FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

O. B. LAW,
Appellant,
v.
JOE F. SEYMOUR,
Appellee.

Filed September 9, 1977

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2-58364

Appeal from Warren District Court - Van Wifvat, Judge.

Plaintiff appeals from trial court's judgment dismissing his action to terminate an oral farm tenancy agreement with defendant. Affirmed.

Stephen A. Hall, Hall, Ewalt & Hall, of Indianola, for appellant.

P. F. Elgin, Elgin, Hoyman & Clogg, of Indianola, for appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Plaintiff-landlord appeals from trial court's judgment dismissing his action to terminate an oral farm tenancy agreement with defendant-tenant. We affirm.

Plaintiff admits he did not give notice of termination as required by sections 562.5-.7, The Code. There is no claim of waiver, estoppel, or an agreement which would do away with the notice requirement. *See* Leise v. Schiebel, 246 Iowa 64, 67 N.W.2d 25 (1954); *see also*, 1 Volz, Iowa Practice § 696 (1976).

Plaintiff advances two arguments to escape the notice requirement. He first argues that a breach of the rental agreement existed so notice is not required, relying on the last phrase of § 562.6. Second, he complains that the amendment to § 562.7, which moved the date of the notice from November 1 to September 1, works a hardship on lessors and argues that if a breach occurs after September 1, the statutory notice should not be required.

I. Although it would seem that the division of corn and soybean proceeds formed a part of the rental agreement, the evidence offered to establish the alleged violations of the oral lease, even including that received by proffer, was insufficient to generate an issue of default in the performance of the existing rental agreement. Nor was there evidence that defendant failed to pay the pasture rent. Consequently, the provision of § 562.6 upon which plaintiff relies is of no assistance to him. *See* Riggs v. Meka, 236 Iowa 118, 17 N.W.2d 101 (1945). Plaintiff's first argument must fail.

II. The second argument also fails as it is directed to the wrong branch of government. An amendment to a statute should be construed to make no change in the prior law beyond that which is "expressly declared, or necessarily implied." State v. Blyth, 226 N.W.2d 250, 259 (Iowa 1975). "[W]here an amendment leaves certain

portions of the original act unchanged, such portions are continued in force, with the same meaning and effect they had before the amendment." Spencer Pub. Co. v. City of Spencer, 250 Iowa 47, 53, 92 N.W.2d 663 (1958). The only change in § 562.7 is the substitution of "September 1" for "November 1". *See* Acts 1973 (65 G.A.) ch. 280, § 1. Events occurring after the notice date have been held to have no effect on a lease extension effectuated by the lack of notice. *See* Read v. Estate of Mincks, 176 N.W.2d 192 (Iowa 1970). The legislature must be deemed to have recognized the judicial interpretation of the prior statute. Humboldt County v. Biegger, 232 Iowa 494, 499, 4 N.W.2d 422 (1942). Only the critical date has changed, nothing more.

Examination of the record indicates that the only subject of dispute was possession of the land. If the defendant remained in possession, statutory notice on or before September 1, 1975, or September 1, 1976, would have rid plaintiff of defendant's presence. Thus, this case would be moot. Olsen v. Martens, 244 Iowa 741, 57 N.W.2d 805 (1953). In that event, the proper remedy would be dismissal of the appeal. Because mootness has not been raised by motion, we have dealt with the merits.

AFFIRMED.