

## Court of Appeal Clarifies What Damages a Tenant can claim When a Landlord Prematurely Ends Tenancy

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### Introduction

1. Recently, the Singapore Court of Appeal (“CA”), in *Alvin Nicholas Nathan v Raffles Assets (Singapore) Pte Ltd*<sup>1</sup>, considered the question of what damages a tenant can claim, if a landlord prematurely terminates the tenancy.
2. Specifically, the CA decided that a tenant could not claim both :
  - (a) the costs of relocating from the original premises to the current premises (which would be classified in law as expectation loss); and
  - (b) the wasted costs of renovating the original premises (which would be classified in law as reliance loss).
3. If the Court were to allow the tenant to claim both kinds of losses, this would put the tenant in an even better position than he would have been in, if the tenancy had been performed (and not terminated) by the landlord.

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### Facts

4. The appellant/tenant (“**the Tenant**”) entered into a two-year lease agreement (“**the Tenancy**”) with the respondent/landlord (“**the Landlord**”), and assumed occupation of the premises (“**the Original Premises**”) in December 2010.
5. In October 2011, the Landlord informed the Tenant that the Original Premises would undergo renovations starting from 1 March 2012. The Landlord initially told the Tenant that he could stay at the Original Premises until December 2012. But the Landlord later informed the Tenant that the Tenancy would be terminated prematurely, and the Tenant had to surrender the Original Premises by 29 February 2012.
6. The Landlord then attempted to retract both his notice of termination and his demand for the Tenant to surrender the Original Premises by 29 February.
7. The Tenant could not agree with the Landlord’s purported retraction of the notice of termination, and on 15 February 2012, he moved to interim premises (“**the Interim Premises**”). On 30 May 2012, the Tenant moved to his permanent premises (“**the Current Premises**”).
8. The cost of rental at the Interim Premises and the Current Premises were higher than the cost of rental at the Original Premises. The size of the ~~Current Premises was larger than the size of the Original Premises.~~

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<sup>1</sup> [2016] SGCA 18

9. In the CA's view, the Tenant was entitled to claim (among other things) :
  - a. the increased rent paid for both the Interim Premises and the Current Premises, and
  - b. the costs of relocating to both the Interim Premises and the Current Premises, and for renovating the Current Premises.
10. However, the Tenant was not entitled to claim, at the same time, the costs of renovating the Original Premises, which was wasted because of the premature termination of the Tenancy ("**the Wasted Costs**").

### *The CA's Reasoning on the Wasted Costs*

11. It is an established principle that when a contract is terminated due to a breach of contract, the purpose of awarding damages is not to restore the parties to their respective positions as if the contract had not been made, but rather, to place the innocent party, so far as money can do so, in the same position as if the contract had been performed.
12. Following this principle, damages for breach of contract are usually assessed in terms of the innocent party's *expectation* loss – the gains the innocent party expected to receive if the contract had been performed. On occasion, damages for breach of contract may be quantified in terms of the innocent party's *reliance* loss – the costs and expenses the innocent party incurred in reliance on the contract, but which were wasted because of the breach of contract.
13. Claims for expectation losses and reliance losses are generally mutually exclusive. If a court awarded an innocent party both expectation and reliance losses following a breach of contract, the innocent party would be put in an even better position than he would have been in if the contract had been performed.
14. In the present case, the Tenant had to suffer the payment of higher rental rates, incur relocation costs, and suffer the inconvenience of relocating. These were losses suffered by the Tenant on account of the Landlord's premature termination. On payment of these sums as damages, the Tenant would effectively have been placed in a position as if there was no breach of the Tenancy.
15. If the Wasted Costs had also been awarded to the Tenant, it would be over-compensating the Tenant. Had the Tenancy been performed by the Landlord, the Tenant would still have incurred the Wasted Costs to renovate the Original Premises and render them suitable for his purposes.
16. For the reasons given, the CA held that the Tenant should not have been awarded the Wasted Costs.

### *Cost of renting and relocating to the Interim Premises*

17. It is an established principle that the innocent party must take all reasonable steps to mitigate the loss due to the defaulting party's breach, and cannot recover damages for any loss which it could have avoided but failed to avoid due to its own unreasonable action or inaction. The burden is on the defaulting party to show that the innocent party had failed to fulfil its duty to mitigate.

18. The Landlord argued that the Tenant could have mitigated his losses by staying in the Original Premises until the Current Premises were ready, thereby avoid the costs associated with renting, and relocating to the Interim Premises.
19. However, the CA found that it was not unreasonable for the Tenant to have moved out of the Original Premises before 1 March 2012 even though the Current Premises were not ready. It was reasonable for the Tenant to want to avoid the inconveniences the renovations would have brought about, even if shifting into the Interim Premises would have involved incurring some costs.
20. The CA also took into account the fact that the Landlord had initially demanded that the Tenant vacate the Original Premises by 29 February 2012 and confirmed that it was terminating the Tenancy prematurely. This clearly constituted a repudiatory breach of the Tenancy by the Landlord, giving the Tenant an immediate right to terminate the contract.
21. By way of a letter dated 17 November 2011, the Tenant exercised his right to accept the Landlord's repudiatory breach. Hence, in the circumstances, the CA found that the Tenant had acted reasonably on the basis that he had to leave before 29 February 2012 to avoid any allegation that he was affirming the contract, or to avoid overstaying on the Original Premises when he had no right to do so.
22. For these reasons, the CA found that the Tenant ought to have been awarded the extra rent incurred during the period when he was occupying the Interim Premises.

## Conclusion

23. The CA's decision clarifies that when a tenancy has been prematurely terminated, the object of the award of damages is to place the innocent party in the same position as if there was no breach and the contract was fully performed. The innocent party can only claim the expectation loss (and not both the expectation and reliance loss).

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