

## Double Rent: Does Tenant's Conduct Matter?

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The National House Buyers Association observed that one of the many problems faced by landlords is having to evict recalcitrant tenants who remain in occupation after expiration of tenancy.<sup>1</sup>

Among the statutory reliefs available to a landlord against a delinquent tenant is to claim for double rent until vacant possession of the demised premises is handed over by the tenant. The specific provision reads:

“Every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double the amount of rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not.”<sup>2</sup>

While the provision on double rent is easy to understand, its application is not as straightforward.

### Wilful and contumacious conduct

In *Panicka*,<sup>3</sup> the landlord brought an action against the tenant claiming for double rent from expiry of the notice to quit until vacant possession was delivered. In allowing the landlord's claim from approximately seven and a half years after expiry of the notice, the trial court was of the view that double rent could only be awarded if the conduct of the tenant in holding over had been unreasonable.

On appeal, by a majority decision, the then Federal Court affirmed the trial court's decision. It was remarked that a claim of this nature must be construed with some degree of stricture as it is for a penal sum in respect of the inconvenience and loss caused by the tenant due to his holding over. The Federal Court adopted the English position that there must be something in the nature of contumacy on the part of the tenant in holding over to render him liable for double rent.<sup>4</sup> Consequently, the courts can decide *carte blanche* if double rent should be awarded upon evaluation of whether the tenant's action amounts to reasonable conduct or otherwise.

1 “Proposed Residential Tenancy Act: Putting an end to tenancy woes?”  
<https://www.edgeprop.my/content/1726319/proposed-residential-tenancy-act-putting-end-tenancy-woes>  
2 Section 28(4)(a) of the Civil Law Act 1956  
3 *Krishna Sreedhara Panicka v Chiam Soh Yong Realty Co Ltd* [1983] 1 MLJ 65 (FC)  
4 *Crook v Whitbread* 88 LJKB 959



Then came *Wee Tiang Yap*.<sup>5</sup> In ordering the tenant to pay double rent from expiry of the notice to quit, the then Federal Court opined that wilful or contumacious conduct is not a requirement in law. On the face of it, this appears to be a reiteration of the dissenting judgment in *Panicka* and it alluded to the position that the courts will have to award double rent at the option of the landlord. This leaves the courts with no exercisable discretion.

In *Soong Ah Chow*,<sup>6</sup> the trial court awarded double rent from expiry of the lease although the notice to quit was only served more than two years later. The tenants appealed to the then Federal Court but the appeal was unanimously dismissed. Notably, the Federal Court endorsed the majority view in *Panicka* that the courts retain the discretion to impose double rent. However, similarly with *Wee Tiang Yap*, it did not make contumacious conduct a prerequisite for double rent.

### Resolving the enigma

The varying interpretations surrounding the law vis-à-vis double rent have been put to the test.

In *Rohasassets*,<sup>7</sup> the landlord and tenants began negotiating renewal of the tenancies before expiry of the same. This continued well after expiry of the tenancies during which the landlord expressly reserved its right to charge double rent, but at the same time accepted tenders of rent. When the negotiations eventually broke down, the landlord issued notices to quit and demanded vacant possession by 1.10.2011. On 31.10.2011, the tenants handed over the premises.

At the trial court, the landlord's claim for double rent from expiry of the tenancies was dismissed. In turn, the landlord filed an appeal. In allowing the appeal in part, the Court of Appeal ordered double rent to be paid for one month, i.e. from 1.10.2011 to 31.10.2011. A concurrent finding was, however, made by both courts that there must be wilful or contumacious conduct on the part of the tenant in holding over to entitle the landlord to claim for double rent.

Departing from the position laid down in *Panicka*, the Federal Court in *Rohasassets* succinctly clarified the position as follows:

<sup>5</sup> *Wee Tiang Yap v Chan Chan Brothers* [1986] 1 MLJ 47 (FC)

<sup>6</sup> *Soong Ah Chow & Anor v Lai Kok Cheng* [1986] 1 MLJ 42 (FC)

<sup>7</sup> *Rohasassets Sdn Bhd (formerly known as Wisma Perkasa Sdn Bhd) v Weatherford (M) Sdn Bhd & Anor* [2020] 1 MLJ 557 (FC)



- (a) There is *no* requirement on the landlord to show wilful or contumacious conduct on the part of the tenant holding over to render the tenant liable for double rent. Unlike the Australian, Canadian and English positions, the word “*wilfully*” was consciously omitted by our legislature.
- (b) It follows that the option lies squarely with the landlord to charge double rent if, upon expiry of the tenancy, the tenant fails or refuses to deliver vacant possession of the demised premises after being told to do so by the landlord. The court’s role is merely to determine whether the landlord had exercised his option to charge double rent lawfully.
- (c) The landlord’s claim can, however, be foiled if the holding over was with the landlord’s consent, either express or implied by conduct. On the facts of *Rohasassets*, the tenants’ holding over was with the tacit approval of the landlord. Aside from failing to issue a notice to quit, the landlord continued to accept rental throughout the period of negotiation for renewal of the tenancies and had accordingly waived the right to charge double rent.

### Authors’ comments

With contumacious conduct out of the equation, a landlord will find it relatively easier to claim for double rent against a tenant holding over without consent upon expiry of the tenancy. It must, however, be stressed that holding over *simpliciter* is not all that needs to be proved by a landlord. In this regard, his intention for a tenant to vacate the demised premises as well as to charge double rent upon expiry of the notice to quit must be evinced clearly in the exchange of correspondence.

On the flipside, it now befalls the tenant to show that he is a “tenant at will”. He must therefore tread with caution once the tenancy is approaching its term and ensure that any holding over is but with the landlord’s express written consent.

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