SUPREME COURT OF QUEENSLAND

CITATION:	*Leisure Kart City Pty Ltd v Professional Auction & Valuation Services Pty Ltd* [2013] QCA 298
PARTIES:	**LEISURE KART CITY PTY LTD** ACN 009 841 374 (appellant) **v** **PROFESSIONAL AUCTION & VALUATION SERVICES PTY LTD** ACN 109 130 109 (respondent)
FILE NO/S:	Appeal No 4514 of 2013 SC No 3111 of 2013
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	4 October 2013
DELIVERED AT:	Brisbane
HEARING DATE:	11 September 2013
JUDGES:	Margaret McMurdo P and Holmes JA and Philippides J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Appeal allowed with costs.** **2. Order setting aside statutory demand set aside with costs.**
CATCHWORDS:	CORPORATIONS – WINDING UP – WINDING UP IN INSOLVENCY – STATUTORY DEMAND – APPLICATION TO SET ASIDE DEMAND – GENUINE DISPUTE AS TO INDEBTEDNESS – ASSESSING GENUINESS – GENERALLY – where the primary judge set aside statutory demand on the ground that there existed genuine disputes as to the existence of the debt on which the demand was based – where the statutory demand described the alleged debt as moneys payable for rent and outgoings remaining outstanding for the period 1 February 2013 to 28 February 2013 and for the period 1 March 2013 to 31 March 2013 – whether genuine dispute existed as to the frustration of the lease or tenancy – whether genuine dispute existed as to the basis of occupancy – whether genuine dispute existed as to termination of the monthly tenancy LANDLORD AND TENANT – TENANCIES OTHER

THAN FOR A TERM – LESSER PERIODIC TENANCIES – MONTHLY TENANCIES – CREATION – where notice to remedy breach was served on the respondent – where the appellant re-entered the premises – where the respondent then went back into possession and paid the December 2012 and January 2013 rent and outgoings in advance – whether the debt the subject of the statutory demand arose under a periodic monthly tenancy

LANDLORD AND TENANCY – TERMINATION OF THE TENANCY – BY NOTICE TO QUIT – NOTICE BY TENANT TO LANDLORD – where the monthly period on which the tenancy was based was a calendar month commencing on the first day of the month – whether the monthly tenancy was terminated by a valid notice

Corporations Act 2001 (Cth), s 459G
Property Law Act 1974 (Qld), s 130(1), s 131, s 134

Turner v York Motors Pty Ltd (1951) 85 CLR 55; [1951] HCA 52, cited

COUNSEL: B W J Kidston for the appellant
M R Griffiths (by leave) for the respondent

SOLICITORS: H Drakos & Company for the appellant
M R Griffiths (by leave) for the respondent

[1] **MARGARET McMURDO P:** I agree with Philippides J's reasons for allowing this appeal but wish to make some additional observations.

[2] The respondent rented premises from the appellant, ultimately on a monthly tenancy. The appellant issued a statutory demand under the *Corporations Act* 2001 (Cth) for $15,643.28. This was for rent and outgoings during the period 1 February to 31 March 2013. The respondent successfully applied under s 459G *Corporations Act* to set aside that order with costs. The appellant contended that the primary judge wrongly set aside the statutory demand.

[3] On 3 January 2013, the respondent wrote to the appellant stating that it gave "28 days' notice as of Thursday 3rd January 2013 to terminate our monthly rental".[1] This notice did not comply with the mandatory terms and requirements of s 130, s 131 and s 134 contained in Pt 8 Div 4 *Property Law Act* 1974 (Qld)[2] which concern the termination of monthly leases. The respondent lessee's notice, although ineffective, was clearly intended to terminate the monthly tenancy by giving a month's notice to the appellant lessor. Although these provisions of the *Property Law Act* have the commendable advantage of providing temporal certainty for lessors and lessees familiar with their terms, not all parties to periodic tenancies can be expected to understand their requirements and not all will have access to legal advice about them. Unfairness could well result. Where notice is given which complies with s 131(2)(a) and (b) but not (c) and the notice clearly demonstrates an intention to terminate the periodic tenancy before the end of the period of the

1 RB 109.
2 Set out in Philippides J's reasons at [39].

tenancy next following the giving of the notice,[3] any arising unfairness could be avoided by a provision deeming such notice to be a notice stating "that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice"[4] and as "effective on the last day of the following month of the tenancy"[5] after the giving of the notice.

[4] The legislature may wish to give consideration to accordingly amending the provisions of the *Property Law Act* relating to the termination of periodic tenancies.[6]

[5] I agree with the orders proposed by Philippides J.

[6] **HOLMES JA:** I agree with the reasons of Philippides J and the orders she proposes.

PHILIPPIDES J:

Background

[7] The appellant, Leisure Kart City Pty Ltd, appeals against the decision at first instance upholding an application brought by the respondent, Professional Auction and Valuation Services Pty Ltd, pursuant to s 459G of the *Corporations Act* 2001 (Cth) to set aside the appellant's statutory demand dated 15 March 2013. The statutory demand was set aside on the ground that there existed genuine disputes as to the existence of the debt on which the demand was based.

[8] The appellant is the owner of real property located at 32 and 60 Allworth Street, Northgate, upon which is located an industrial building partitioned into several tenancies. In June of 2012, the respondent and a related company, PVAS Building Auctions Pty Ltd (Auctions) entered into separate leases for different parts of the appellant's premises. The respondent entered into a lease of premises described as "1/32 Allworth Street, Northgate" for use as a "storage and auction yard" commencing on 1 September 2011 and expiring on 30 April 2014 for a monthly rental of $5,932 plus GST (Unit 1 lease). Auctions entered into a lease of premises described as "Unit 2 60 Allworth Street, Northgate" for use for "general auctions" pursuant to a lease commencing on 1 May 2012 and expiring on 30 April 2014 for a monthly rental of $7,171.90 plus GST (Unit 2 lease). The two premises were in the same building although not contiguous.

The Statutory Demand

[9] The statutory demand described the alleged debt of $15,643.28 as moneys payable as at 15 March 2013 for rent and outgoings remaining outstanding for the period 1 February 2013 to 28 February 2013 of $7,821.64 including GST pursuant to invoice number 20121466 and for the period 1 March 2013 to 31 March 2013 of $7,821.64 including GST pursuant to invoice number 20121700.

[10] Neither the statutory demand, nor the supporting affidavits specified under what lease or rental agreement the alleged debt was said to arise, but as the primary judge observed, the respondent did not allege any defect in the form of the demand and

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3 See s 131(3) *Property Law Act*.
4 See s 131(2)(c) *Property Law Act*.
5 See s 134(1) *Property Law Act*.
6 See s 130 to s 136 *Property Law Act*.

the primary judge proceeded on the basis that the alleged debt related to the respondent's Unit 1 lease or some other form of tenancy relating to Unit 1.

Background Facts

[11] There was affidavit evidence at first instance of Mark Griffiths, the sole director of the respondent (and also Auctions) that in August 2012 part of the ceiling of the shed above Unit 2 collapsed and that a subsequent inspection revealed termite damage to structural members of the shed such that Auctions was unable to conduct any business out of its leased premises for about five and a half weeks.

[12] By facsimile dated 16 September 2012, Gill and Lane, solicitors for the respondent and Auctions, wrote to H Drakos and Co, solicitors for the appellant, giving notice that both leases were terminated because of the appellant's breach of its obligation under cl 59 (to undertake works to bring the premises into a reasonable condition) and because of the frustration of the leases due to the condition of the premises and the withdrawal of public liability insurance required by cl 20 of the leases rendering the use of the premises impossible.

[13] By facsimile dated 16 October 2012, Gill and Lane advised the appellant's solicitors, that their clients had recommenced business from the premises, notwithstanding the inability to obtain public liability insurance in respect of the premises.

[14] By facsimile dated 22 October 2012, Gill and Lane wrote to the appellant's solicitors suggesting mediation of the dispute between the parties[7] and that in the meantime payment of rent and outgoings would be made on a without prejudice basis.

[15] On 7 November 2012, a notice to remedy breach was served on the respondent in respect of Unit 1 in respect of arrears of rent. On 29 November 2012 the appellant re-entered Unit 1, took possession and changed the locks and advised the respondent that it had done so due to its failure to comply with the notice to remedy breach.

[16] By facsimile dated 30 November 2012, Gill and Lane wrote to the appellant's solicitors, and under threat of seeking injunctive relief, proposed payment of the sum claimed by the appellant (while maintaining that it was disputed) so as to "regain entry to the premises".

[17] The appellant's solicitors responded on the same day in respect of Unit 1, advising that the appellant would allow re-entry on payment of $28,115.64 which was itemised and included payment of rent and outgoings particularised in the notice to remedy breach and rent and outgoings for December 2012 of $7,821.64 as invoiced. It was also stated, "As the Lease has now been terminated and your client is liable for damages, we would propose to draw up a Deed setting out the terms of re-entry".

[18] By facsimile dated 3 December 2012, Gill and Lane advised the appellant's solicitors that the payment sought would be made for immediate delivery of the

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[7] The dispute being as to the appellant's claim for rent during the period Gill and Lane's clients maintained they were prevented from occupying the premises and their claim for abatement of rent and compensation.

keys to the premises. The full amount claimed was paid and new keys for Unit 1 were provided to the respondent. Thereafter, in addition to the payment in advance of $7,821.64 for the December 2012 for Unit 1, the respondent paid in advance (on 31 December 2012) the January 2013 rent and outgoings pursuant to an invoice dated 15 December 2012.

[19] On 3 December 2012 the appellant's solicitors wrote to Gill and Lane, referring to a notice to remedy breach of covenant dated 8 November 2012 for claimed unpaid rent in respect of Unit 2, and pressed for payment under threat that the appellant would terminate the lease and regain possession of Unit 2. The threatened action did not eventuate.

[20] By letter dated 3 January 2013, Mr Griffiths gave notice to the appellant as follows:

> "Professional Auction & Valuation Services give 28 days' notice as of Thursday 3rd January 2013 to terminate our monthly rental of 2/32 Allworth Street Northgate QLD."

[21] By letter dated 8 January, the appellant's solicitors wrote to Gill and Lane enclosing a copy of Mr Griffiths' correspondence (which they treated as referring to Unit 2) and stated that the lease for Unit 2 was still current and that the appellant did not accept the purported termination of that lease.

[22] By facsimile dated 9 January 2013, Gill and Lane advised the appellant's solicitors that in respect of Unit 2:

> "1. Pursuant to the provisions of s 107(d) of the *Property Law Act* 1974, your client has, by its unequivocal act of changing the locks on the premises, re-entered and taken possession of the same.
>
> 2. Such re-entry thus brings about an immediate determination of the Lease by operation of law (*Re Stewart: Ex parte Overells Pty Ltd (1941) St R Q @ 179*).
>
> 3. Your client, by its conduct having determined the Lease, cannot now seek to reinstate the same."

[23] The appellant's solicitors responded by letter on the same day as follows:

> "… We advise that Unit 2 60 Allworth Street, Northgate is leased to your client PVAS Building Auctions Pty Ltd. Our client did not change the locks for this premises or terminate the Lease. Your client's Lease for the above premises is still current. Your client's purported termination of the Lease for this premises is not accepted by our client.
>
> Unit 1 32 Allworth Street, Northgate was leased to your client Professional Auction & Valuation Services Pty Ltd. As a result of your client failing to remedy the breaches under the Lease, our client terminated the Lease and regained possession of the premises on 29 November 2012."

[24] On 4 February 2013, Mr Griffiths wrote to the appellant as follows:

> "Please find enclosed the keys to 32 Allworth Street, as we have not had an answer to our email we have expressed posted them to your office address.

> I have also included a letter from your solicitor stating that you terminated the lease at the above address in November for Professional Valuation & Auction Services Pty Ltd, hence we gave you 28 days notice as required."

[25] By facsimile dated 19 February 2013 to Gill and Lane, the appellant's solicitors asserted in respect of Unit 2 that the lease had been unlawfully repudiated by the vacating of the premises and the return of the keys and reserved the appellant's rights.

The decision at first instance

[26] There is no complaint as to relevant principles applied by the primary judge. In that regard his Honour observed[8] that a genuine dispute required only that "the grounds for alleging the existence of the dispute are real and not spurious, hypothetical, illusory or misconceived". The primary judge noted that the threshold test is not a high one,[9] but also referred to authority[10] that the court is not required to accept uncritically as giving rise to a genuine dispute every statement in an affidavit however equivocal, lacking in precision and inconsistent with undisputed contemporary documents or other statements by the same deponent or inherently improbable in itself.

[27] In determining that there was a genuine dispute as to the existence of the debt, the primary judge found that there was a credible argument that Unit 1 was affected by damage to the building and that, whatever the basis of the occupancy of Unit 1, whether under the lease or some other form of tenancy, "there exist[ed] a genuine dispute as to whether it was frustrated by the state of the premises" and thus as to the existence of the debt. In that respect his Honour referred to "the inter-related nature of the work" of the respondent and Auctions, the connection in respect of the uses stipulated in the two leases[11] and the respondent's claim that it was unable to conduct its business from the premises without risking voiding its liability insurance cover required by cl 20 of the Unit 1 lease.

[28] However, the primary ground on which the judge at first instance set aside the statutory demand was that the basis upon which the respondent was liable to pay rent or outgoings for the period in question was "uncertain at best" and that there was a genuine dispute as to whether there was any obligation on the respondent to pay rent or outgoings for February or March of 2013. In that regard, his Honour referred to Gill and Lane's facsimile of 16 September 2012 giving notice that both leases were terminated and their facsimile of 22 October 2012 that, pending mediation, their client would recommence payment of rental and outgoings on a without prejudice basis. His Honour considered that that communication, "at least arguably, gave rise to a tenancy from month to month that was determined by notice given to expire on any date - see clause 4 of the lease".

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8 Citing *Spencer Constructions Pty Ltd v G & M Aldridge Pty Ltd* (1997) 147 ALR 444, 445-446.

9 Referring to *Solarite Air Conditioning Pty Ltd v York International Australia Pty Ltd* [2002] NSWSC 411.

10 *Eyota Pty Ltd v Hanave Pty Ltd* (1994) 12 ACSR 785, 787, *Chadwick Industries (South Coast) Pty Ltd v Condensing Vaporisers Pty Ltd* (1994) 13 ACSR 37, 39 and *Rohalo Pharmaceutical Pty Ltd v RP Scherer SpA* (1994) 15 ACSR 347, 353.

11 Neither lease, however, contained an express term to the effect that termination of one lease effected a termination of the other lease.

[29] But, even if that were not so, his Honour considered that on any view the Unit 1 lease appeared to have been terminated again before the incurring of the alleged debt, due to the appellant's notice dated 29 November 2012 that it had re-entered and taken possession. That the appellant had taken the view that as at 30 November 2012 the lease was terminated was apparent from the terms of its solicitor's letters of 30 November 2012 and 9 January 2013.

[30] His Honour found that, in addition, there was a further purported termination on the part of the respondent, by the letter dated 3 January 2013. His Honour noted that the letter was on Professional Valuation and Auction Services' letterhead and was signed by Mr Griffiths as director of that entity, which was "unequivocally the [respondent] in the present proceedings". His Honour observed:

> "The point has been made that its leased premises was in fact 1/32 Allworth Street. It will be recalled that Auctions' leased premises was 2/60 Allworth Street. The letter contains reference to premises at 2/32. It appears in subsequent correspondence there was likely confusion on the part of some about what premises it referred to. In my view, though, it is self evident that there is a reasonable, if not strong argument, that this notice of termination related to the premises leased by the [respondent], and not by Auctions. That much is, in my view, apparent not only from the fact that its [sic] written on the [respondent's] letterhead and signed by the [respondent's] director but also by the fact that the letter itself specifically referred to Professional Auction & Valuation Services giving notice.
>
> In any event, it is not for me to resolve that issue now, but merely to observe the obvious argument I have identified exists. The upshot is that the basis upon which the [respondent] should be liable to pay rent and outgoings in respect either of an earlier and repeatedly terminated lease, or some other form of at least arguably terminated tenancy is at best for the [appellant] uncertain. There is, in my view, obviously a genuine dispute as to whether the so-called rental and outgoings exist as a debt which was or is payable by the [respondent]."

Grounds of Appeal

[31] The grounds of appeal are that the learned primary judge erred in finding that the following disputes constituted a "genuine dispute about the existence or amount of the debt to which the demand relates" for the purposes of s 459H:

(a) the dispute as to whether the lease in respect of Unit 1 was frustrated, and consequently whether the respondent had lawfully terminated the lease, in circumstances where it was common ground that the lease had been terminated and a debt the subject of the demand did not relate to an amount payable pursuant to the lease;

(b) the dispute regarding the effectiveness of the respondent's notice of termination of the then month-to-month tenancy by letter dated 3 January 2013, which regardless of referring to the wrong premises, was in any event incapable, as a matter of law, of effectively terminating the tenancy.

Genuine dispute as to the respondent's obligation to pay the claimed debt?

Genuine dispute as to frustration of the lease?

[32] It is apparent from what follows below that the issue of whether the Unit 1 lease was frustrated because of damage to the building is an irrelevancy, given that neither the appellant nor the respondent contended that the Unit 1 lease remained on foot at any time after the re-entry. Nor could there be a basis for frustration thereafter where the respondent voluntarily chose to resume possession.

Genuine dispute as to the basis of occupancy?

[33] The appellant's contention that after re-entry there arose a periodic monthly tenancy and that there was no basis for the view that there was a genuine dispute as to the nature of the occupancy is correct. Irrespective of whether the respondent's purported termination by letter dated 16 September 2012 was lawful, it is clearly the case that by 30 November 2012 the lease was terminated by the re-entry as contended by the appellant. Thereafter, the appellant's claim for rent and outgoings was not as a debt arising under the lease. But it is to be noted that the amount claimed in the statutory demand was not described as a debt owing under a lease. Rather, the appellant contended that the debt arose under a periodic monthly tenancy.

[34] As already outlined, after the appellant's re-entry, the respondent went back into possession and paid the December 2012 and January 2013 rent and outgoings in advance in accordance with the invoices issued, with nothing being done in relation to the proposal to regularise the basis of occupancy. Although the appellant's submissions at first instance addressed the issue as to whether a tenancy at will arose, the respondent's submissions below proceeded on the basis that there was a monthly tenancy, but one that was determinable by notice given to expire on any day pursuant to cl 4(c)(ii) of the lease. That position, as the appellant correctly contended, was erroneous.

[35] Clause 4(c) of the lease provided for the situation where the lessee was in default. Since re-entry was effected pursuant to cl 4(c)(i) of the lease, which operated to terminate the lease by permitting the lessor without any prior demand or notice to re-enter and take possession of the premises for breach by the lessee, neither cl 4(c)(ii), nor for that matter 4(d), applied. Clause 4(c)(ii) of the lease operated where the lessor merely gave written notice to terminate which was treated as effective from the date the notice was given (with the consequence that thereafter a monthly tenancy was created that could be terminated by notice given to expire on any date). Clause 4(d) applied in the event of the lessee "continuing in occupation…after the expiration of the term" (in which case there was deemed to be a monthly tenancy in respect of the period of the holding over requiring 30 days notice).

[36] The appellant contended that the basis that, post re-entry, a monthly tenancy arose was by operation of law, the respondent having agreed to pay rent "monthly in advance": *Turner v York Motors Pty Ltd* (1951) 85 CLR 55. Certainly, payment of monthly rent, particularly where it is paid in advance, although not legally conclusive, is strong evidence as to the existence of a monthly tenancy and may indicate that any other conclusion would be unreasonable: *Turner* at 72, 73, 86. However, in the present case, in addition to the payment of monthly rent in advance,

Mr Griffiths' letter of 3 January 2013 referred to notice being given in respect of a monthly tenancy. And, consistently with the approach below, the respondent's submissions before this court proceeded on the basis that it went back into possession on the basis of a monthly tenancy. There is no cause for uncertainty in the circumstances as to the nature of the periodic tenancy being a monthly tenancy arising by operation of law.

Genuine dispute as to termination of the monthly tenancy?

[37] The issue that then arises is as to termination of the monthly tenancy. As stated, since there was a re-entry under cl 4(c)(i), the notice provision in cl 4(c)(ii) does not apply. Nor, since there was no tenancy at will, do the provisions of s 129 *Property Law Act* 1974 (Qld) (PLA) that require one month's notice expiring at any time.

[38] The appellant contended that there were two possible terminations of the monthly tenancy that could be pointed to by the respondent – the letter of 3 January 2013 and the letter of 4 February 2013 under cover of which the keys were returned. But neither, it was said, assisted the respondent due to non-compliance with the provisions of the PLA.

[39] The relevant provisions of the PLA are as follows:

"**130 Notice of termination of tenancy**

(1) Subject to the other provisions of this division, a weekly, monthly, yearly, or other periodic tenancy may be terminated by either the landlord or the tenant upon notice to the other and, unless otherwise agreed upon, the notice—

(a) shall satisfy the requirements of section 131; and

(b) shall be given in the manner prescribed by section 132; and

(c) shall be given in sufficient time to provide the period of notice required by section 133, 134, 135 or 136, as the case may be.

…

131 Form and contents of notice

…

(2) A notice in writing—

(a) shall be signed by the person giving the notice or by the person's agent; and

(b) shall identify the land or premises in respect of which the notice is given; and

(c) shall state the date on which the tenancy is to terminate or that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice.

(3) A notice may state both—

(a) the date on which the tenancy is to terminate; and

(b) that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice;

> and, if it does state both, and the date on which the tenancy is to terminate is incorrectly stated, the notice shall be effective to terminate the tenancy on the last day of the period of the tenancy next following the giving of the notice.
>
> …
>
> **134 Notice to terminate monthly tenancy**
>
> (1) A notice to terminate a monthly tenancy shall be given on or before the last day of 1 month of the tenancy to be effective on the last day of the following month of the tenancy.
>
> (2) In this section—
>
> ***month of the tenancy*** means the monthly period on which the tenancy is based and not necessarily a calendar month, and, unless otherwise expressly agreed upon, the month shall be deemed to begin on the day on which the rent is payable."

[40] The appellant submitted that the notice given by the letter of 3 January 2013 was incapable of terminating the tenancy because it failed to identify the premises in respect of which notice was given and thus did not comply with the mandatory requirements of s 130(1)(a) and s 131(2)(b) of the PLA. In that regard, it was contended that the notice was expressly stated to be in relation to Unit 2, or at least was not asserted to be in relation to Unit 1.

[41] It is the case that there are confusing aspects to the notice. The notice, signed by Mr Griffiths as director of "PVAS", was on the letterhead of "Professional Valuation & Auction Services" (which is slightly different in name from that of the respondent although the ABN number on the letterhead was the same as the respondent's). A further curiosity is that the notice referred to 2/32 Allworth Street, whereas there was no lease of premises so described; the Unit 1 lease being of premises described as 1/32 Allworth Street and the Unit 2 lease of 2/60 Allworth Street. (It is to be noted that in correspondence the respondent's solicitors often referred to both premises as "Units 1 & 2/32 Allworth Street"). However, the respondent maintained that the reference to "2/32" instead of "1/32" was inadvertent and clearly intended as a reference to Unit 1. In any event, it remains the case that the notice could reasonably be argued to have been given in respect of Unit 1, as the letter expressly specified that notice was being given by "Professional Auction & Valuation Services" and it only occupied Unit 1.

[42] Nevertheless, the appellant submitted that, regardless of whether it was arguable that the notice related to Unit 1 and even if it is assumed that it did, it was still invalid and incapable of terminating the Unit 1 tenancy. This was because, by giving "28 days' notice as of …3rd January 2013", the notice failed to comply with the mandatory requirement of s 131(2)(c) of the PLA in that it did not "state the date on which the tenancy is to terminate or that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice." The appellant's contention that the notice did not satisfy either requirement is correct.

[43] Furthermore, as the appellant rightly maintained, in only giving 28 days notice as of 3 January 2013, the date the purported notice was posted, it was also invalid as it failed to comply with the mandatory requirement of s 134(1) of the PLA. That is, it was incapable of being given in sufficient time to provide the period of notice

required by s 134(1). The effect of s 130(1)(c) and s 134(1) is that notice in respect of a monthly tenancy must be for no less than the period of one month and to expire at the end of the following month of the tenancy. Given that the monthly period on which the tenancy in question was based was a calendar month commencing on the first day of the month, notice given in January 2013, if it had been properly given, could only have operated to terminate the tenancy effective on the last day of February 2013. That, at best, would have had the consequence that there would have been no liability for the March rental. But the notice that was given was incapable of achieving that result (and the letter of 4 February 2013 suffered from the same defect in terms of giving insufficient notice to avoid liability for the March 2013 rental).

[44] Neither letter, as a matter of law, could have relieved the respondent from its obligation to pay the amounts the subject of the statutory demand. Accordingly, the finding that there was a genuine dispute as to the existence of the debt was wrong in law; the dispute as to the liability to pay the debt did not provide a proper basis to set aside the statutory demand.

Orders

[45] It follows that the appeal should be allowed with costs and the order setting aside the statutory demand should be set aside with costs.