include incidents of a tenancy.

In contrast with the assignment of statutory tenancy, English courts have decided from the start, that a statutory tenant of a dwelling house holding upon terms which do not prohibit subletting, may sublet part of the dwelling house. The *locus classicus* is the Court of Appeal's decision in *Roe* v. *Russell*.[7] This decision, however, turned upon the construction of provisions of the English Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 and the Rent and Mortgage Restrictions Act, 1923. Under section 4(1)(h) of the latter Act, an order for the recovery of the premises can be made against a statutory tenant if he sublets the whole premises. From this, the court inferred that, "It is very difficult after this section 4, sub-section (1)(h) to say that the statutory tenant cannot sublet part of the premises, when the landlord is not given power to eject him for doing so."[8] The other reason for the court's decision is that the "… continued references throughout the Acts to partial subletting and sub-tenancies must be treated as an indication that in the opinion of Parliament, a statutory tenant remaining in possession might sublet part of his demised premises. The references are sometimes to sub-tenants, sometimes to tenants to whom the premises are lawfully let… "[9] This distinction, the court felt must imply that sub-tenancies can be created by both contractual and statutory tenants.

Both these reasons are germane to the English Acts, and this has been the ground on which *Roe* v. *Russell* has been distinguished by local courts.[10] If one wants to be faithful to logic, then if a statutory tenancy confers only a personal right of irremovability, then it should not be possible to carve sub-tenancies out of it. Some English judges

5 *Supra,* n. 1 at p. 229.
6 K*eeves* v. *Dean, supra,* n. 84 at p. 695.
7 *Supra,* n. 2.
8 *Ibid*., at p. 128.
9 *Ibid*., at p. 129.
10 See *Tan Eng Seng* v. *Teo Soon Kiat & Ors. supra,* n. 2 at p. 148.

have in fact reasoned likewise and came to the conclusion that (aside from statutory provisions), a statutory tenant cannot effectively sublet the premises.[11]

Once again, section 28(a) poses a relevant consideration as to whether a right to sublet is a "term or condition" of the tenancy. Scrutton L.J. reiterated his views in *Keeves* v. *Dean,* in *Roe* v. *Russell.* However, once again his fellow judges (in a differently constituted Court of Appeal from *Keeves* v. *Dean)* disagreed with him. Sargant L.J. felt that, "... once the conclusion is reached that the statutory tenant has no estate or property as tenant at all, but has a purely personal right to retain possession of the property, it is difficult to apply to him, as part of the terms and conditions of his former tenancy, rights essentially incidental and due to the possession of property."[12] Therefore, the preponderance of English judicial views seems to be that provisions similar to section 28(a) of the Act do not empower the statutory tenant to sublet nor assign the premises. This is likely to sway the local courts when they have to decide this point.

Surprisingly, this issue has never been directly[13] considered by our courts. In the Malaysian case of *United India Fire & General Insurance Co. Ltd.* v. *Jaffnese Co-Operative Society Ltd.*,[14] a tenant who remained on the premises after determination of his tenancy, sublet the premises. This was after the passing of the Control of Rent Act of 1966 (which repealed the 1956 Ordinance). The new Act in fact abolished the creature of the statutory tenant and only gave the tenant a personal privilege to stay. On this basis, the Federal Court held that the creation of the sub-tenancy was ineffectual. In addition, Ali F.J. expressed the view that the sub-tenant would have no rights, even under the repealed Control of Rent Ordinance 1956. This seems to suggest that a statutory tenant cannot sublet the premises. But it is submitted that, the basis for this conclusion is erroneous because his Lordship purportedly relied on *Tan Eng Seng's* case, which, as stated earlier, dealt with an assignment of a tenancy and not with a sub-tenancy proper.

In view of the fact that the reasons which compelled the English courts to hold that a statutory tenant can sublet the premises are not pertinent to our situation, and that the conclusion from the principle that a statutory tenant is a personal right, propels us the other way, it is submitted that it should not be possible in Singapore for a statutory tenant to sublet the premises. Further, there is a policy consideration that reinforces this conclusion, for it might be a little harsh and unfair to the landlord to allow a statutory tenant to sublet the premises. The Act has burdened the landlord with the creation of an irremovable class of tenants and to allow these tenants to themselves create yet

[11] See *Wheeler* v. *Smith,* unreported. But see the Estates Gazette, May 14, Digest of Cases, There is a discussion of this case in *Roe* v. *Russell, supra,* n. 2 at p. 127.

[12] *Supra,* n. 2 at p. 131.

[13] In *Tan Eng Seng* v. *Teo Soon Kiat & Ors*., *supra,* n. 2, the court left the point open.

[14] [1971] 1 M.L.J. 118.

another irremovable class of sub-tenants (which would be the result if statutory tenants are able to sublet their premises)[15] seems too much.

SUCCESSION TO A STATUTORY TENANCY

With the notable exception of subletting by the statutory tenant, English law adheres to the principle that a statutory tenant only has a personal right or privilege with which he cannot deal. From this, the Court of Appeal in *John Lovibond & Sons Ltd.* v. *Vincent*,[16] concluded that a statutory tenancy ceased on the death of the tenant and cannot be transmitted by will. It should make no difference that the tenant dies intestate. This principle has been accepted locally. In *Tan Khio Soel & Anor.* v. *Ban Hin Lee Bank Ltd.*,[17] where the statutory tenant died intestate, the Federal Court held with regard to the tenancy, that "… no rights of any sort in respect of the premises occupied by Shaik Abdul Kader [the tenant] passed to the Chief Justice or to his family or to his personal representative or to anybody else... ,"[18]

So, unlike a contractual tenancy (even if it is of rent controlled premises), a statutory tenancy does not pass to the estate of the tenant[19] but, "… is a purely personal right and [...] such right ceases with and on the death of the statutory tenant, unless the provisions of section 16 of the Rent Act become applicable."[20] The reference to section 16, as an exception to the principle, stated in Rajah J.'s statement is of great importance. Section 16 of the Act was intended to give the landlord additional grounds to recover domestic premises from the tenant and paragraph (c) in particular, provides that an order for possession may be made,

> (c) where neither the tenant nor any member of his family is residing in the premises or any part thereof.

A number of cases have interpreted this to mean that, "… the landlord has no right in such circumstances to recover possession if either the

[15] In *Solomon* v. *Orwell* [1954] 1 All E.R. 874, the English Court of Appeal held that where the statutory tenancy comes to an end for whatever reason (for example, the statutory tenant giving up possession), the sub-tenancy (which is created by the statutory tenant) automatically comes to an end also. In the court's view, although an ordinary sub-tenant is protected by the English equivalent of section 26, in this case, the sub-tenant was not so protected because he was sharing the kitchen with the tenant (see *Neale* v. *Del Soto* (1945) 1 All E.R. 191, *Stanley* v. *Compton* (1951) 1 All E.R. 859). This principle is peculiar to English law. Therefore, if conceptually one allows a statutory tenant to sublet the premises, it is submitted that the sub-tenant is protected under section 26, just like a sub-tenancy created by a contractual tenant. This is not inconsistent with the principle in English law that, even though a statutory tenant can sublet his premises, because he himself has no estate or interest, he cannot carve something out of nothing and the sub-tenant, like the statutory tenant, has only a personal right or privilege. The status of irremovability, is conferred on the sub-tenant by statute.

[16] [1929] 1 K.B. 687.

[17] *Supra,* n. 63.

[18] *Per* Thomson L.P., *ibid*., at p. 73. This decision has been followed in *Yap Cheng Kee & Anor.* v. *Ow Giam Eng & Anor.* [1975] 1 M.L.J. 151.

[19] It has been held in *Alagappa Chettiar* v. *Kader & Ors.* (1939) 8 M.L.J. 304, and *Kechik & Ors.* v. *Habeeb Mohamed & Anor.* (1963) 29 M.L.J. 127 that upon the death of the tenant, the contractual tenancy of rent controlled premises passed to his estate.

[20] *Per* Rajah J. in *Ang Bock Chwee* v. *Lim Huan Hee & Ors*., *supra,* n. 86.

tenant or any member of his family resides therein___"[21] It is settled that this protection is accorded to members of the family of the contractual tenant, but there are two opposing lines of cases as to whether a similar protection is accorded to the members of the family of the statutory tenant.[22] The writer has argued elsewhere that the law on this point is still unsettled,[23] but it must be admitted that the preponderance of judicial views (at least in Singapore) is that section 16(c) protects the members of the family of both the contractual and the statutory tenant.

If one accepts this interpretation of section 16(c), then upon the death of the statutory tenant, any qualifying members of his family[24] residing on the premises are protected and cannot be evicted, although strictly speaking, this cannot be considered a succession of the statutory tenancy but rather is a statutory protection given to the members of the family of the statutory tenant.

Conclusion

The writer has elsewhere called for a repeal of the Act, on the ground that it has outlived its usefulness.[25] That day is far off, if it will ever come at all. Meanwhile, there seems to be no end to the conundrums presented by the Act. It is true that the importance of the Act has been reduced because of some provisions for de-control of rent controlled premises[26] and tenants vacating these premises upon being compensated by the landlord. But there is still considerable litigation concerning the Act and more specifically the statutory tenant. It is desirable therefore, if the Act is to continue operation to effect an amendment clarifying the position of the statutory tenant, especially with regard to his rights and obligations as outlined above. This was done in England in 1933[27] and recently in Malaysia, the creature of

[21] See, *e.g.,* Winslow J. in *Hoo Yan Meng* v. *Esah, supra,* n. 28.

[22] In favour of the view that the statutory tenant's family is protected are, *Foo Kok Hui* v. *Saraswathy & Anor.* [1961] M.L.J. 91, *Yeo Seow Inn* v. *Chan Khit* [1967] 2 M.L.J. 197, *Hoo Yan Meng* v. *Esah, ibid.* In support of the opposing view are, *Tan Khoi Soei* v. *Ban Hin Lee Bank Ltd., supra,* n. 63, *Yap Cheng Kee & Anor.* v. *Ow Giam Eng & Anor., supra,* n. 3. For a discussion of these cases, see T.T.B. Koh "Rent Control In Singapore", *supra,* n. *5* at p. 216, and the writer's "The Control of Rent (Exemption) Notification And 'Members Of The Family' Of a Tenant", *supra,* n. 27.

[23] *Ibid.*

[24] Section 2 of the Act defines "member of his family" to mean:

(a) the husband or widower; or
(b) the wife or widow; or
(c) the father or mother; or
(d) a son or daughter, either of whom is over sixteen years of age; and

where the tenancy has not been determined according to law, includes a personal representative.

[25] See "The Control Of Rent (Exemption) Notification And 'Members of The Family' Of A Tenant", *supra,* n. 27.

[26] There are two pieces of de-control legislation *viz.* the Controlled Premises (Special Provisions) Act, Cap. 267, Singapore Statutes, 1970 (Revised Edition), and The Control Of Rent Rent (Exemption) Notification 1980, No. S290./80.

[27] In 1933, the Rent and Mortgage Interest Restrictions (Amendment) Act, was passed. By para, (d) of Sch. I, a landlord is entitled to invoke the jurisdiction of the Court if "the tenant without the consent of the landlord has … assigned or sub-let the whole of the dwelling-house, or sub-let part of the dwelling-house the remainder being already sub-let." This necessarily means that the tenant can sub-let the premises partially even without the consent of the landlord and he can assign and sub-let the whole premises with the land-

statutory tenancy has been abolished as a measure towards greater de-control.[28] Although this latter step may be too drastic to take, the legislature should at least clarify the position of a creature that owes its existence solely to them.

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lord's consent. In addition to this the English legislature had from time to time put into one of the series of Rent Acts provisions affecting the incidents of a statutory tenancy, *e.g.,* by the Act of 1915 under section 2 sub-section (l)(d) a tenant has been defined as "including persons from time to time deriving title under the tenant" and by section 12 sub-section 1(g) of the Act of 1920, "tenant" was defined and include, the widow of a tenant dying intestate who was residing with him at the time of his death. This appears to show that in some instances, the statutory tenant might pass on his statutory interest to others.

[28] This was done by the Control of Rent Act 1966 particularly section 23.

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