

# GARSON v de GALLIANO

Supreme Court  
Unsworth, C.J.  
21 February 1968

*Landlord and tenant — business premises — application for new tenancy — whether out of time — Landlord and Tenant — (Miscellaneous Provisions) Ordinance, s. 42 (3)*

The words “the tenant’s request for a new tenancy” in s. 42 (3) of the Landlord and Tenant (Miscellaneous Provisions) Ordinance (Cap. 83, 1965-69 Ed.) means a request made in accordance with s. 39.

## **Application**

On an application by the tenant of business premises for a new tenancy, objection was taken that the application was out of time.

Sir Joshua Hassan for the applicant.  
L.R. Peralta for the respondent.

**28 February 1968: The following judgment was read—**

This is an application pursuant to the Landlord and Tenant (Miscellaneous Provisions) Ordinance for a new tenancy of certain business premises and objection has been taken that the application is out of time.

The facts are that on 13 September 1967, the landlord gave notice of termination under s. 38 of the Ordinance and specified the date when the tenancy would come to an end as 31 May 1968. On 14 November 1967, the tenant notified the landlord that he would not be prepared to give up the premises and in the same notification made a request for a new tenancy. This request was not, and could not have been, a request under s. 39 as subs. (4) of that section provides that a tenant's request for a new tenancy shall not be made if the landlord has already given notice of termination under s. 38. The application to the court was made on 1 February 1968.

The application to the court is made under s. 37 (1) which reads as follows:—

"A tenancy to which this Part of this Ordinance applies shall not come to an end unless terminated in accordance with the provisions of this Part of this Ordinance; and, subject to the provisions of s. 42 of this Ordinance, the tenant under such a tenancy may apply to the court for a new tenancy —

(a) if the landlord has given notice under the next following section to terminate the tenancy; or

(b) if the tenant has made a request for a new tenancy in accordance with s. 39 of this Ordinance."

The objection is taken under s. 42 (3) of the Ordinance which reads as follows:—

"No application under subs. (1) of s. 37 of this Ordinance shall be entertained unless it is made not less than two nor more than four months after the giving of the landlord's notice under s. 38 of this Ordinance, or, as the case may be, after the making of the tenant's request for a new tenancy."

The point at issue is whether the words "the tenant's request for a new tenancy" in s. 42 (3) means a request under s. 39 or whether it includes a request made at the time of the reply to the landlord's notice of termination. In my view the words are limited to a request under s. 39. The position is that an application to the court must be made within four months of the landlord's notice under s. 38 or of the tenant's request for a new tenancy under s. 39. It is true that s. 42 does not expressly refer to s. 39 but, in my view, it is clear from the whole tenor of the Ordinance (in particular to the wording of s. 37 (1) and s. 39 (4) ) that the reference to the tenant's request for a new tenancy is a reference to a request made in accordance with s. 39.

In this case the period of four months must be calculated from 13 September 1967, when the landlord gave notice of termination under s. 38. The period had expired when the application was made to the court on 1 February 1968.

For the reasons mentioned above I hold that I have no jurisdiction to entertain this application.