

Act No. 19 OF 1981

LANDLORD AND TENANT ACT, 1981

Arrangement of Sections

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- (b) to notify the landlord forthwith of any such encroachment, any adverse claim to the premises and any notice or proceeding known to him (whether addressed to or taken against him or not) which may affect the landlord's interest in the premises;
- (c) not to contravene any restriction imposed by or under any statute with respect to use of the premises;
- (d) not to do or allow to be done on the premises anything which constitutes a nuisance;
- (e) not to use the premises or cause or allow the premises to be used for any illegal purpose.

(2) For the purposes of paragraphs (d) and (e) of sub-section (1), a person allows to be done anything which he has the right to prevent if he does not take reasonable steps to enforce that right.

14. (1) The landlord has an overriding obligation to see that the tenant is notified in writing of the name and address of the person in whom the reversion is for the time being vested, and, if different, the name and address of the person to whom the rent is to be paid within—

Disclosure of  
landlord's identity

- (a) two months after any assignment of the reversion or on or before the next occasion on which rent is payable under the tenancy agreement after such an assignment, whichever is the later;
- (b) two months after receipt of a written request for the information reasonably made by the tenant at any time

(2) In any notice given under paragraph (a) of sub-section (1), trustees may be described collectively as such and their address may be given as that from which the affairs of the trust are conducted; but no such notice is required of an assignment effected solely for the purpose or in consequence of a change in the trustees.

(3) A request made under paragraph (b) of sub-section (1) may be addressed to the person who last demanded or received rent from the tenant or any other person for the time being acting as agent for the landlord in relation to the tenancy, and, upon receipt of such a request, that person shall forthwith forward it to the landlord.

(4) Where the demised premises consist of part only of a building or are comprised in a composite group of buildings, the notice to be given under paragraph (a) of sub-section (1) is duly given if it is displayed for a reasonable period at or within the

building or group of buildings in a position likely to be seen by the tenant in the ordinary course of his use of the premises.

(5) A landlord or any other person who fails without reasonable excuse to comply with the provisions of this section is guilty of an offence punishable summarily by a fine of \$1,000, or by imprisonment for three months, or both.

(6) In this section—

“address”, in relation to a person, means the place where he lives or where he carries on his business or, in relation to a company, its registered office;

“assignment” includes any conveyance other than a mortgage;

“the reversion” means the estate which but for the tenancy would carry the right to immediate possession of the demised premises, disregarding any mortgage.

Disclosure of  
tenant's identity

15. (1) The tenant has an overriding obligation to see that the landlord is notified in writing of the name and address of the person in whom the tenancy is for the time being vested within—

(a) two months after any assignment of the tenancy;

(b) two months after receipt of a written request for the information reasonably made by the landlord at any time.

(2) A request made under paragraph (b) of sub-section (1) may be addressed to the person who last paid rent under the tenancy, or any other person for the time being acting as agent for the tenant in relation to the tenancy.

(3) Any notice to be given to the landlord under this section is duly given if given to a person who receives rent on his behalf.

(4) A tenant or any other person who fails without reasonable excuse to comply with the provisions of this section is guilty of an offence punishable summarily by a fine of \$1,000, or by imprisonment for three months, or both.

(5) The expressions “address” and “assignment” have the same meaning in this section as that given by sub-section (6) of section 14.

Repairs by  
landlord

16. (1) In the case of a tenancy of a building or part of a building let for use wholly or mainly as a private dwelling, the landlord has—

(a) Where the term is less than twenty-one years, an overriding obligation to see that the premises are reasonably fit for human habitation at the commencement of the tenancy;

- (b) where the term is less than three years, an overriding, and, where the term is not less than three years but is less than twenty-one years, a variable obligation to keep the premises reasonably fit for human habitation during the tenancy;
- (c) where the term is less than seven years, an overriding obligation to keep in repair—
  - (i) the structure and exterior of the premises;
  - (ii) and in proper working order the installations in the premises for the supply of water and electricity, but not fixtures, or appliances for making use of the supply of water or electricity;
- (d) where the term is less than twenty-one years, a variable obligation to keep in repair and in proper working order the installations in the premises for the heating of water, air-conditioning or otherwise cooling of the premises and for sanitation (including basins, sinks, baths, shower units and sanitary conveniences).

(2) In the case of a tenancy for a term less than twenty-one years, to which sub-section (1) does not apply, the landlord has a variable obligation to keep in repair the structure and exterior of the premises.

17. (1) In the case of any tenancy of premises which consist of part only of a building, the landlord has a variable obligation to keep in repair the structure and exterior of the building.

Tenancies of parts  
of buildings

(2) Where the tenant under any such tenancy is entitled, whether in common with others or not, to the use for access or other purposes of other parts of the building or its curtilage in the possession or control of the landlord, or to any facilities to be provided by the landlord, the landlord "subject to subsection (4)", has an overriding obligation to—

- (a) keep in good order and condition any part of the building or curtilage which the tenant is entitled to use as aforesaid;
- (b) ensure that, according to its nature, any part of the building or curtilage which the tenant is entitled to use for access is adequately lit and safe to use;
- (c) ensure, so far as is practicable, that any facilities to which the tenant is entitled as aforesaid are continued at the proper level and that any installations for the provision of those facilities are safe to use and adequately perform their function.

(3) In this section—

- (a) the extent of the obligation of the landlord under sub-section (2) is to be ascertained by reference to the order and condition of the relevant part of the building or curtilage or, as the case may be, the level of the facilities provided at the commencement of the tenancy;
- (b) “facilities” includes lighting, air-conditioning or other cooling mechanisms, heating of water, elevators, attendance and services.

(4) In the case of tenancies of premises used wholly or mainly for business, trade or professional purposes the obligation of the landlord shall be a variable obligation.

1981 No.

(5) This section does not apply to any tenancy of premises to which the Condominiums Act, 1981, applies.

Access

18. (1) Where under any tenancy the tenant is entitled to use for all or any of the purposes of the tenancy a route or means of access to the demised premises over land in the possession or control of the landlord, the landlord has an overriding obligation to keep that route or means of access safe and fit for use for those purposes.

(2) This section does not apply to any tenancy to which section 17(2)(b) applies.

Support and shelter

19. (1) In the case of any tenancy of a building or part of a building which enjoys support or shelter—

- (a) in the case of a part of a building, by any other part of that building;
- (b) in any case, by any adjacent or neighbouring building or other premises,

the landlord has an overriding obligation to maintain during the tenancy the support or shelter enjoyed at the commencement of the tenancy or support or shelter substantially equivalent thereto.

(2) Sub-section (1)—

- (a) applies only to support or shelter by premises in the possession or control of the landlord or by which he has the right to support or shelter for the benefit of the demised premises, and in the latter case applies only to the extent of that right;
- (b) does not require the landlord to carry out any repairs or reinstatement to make good a loss of support or shelter occasioned by any act or default of the tenant or any sub-tenant of the demised premises.

(3) This section does not apply to any tenancy of premises to which the Condominiums Act, 1981, applies. 1981 No.

20. (1) In the case of any tenancy, the tenant has an overriding obligation— Repairs by tenant

- (a) to take proper care of the demised premises as a good tenant;
- (b) to make good any damage to the premises done or caused to the premises by the tenant, any sub-tenant of his or any other person lawfully living in or visiting the premises;
- (c) not to carry out any alternations or other works of which the actual or probable result is to destroy or alter the character of the premises or any part of them to the detriment of the interest of the landlord therein.

(2) In the case of a tenancy for a term less than twenty-one years, to which section 16(1) does not apply, the tenant has a variable obligation to keep in repair all parts of the premises other than those which the landlord is obliged to keep in repair under section 16(2).

(3) In the case of a tenancy for a term not less than twenty-one years, the tenant has a variable obligation to keep in repair the entirety of the premises.

21. (1) Where the landlord is authorised or obliged under any tenancy agreement or this Act to carry out works of repair, improvement or alternation of the demised premises, or of any building of which those premises form part, the tenant has an overriding obligation to permit the landlord, and persons authorised by him for the purpose, to enter the premises at reasonable times and upon reasonable notice in order to inspect them and carry out any such works. Entry and inspection

(2) Where the tenant is obliged under any tenancy agreement or this Act to carry out any repairs of the demised premises, the tenant has an overriding obligation to permit the landlord, and persons authorised by him for the purpose, to enter the premises at reasonable times and upon reasonable notice in order to inspect their state of repair.

22. Where the landlord is authorised or obliged under the tenancy agreement, this Act or otherwise to carry out works of repair, improvement or alteration of the demised premises, or of any building of which those premises form part, the landlord has a variable obligation to make good any damage to the premises or property therein which may be occasioned by or in the course of carrying out the works or inspecting the premises for the purpose. Making good damage

General provisions as  
to repair obligations

23. (1) The following provisions apply for ascertaining the term of a tenancy for the purposes of sections 16 to 20, namely:—

- (a) if a tenancy is granted for a term part of which falls beyond the grant, that part is left out of account and the tenancy is treated as for a term commencing with the grant;
- (b) if the landlord has a right to terminate the tenancy, it is assumed that that right will be exercised as soon as available;
- (c) subject to paragraph (b), if the tenant has an option to renew the tenancy, for any period, that period is added to the original term.

(2) In sections 16, 17 and 20, "structure and exterior" includes drains, gutters and external pipes.

Qualifications of  
repair obligations

24. (1) The obligations of the landlord under sections 16 and 17 do not require him to—

- (a) carry out works or repairs which the tenant is obliged to carry out under section 20 or would be so obliged apart from any exclusion or modification of his obligation under the said section;
- (b) keep in repair or maintain anything which the tenant is entitled to remove from the premises;
- (c) rebuild or re-instate the premises in the case of destruction or damage by fire, flood, earthquake, hurricane, storm, tempest, explosion, riots, malicious damage or strikes.

(2) The obligations of the tenant under section 20 do not require him to—

- (a) carry out works or repairs which the landlord is obliged to carry out under section 18 or would be so obliged apart from any exclusion or modification of his obligation under the said section;
- (b) keep in repair or maintain anything which the tenant is entitled to remove from the premises;
- (c) rebuild or re-instate the premises in the case of destruction or damage by fire, flood, earthquake, tempest, explosion, riots, malicious damage or strikes.

Standard of repair

25. (1) In determining the standard of repair required in respect of the obligations arising under sections 16, 17 and 20, regard is to be had to the age, character and prospective life of the premises and the locality in which they are situated.

(2) Any obligations of the landlord to carry out works under section 16 is conditional upon his having actual knowledge (whether from notice given by the tenant or from any other source) of the circumstances calling for these works.

26. (1) In respect of the obligations of the landlord arising under sections 16 to 19, under any other enactment, or under any tenancy agreement in respect of repair or maintenance of the demised premises, the landlord owes to all persons who might reasonably be expected to be affected by defects in the state of the premises a duty to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damages to their property caused by a relevant defect. Landlord's liability  
in tort

(2) The said duty is owed if the landlord knows (whether from notice given by the tenant or otherwise) or if he ought in all the circumstances to have known of the relevant defect.

(3) In this section, "relevant defect" means a defect in the state of the premises existing at or after the material time and arising from, or continuing because of, an act or omission by the landlord which constitutes or would, if he had notice of the defect, have constituted a failure by him to carry out his obligation to repair or maintain the premises; and for the purpose of the foregoing provision "the material time" means—

- (a) where the tenancy commenced before this Act, the commencement of this Act; and
- (b) in all other cases, the earliest of the following times, that is to say, the time when—
  - (i) the tenancy commences;
  - (ii) the tenancy agreement is entered into;
  - (iii) possession is taken of the premises in contemplation of the tenancy.

(4) Where the landlord has a right under section 21 or the tenancy agreement to enter the premises to carry out any description of repair or maintenance of the premises, then, as from the time when he first is, or by notice or otherwise can put himself, in a position to exercise the right and so long as he is or can put himself in that position, he shall be treated for the purposes of sub-sections (1) to (3) (but for no other purpose) as if he has an obligation for that description of repair or maintenance of the premises.

(5) Sub-section (4) does not create any duty owed to the tenant in respect of any defect in the state of the premises arising from or continuing because of a failure to carry out an obligation the tenant has under this or any other Act or the tenancy agreement.

27. (1) Subject to the other provisions of this section, the landlord has a variable obligation to permit the tenant to remove from the demised premises any tenant's fixtures at any time during the tenancy or upon its determination, provided the removal causes no irreparable damage to the said premises.

(2) Where a periodic or other tenancy is determined by notice of the landlord and the length of the period of notice is insufficient reasonably to enable the tenant to remove a fixture before the expiration of the notice, the landlord's obligation under sub-section (1) continues for such further period of time as is reasonably necessary for removal of the fixture.

(3) With respect to removal of fixtures the tenant has a variable obligation—

- (a) before the removal, to pay all rent owing and to perform all his other obligations to the landlord under this or any other Act or the tenancy agreement;
- (b) not to do any avoidable damage to the demised premises;
- (c) immediately after the removal, to make good all damage occasioned to the demised premises by the removal or to pay the landlord reasonable compensation in respect of such damage;
- (d) not to remove any fixture without giving the landlord at least one month's notice in writing of his intention to remove it.

(4) At any time before the expiration of the notice given by the tenant under paragraph (d) of sub-section (3), the landlord may, by notice in writing to the tenant, elect to purchase any fixture specified for removal in the said tenant's notice.

(5) If the tenant does not wish or refuses to comply with such election, the matter may be referred by either party, or both, to the Land Commission for determination and in its determination the Commission may by order confirm the landlord's election or uphold the tenant's refusal and make such further order as in its absolute discretion it thinks fit in all the circumstances of the case for determination of the matter.

(6) Any dispute in any case as to the amount of compensation to be paid by the tenant under paragraph (c) of sub-section (3) or as to the purchase price to be paid by the landlord upon an election under sub-section (4) shall be determined by the Land Commission.

(7) In this section, "tenant's fixtures" includes any chattel, machinery, fencing or similar property or any building erected on

or affixed to the demised premises by or on behalf of the tenant at his sole expense for—

- (a) any purpose of trade, manufacture or agriculture;
- (b) ornament;
- (c) the domestic convenience of the tenant in the occupation of the demised premises;

but not so erected or affixed in pursuance of any obligation or in violation of any agreement in that behalf in the tenancy agreement.

28. (1) To the extent that the landlord or tenant has an obligation to repair the demised premises under this or any other Act or the tenancy agreement, he has a variable obligation to insure the said premises in the joint names of himself and the other party to the tenancy agreement against loss or damage by fire, flood, earthquake, hurricane, storm, tempest, explosion, riots, malicious damage or strikes. Insurance

(2) All money received under such insurance shall be held on behalf of the landlord and tenant for their benefit in proportion to their respective interests in the demised premises.

(3) Provided notice is given to the insurance company before it pays out any of the insurance money, the said money shall, upon request of either the landlord or tenant, be applied in reinstatement of the demised premises.

(4) Where one party to the tenancy agreement fails to comply with his obligation as to insurance under sub-section (1) and the other party insures the demised premises in his sole name, he shall nevertheless be deemed to insure on behalf of the other party to the extent of his interest in the demised premises and sub-sections (2) and (3) apply accordingly.

(5) Sub-section (4) operates without prejudice to any remedy the insuring party has against the other party for failure to comply with his obligation to insure, including a claim for reimbursement of any insurance premium and other costs incurred in respect of the insurance.

29. (1) Where a lease contains a covenant prohibiting the lessee from— Lessor's consent  
of licence

- (a) assigning, subletting or parting with possession of;  
or
- (b) changing the user of; or
- (c) making alterations or additions to, or erecting new buildings on,

the demised premises, or any part thereof, without the consent or licence of the lessor, the lessor has overriding obligations not to—

- (i) withhold unreasonably his consent or licence;
- (ii) delay unreasonably his decision whether or not to give his consent or licence;
- (iii) charge any fine or other sum of money in the nature of a fine for the giving of such consent or licence, but this does not preclude the lessor from requiring the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to such consent or licence.

(2) In any case where the lessee considers that the lessor is in breach of his obligations under paragraph (i) or (ii) of sub-section (1), he may apply to the Land Commission for an order requiring the landlord to give the appropriate consent or licence.

(3) Upon such an application—

- (a) the onus of establishing a prima facie case that the lessor is in breach of his obligations rests with the lessee;
- (b) in considering whether the lessor is withholding unreasonably his consent or licence, the Land Commission shall have regard to all the circumstances pleaded by the lessor and, in particular, the extent to which the lessor was at the time of refusing his consent or licence under a reasonable apprehension that—

- (i) his financial or proprietary interest would be adversely affected and the tenant would be unable or unwilling to indemnify him in respect of these; or
  - (ii) the interests of good estate management would be prejudiced in relation to the demised premises or any neighbouring premises belonging to him, if the said consent or licence were given;
- (c) in considering whether the lessor had such a reasonable apprehension, the Land Commission may, without prejudice to the generality of subparagraphs (i) and (ii) of paragraph (b), take into account the extent to which the lessor had a reasonable apprehension that the giving of such consent or licence would—
- (i) affect the legal status of the whole or part of the demised premises, or of the occupier, to the detriment of the lessor's interest;
  - (ii) involve the lessor in new or increased

- liability for payment of rates, taxes or other financial burdens which the lessee is unable or unwilling to undertake;
  - (iii) render the lessor liable for breach of any statutory or contractual obligation or liable in tort to any person;
  - (iv) affect the lessor's interest in the user of the demised premises having regard to planning regulations;
  - (v) diminish the value of neighbouring premises belonging to the lessor;
- (d) in considering whether the lessor is delaying unreasonably his decision whether or not to give his consent or licence, the Land Commission shall have regard to whether the lessee provided the lessor with all the information reasonably requested by the lessor in connection with the request or application for the consent or licence.
- (4) Without prejudice to its jurisdiction under subsections (2) and (3), the Land Commission may, where it considers it appropriate in all the circumstances of the case, order the lessor to give his consent or licence subject to the condition that—
- (a) in the case of assigning, subletting or parting with possession, additional security is given to cover existing obligations under the lease;
  - (b) in the case of a change of user, the lessee pays a reasonable sum or an increased rent—
    - (i) where the letting value of the demised premises or any part thereof will be increased by the said change of user, in respect of and related to the amount of any such increase;
    - (ii) where the lessor might otherwise be entitled to refuse his consent or licence, in respect of and as compensation for any financial liability imposed upon him, any damage caused to or other loss suffered by him or any diminution in the value of the demised premises or any neighbouring premises belonging to him in consequence of the change of user;
  - (c) in the case of alterations or additions to or the erection of new buildings on the demised premises, the lessee

- (i) pays a reasonable sum or an increased rent, where the lessor might otherwise be entitled to refuse his consent or licence, in respect of and as compensation for any financial liability imposed upon him, any damage caused to or other loss suffered by him or any diminution in the value of the demised premises or any neighbouring premises belonging to him in consequence of the alterations, additions or erection of new buildings;
- (ii) undertakes to reinstate the demised premises on the determination of the lease, if called upon to do so, unless the alterations, additions or erection of new buildings add to the letting value of the premises or the Land Commission considers that in all the circumstances of the case such an undertaking is unreasonable.

#### PART IV

#### ENFORCEMENT OF OBLIGATIONS

Apportionment of conditions on severance

30. (1) Where there is—

- (a) severance by conveyance, surrender or otherwise of the reversion expectant on the termination of a lease; or
- (b) avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein;

every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversion as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2) This section applies only to leases made after 1st January, 1885.

31. (1) Where, in a conveyance for valuable consideration of part of land comprised in a lease, for the residue of the term or interest created by the lease, the rent reserved by such lease or any part thereof is, without the consent of the lessor, expressed to be—

Equitable  
Apportionment  
of rent and other  
provisions

- (a) charged exclusively on the land conveyed or any part thereof in exoneration of the land retained by the assignor or other land; or
- (b) charged exclusively on the land retained by the assignor or any part thereof in exoneration of the land conveyed or other land; or
- (c) apportioned between the land conveyed or any part thereof and the land retained by the assignor or any part thereof;

then, without prejudice to the rights of the lessor, such charge or apportionment is binding as between the assignor and the assignee under the conveyance and their respective successors in title.

(2) Where any—

- (a) default is made in payment of the whole or part of a rent by a person who, by reason of such charge or apportionment as aforesaid, is liable to pay the same; or
- (b) breach occurs of any of the lessee's covenants (other than in the case of an apportionment the covenant to pay the entire rent) or conditions contained in the lease, so far as the same relate to the land retained or conveyed, as the case may be;

the lessee for the time being of any other land comprised in the lease in whom, as respects that land, the residue of the term or interest created by the lease is vested, who—

- (i) pays or is required to pay the whole or part of the rent which ought to have been paid by the defaulter aforesaid; or
- (ii) incurs any costs, damages or expenses by reason of the breach of covenant or condition aforesaid;

may, without prejudice to the right of action for breach of the provision for charging or apportionment, exercise the remedy of distress on the land comprised in the lease in respect of which the default or breach is made or occurs, or any part of that land, and may also take possession of the income of the same land, until by means of such distress and receipt of income or otherwise the whole or part of the rent (charged or apportioned as aforesaid) so unpaid and all costs, damages and expenses incurred by reason

of the non-payment thereof or of the breach of the said covenants and conditions are fully paid or satisfied.

(3) The remedies conferred by this section—

- (a) take effect only so far as they might have been conferred by the conveyance whereby the rent is expressed to be exclusively charged or apportioned as aforesaid, but a trustee or other person in a fiduciary position, or a mortgagee, has, and shall be deemed always to have had, power to confer the same or like remedies;
- (b) apply only where the conveyance whereby the rent or any part thereof is expressed to be charged or apportioned is made after the commencement of this Act;
- (c) do not apply where the rent is charged exclusively as aforesaid or legally apportioned with the consent of the lessor.

(4) This section applies only if and so far as a contrary intention is not expressed in the conveyance whereby the rent is expressed to be charged or apportioned, and takes effect subject to the terms of that conveyance and to the provisions therein contained.

Further provisions  
for apportionment

32. (1) Where, in a conveyance for valuable consideration, of part of land comprised in a lease, for the residue of the term or interest created by the lease—

- (a) the rent is not expressed to be charged or apportioned as described in subsection (1) of section 31; or
- (b) the observance or performance of covenants and conditions in the lease (other than those relating to the rent) is not expressed either to be undertaken by the assignor or the assignee in respect of the whole land comprised in the lease or to be apportioned between the assignor and assignee so as to render each of them liable for such observance or performance only in respect of the land retained by the assignor or the land conveyed to the assignee, as the case may be, and so far as the covenants and conditions relate to such lands;

then, without prejudice to the rights of the lessor—

- (i) the said rent shall be deemed to be apportioned between the land retained and the land conveyed according to the proportion in size and area the latter bears to the former; and

- (ii) the observance or performance of the said covenants and conditions shall be deemed to be apportioned as aforesaid.

(2) Such apportionment is binding as between the assignor and the assignee under the conveyance and their respective successors in title and the remedies provided for by section 31 are available to the extent they would be if the apportionment under this section were expressed to take effect in the conveyance.

(3) If any dispute arises as to apportionment under this section, it may be referred to the Land Commission for determination.

33. (1) Unless a contrary intention appears, in accordance with subsection (2), where any actual waiver by a landlord or the persons deriving title under him of the benefit of any covenant, condition or agreement in any lease or tenancy agreement is proved to have taken place in any particular instance, such waiver does not extend to any instance or to any breach of covenant, condition or agreement save that to which such waiver specifically relates, nor does it operate as a general waiver of the benefit of any such covenant, condition or agreement. Waiver

(2) A general waiver of a covenant, condition or agreement in any lease or tenancy agreement is not effective unless executed in writing by the lessor or his agent thereunto authorised in writing.

(3) Notwithstanding any provision to the contrary in the receipt or otherwise, a receipt of rent shall be deemed to be a waiver of any particular breach of covenant of which at the time of the receipt the landlord, his agent or any other person validly giving the receipt knows or would have known if he had exercised reasonable diligence.

34. (1) Where a licence is granted to a lessee to do any act, the licence, unless otherwise expressed, extends only to— Licences

- (a) the permission actually given; or
- (b) the specific breach of any provision or covenant referred to; or
- (c) any other matter thereby specifically authorised to be done;

and the licence does not prevent any proceedings for any subsequent breach, unless otherwise specified in the licence.

(2) Notwithstanding any such licence—

- (a) all rights under covenants and powers of re-entry contained in the lease remain in full force and are available as against any subsequent breach of

covenant, condition or other matter not specifically authorised or waived, in the same manner as if no licence had been granted; and

- (b) the condition or right of re-entry remains in force in all respects as if the licence had not been granted, save in respect of the particular matter authorised to be done.

(3) Where, in any lease, there is a power or condition of re-entry on the lessee assigning, subletting or doing any other specified act without a licence, and a licence is granted to—

- (a) any one of two or more lessees to do any act, or to deal with his equitable share or interest; or  
 (b) any lessee, or to one of two or more lessees, to assign or sublet part only of the property, or to do any act in respect of part only of the property;

the licence does not operate to extinguish the right of re-entry in case of any breach of covenant or condition by the co-lessees of the other shares or interests in the property, or by the lessee or lessees of the rest of the property (as the case may be) in respect of such shares or interests or remaining property, but the right of re-entry remains in force in respect of the shares, interests or property not the subject of the licence.

(4) This section applies to licences granted after 1st October, 1864.

Running of lessee's  
covenants

35. (1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed and performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and without prejudice to any liability affecting a covenantor or his estate.

(2) Any such rent, covenant or provision is capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(3) Where that person becomes entitled by conveyance or otherwise, such rent, covenant or provision may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition

waived or released before such person becomes entitled as aforesaid.

(4) This section applies to leases made before or after the commencement of this Act, but does not affect the operation of any—

- (a) severance of the reversionary estate; or
- (b) acquisition by conveyance or otherwise of the right to receive or enforce any rent, covenant or provision,

effected before the commencement of this Act.

36. (1) The obligation under a condition or of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

Running of lessors' covenants

(2) This section applies to leases made before or after the commencement of this Act, whether the severance of the reversionary estate was effected before or after such commencement, but, where the lease was made before 1st January, 1884, nothing in this section affects the operation of any severance of the reversionary estate effected before that date.

(3) This section takes effect without prejudice to any liability affecting a covenantor or his estate.

37. (1) Subject to subsections (2) and (3), a successor in title of the lessor or lessee has the benefit and is subject to the burden of all covenants or conditions in the lease only during the period he retains an interest in the reversion or lease, as the case may be.

Position of parties after assignment

(2) No assignment made by a lessee discharges him from observance or performance of covenants or conditions in the lease unless and until notice in writing of the particulars of such assignment is given to the lessor.

(3) A lessee who assigns his estate or interest in the interval between two dates for payment of rent remains, notwithstanding such assignment, liable for payment of the rent and observance

or performance of the covenants or conditions in the lease up to and including the date for payment of rent next after the giving of notice of the assignment to the lessor.

(4) Subject to subsections (2) and (3), an assignment of the estate or interest of the original lease, which is consistent with the terms of the lease (as modified, according to the circumstances of the case, by section 29) operates to discharge the assignor from all future liability to the lessor and his successors in title, but without prejudice to the liability of the assignee of such estate or interest.

(5) This section applies only—

- (a) if and as far as a contrary intention is not expressed in the lease or any assignment of it, and has effect subject to the terms of the lease or any such assignment and to the provisions therein contained;
- (b) to leases, or assignments of such leases, executed after the commencement of this Act.

Position of parties  
after subletting

38. (1) Where any lessee, who has sublet, fails to pay to his lessor any rent payable under the lease—

- (a) the lessor, after such rent has remained unpaid for one month, may serve notice in writing on the sublessee requiring him to pay to the lessor or his specified agent so much of the rent payable by such sublessee to the lessee under the sublease as may be sufficient to discharge the rent unpaid by the lessee and thereupon the sublessee is liable to pay to the lessor all rent payable under the sublease, or so much thereof as is sufficient to discharge rent payable under the lease which may accrue after receipt of such notice, until such time as the lessor serves notice in writing on the sublessee to cease such payment;
- (b) the sublessee may, before any action is brought by the lessee for rent against the sublessee, pay to the lessor so much of the said rent payable by the sublessee to the lessee as is sufficient to discharge such rent remaining unpaid by the lessee.

(2) The lessor has all the rights and remedies of the lessee for enforcing payment of rent to be paid to him by the sublessee under subsection (1).

(3) The receipt of the lessor or his specified agent is full discharge to the sublessee as against the lessee in respect of all rent paid under sub-section (1).

(4) Where there is a subletting consistent with the terms of the lease (as modified, according to the circumstances of the case, by section 29), the receipt of the lessee for payment by the sublessee of rent payable under the sublease is a full discharge to the sublessee as against the lessor in respect of all rent issuing out of and thereto before due from the demised premises, except so much rent, if any, as remains payable by the sublessee.

(5) Subsection (3) does not—

- (a) prejudice the rights and remedies of the lessor with respect to the balance of rent payable to him as against the lessee and other premises out of which such rent may accrue due;
- (b) apply to cases where the lessor has served a notice under subsection (1)(a) before the sublessee pays the lessee.

(6) This section applies only—

- (a) if and as far as a contrary intention is not expressed in the lease or any sublease granted out of it, and has effect subject to the terms of the lease or any such sublease and to the provisions therein contained;
- (b) to leases, or subleases granted out of such leases, executed after the commencement of this Act.

39. (1) Any person entitled to land who permits the said land to be held or occupied by any person under an agreement not specifying or determining the amount of rent may by action recover a reasonable sum for the use and occupation of the said land. Actions for use and occupation

(2) Where a tenant continues to hold or occupy the demised premises after determination of the tenancy, whether such determination results from expiration of the term of the tenancy or notice given by either the landlord or the tenant or otherwise, the landlord may by action recover a reasonable sum for the use and occupation of the said premises.

(3) The acceptance by a landlord of arrears of rent or a sum for use and occupation of land after notice to determine the tenancy has been given does not operate as a waiver of the notice or as a reinstatement of the tenancy or as the creation of a new tenancy unless the parties so agree.

(4) The burden of proof that the notice has been waived or the tenancy has been reinstated or a new tenancy created is upon the person so claiming.

## Recovery of rent

40. (1) Where under any tenancy agreement the rent or other sums are payable by the tenant in arrear, the landlord may by action recover such rent or other sums whether or not the tenancy still exists.

(2) Where under any tenancy agreement the rent or other sums are payable by the tenant in advance, such rent or other sums shall be deemed to be due and payable on the day on which they so become payable in advance and the landlord may by action recover such rent or other sums accordingly.

## Right of distress for rent

41. (1) From the commencement of this Act, a landlord or any other person entitled to a right of distress for rent may exercise the right, whether it arises at common law or under any statute or is conferred expressly by any tenancy or other agreement, only in accordance with the provisions of this Act.

(2) Subsection (1) does not affect any right of distress exercisable by any public or statutory body in respect of rates, taxes or other items charged upon or issuing out of land.

(3) Any rules of the common law relating to the right of distress for rent and its exercise continue to apply to the extent that they are not modified or replaced by the provisions of this Act.

## Distress by bailiff

42. From the commencement of this Act, any distress for rent shall be levied only by a bailiff certified in accordance with the provisions of section 43.

## Certified bailiffs

43. (1) No person shall act as a bailiff to levy any distress for rent unless he is authorised to act as a bailiff by a certificate in writing under the hand of a magistrate.

(2) Such a certificate may be—

- (a) general or may apply to a particular distress or distresses;
- (b) granted in such manner and form and subject to such security as may be prescribed;
- (c) cancelled or declared void by a magistrate, subject to the approval of a High Court judge, but such cancellation shall not exempt the bailiff to whom the certificate relates from any other penalty or proceeding to which he may be liable.

(3) A bailiff so certified has all the powers, authority and immunities of a bailiff of the court.

(4) If any person not holding such a certificate levies a distress for rent, he, and any person who authorised him to levy the distress, shall be deemed to have committed a trespass and

shall, in addition, be liable, on summary conviction, to a fine of \$2,500.00.

- (5) For the purposes of subsection (2), the Chief Justice, with the concurrence of a High Court judge, may make rules for
- (a) regulating the manner and form in which a bailiff's certificate may be granted;
  - (b) regulating the security to be required from a certified bailiff;
  - (c) fixing the duration of a bailiff's certificate and any conditions subject to which it may be granted;
  - (d) regulating the fees payable on issue of a bailiff's certificate.

44. (1) Subject to subsection (2), distress may be levied for rent remaining unpaid in respect of a tenancy which has determined in the same manner as it could be made if the tenancy has not determined. Distress after determination of tenancy

(2) Such distress shall be levied only—

- (a) if the distress levied under it would be levied within six months after determination of the tenancy;
- (b) the landlord or other person claiming the rent has retained his title or interest in the demised premises or other land out of which the rent remaining unpaid issues;
- (c) the tenant or other person owing the rent has continued in possession of the said demised premises or other land.

45. (1) Distress shall be levied in the presence of the landlord or other person claiming the rent, if he so desires, only between the hours of 6 a.m. and 6 p.m. Levying distress

(2) Where it is necessary to gain entry in order to levy the distress, the bailiff—

- (a) may break open the demised premises or any building on other land out of which the rent remaining unpaid issues;
- (b) shall call to his aid such members of the police service as are necessary to ensure that peace is preserved.

(3) Upon levying the distress, the bailiff shall make out and leave with the tenant or other person owing the rent, or his wife or other adult person living in the premises or on the land upon which the distress is levied, a written inventory of the goods and chattels distrained.

(4) If no such person is to be found at the time of levying the distress, the bailiff may, as an alternative, attach the written inventory to some prominent place in or on the said premises or land.

Fraudulent removal  
of goods

46. (1) Any goods or chattels removed or carried away fraudulently or clandestinely by the tenant or any other person from the demised premises or any other land out of which rent remaining unpaid issues, with intent to prevent the taking of the same in distress, may, subject to subsection (2), be taken in distress wherever they may be found.

(2) Such goods or chattels may be so taken—

- (a) only where insufficient distress is found on the said demised premises or other land;
- (b) provided they are taken within the thirty days next ensuing their removal or carrying off;
- (c) provided they have not been sold bona fide and for valuable consideration, before the levying, to any person or persons not privy to the fraud.

(3) Subject to sub-section (4), a certified bailiff may break open any place where such goods or chattels have been locked up or whither they have been fraudulently removed.

(4) Subsection (3) does not apply where the place is a dwellinghouse, unless a magistrate sanctions its application upon being satisfied, by the sworn testimony of the said bailiff or the landlord or other person claiming the rent, that there is reasonable ground to suspect that such goods and chattels are concealed in it.

(5) The sanction of the magistrate under subsection (4) shall be issued by him in such form as may be prescribed.

(6) Any person so fraudulently removing or carrying away such goods or chattels or concealing the same, and any person wilfully or knowingly aiding or assisting such a person in such acts, shall forfeit to the landlord or other person entitled to the rent remaining unpaid a sum equal to twice the value of the said goods or chattels, which sum may be recovered as a debt in any court.

(7) Subject to the foregoing provisions of this section, goods or chattels shall not be taken in distress where they are not at the time of the taking in or on the demised premises or other land out of which the rent remaining unpaid issues.

Distress of cattle  
and other livestock

47. (1) Subject to subsection (2), any cattle or other livestock of the tenant or other persons owing rent remaining unpaid which is feeding or depasturing on the demised premises or other land out of which the said rent issues, or on any other land on which the said tenant or other person has a right of pasturage, may be taken in distress.

(2) Such cattle or livestock may be so taken in distress only if there are insufficient other goods or chattels found in or on the said demised premises or other land, which may be taken in distress.

48. (1) Subject to subsection (4), any standing crops on any part of the demised premises or other land out of which the rent remaining unpaid issues may be taken in distress. Distress of crops and other produce

(2) When ripe, such crops may be cut, gathered, made, cured, carried and laid up in the buildings or other proper place on the said demised premises or other land or, if there is no such place, such other building or place as may be hired or otherwise procured by the landlord or other person entitled to the rent remaining unpaid for that purpose as near as may be to the said demised premises or other land.

(3) Crops so taken in distress may be appraised, sold or otherwise disposed of in the same manner as other goods and chattels which may be taken in distress for rent, but such appraisal shall not be taken before the crops are so cut, gathered, made or cured.

(4) If, after such taking in distress but before the crops levied are ripe and cut, gathered, made or cured, the tenant or other person owing the rent pays to the landlord or other person entitled to it the whole of the rent remaining unpaid, together with all the costs and charges of levying the distress, then the distress ceases and the crops shall be delivered up to the said tenant or other person.

(5) In this section, "standing crops" includes fruit, produce and other growing products.

49. (1) Without prejudice to any rule of the common law relating to things privileged from distress for rent, the following goods and chattels are exempt from distress for rent— Exempted goods and chattels

(a) the wearing apparel and bedding (of whatever value) of the tenant or his family, and the tools and implements of his trade to the value of \$1,000; Provided that this exemption does not apply where—

- (i) the tenancy has expired;
- (ii) possession of the demised premises has been demanded;
- (iii) the distress is made not earlier than seven days after such demand.

(b) in the case of a tenancy of land used for agricultural or grazing purposes—

- (i) agricultural or other machinery which is the property of a person other than the tenant and is on the demised premises under an agreement with the tenant for the hire or use thereof in the conduct of his business;
- (ii) livestock which is the property of a person other than the tenant and is on the demised premises solely for breeding purposes;
- (iii) if there is other sufficient distress on the demised premises, livestock on the said premises which is the property of a person other than the tenant and has been taken in by the tenant to be fed at a fair price:

Provided that, in respect of exemption under this sub-paragraph, if such livestock is so levied in distress by reason of other sufficient distress not being found, there shall not be recovered by that distress a sum exceeding the reasonable cost of the feeding, or any part thereof which remains unpaid.

(2) Upon complaint, a court of summary jurisdiction may, by summary order, direct that goods and chattels exempt under subsection (1)(a), which have been taken in distress, if not sold, be restored, or, if they have been sold, that such sum as the court may determine to be the value thereof shall be paid to the complainant by the person who levied the distress or directed it to be levied.

Goods of sub-tenants, lodgers and other persons

50. (1) Where a distress for rent due to a superior landlord by his immediate tenant is or is about to be levied on any furniture, goods or chattels of any—

- (a) sub-tenant liable to pay, by equal instalments not less often than every month, rent in respect of the whole or part of the premises demised by the said superior landlord to the said immediate tenant; or
  - (b) lodger; or
  - (c) other person not being a tenant of the said demised premises, or any part thereof, and not having any beneficial interest in any tenancy of the same;
- such sub-tenant, lodger or other person may serve on the bailiff a declaration by him in writing—

- (i) to the effect that the said immediate tenant has no property or beneficial interest in the said furniture, goods or chattels and that they are the property of or are in the lawful possession of the sub-tenant, lodger or other person;
- (ii) in the case of a sub-tenant or lodger, setting forth what rent (if any) is then due or to become due, and for what period, to his immediate landlord and containing an undertaking to pay to the said superior landlord, or the bailiff on his behalf, the said rent or so much of it as is sufficient to discharge the claim of the superior landlord against his immediate tenant;

and shall annex to such declaration a correct inventory, subscribed by him, of the furniture, goods or chattels referred to in the declaration.

(2) Any payment made by a sub-tenant or lodger under such an undertaking is a valid payment on account of any rent due from him to his immediate landlord.

(3) If, after service of such a declaration and inventory and, in the case of a sub-tenant or lodger, after the giving of and compliance with such an undertaking, the bailiff or any other person, levies or proceeds with a distress on the furniture, goods or chattels of such sub-tenant, lodger or other person, he shall be guilty of an illegal distress and the sub-tenant, lodger or other person may apply to a magistrate for an order for restoration to him of the furniture, goods or chattels.

(4) Upon such an application, the magistrate shall enquire into the truth of the declaration and inventory and may make such order for restoration or otherwise as may seem just to him.

(5) In addition, the superior landlord is liable to an action against him at the suit of the sub-tenant, lodger or other person, in which case the truth of the declaration and inventory may likewise be enquired into.

(6) If any sub-tenant, lodger or other person makes or subscribes such a declaration and inventory knowing them, or either of them, to be untrue in any material particular, he is guilty of an offence and is liable on conviction to a fine of \$1,000 or imprisonment for three months, or both.

(7) In this section, "sub-tenant" does not include a person in whose favour a demise has been made in breach of covenant or other valid restriction.

(8) This section does not apply to goods—

- (a) belonging to the spouse of the tenant whose rent is in arrear;

- (b) comprised in any bill of sale, hire-purchase agreement or settlement made by such tenant;
- (c) in the possession, order or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof;
- (d) consisting of any livestock to which section 49(1) (b) applies;
- (e) of a partner of the immediate tenant;
- (f) not being goods of a lodger, upon premises where any trade or business is carried on in which both the immediate tenant and sub-tenant have an interest;
- (g) again not being goods of a lodger, on premises needed as offices or warehouses where the owner of the goods neglects for one calendar month after notice (which shall be given in like manner as a notice to quit) to remove the goods and vacate the premises;
- (h) belonging to and in the offices of any company or corporation on premises the immediate tenant whereof is a director or officer, or in the employment of such company or corporation.

(9) Upon application by the bailiff or any other person aforesaid the magistrate may determine whether any goods come within paragraphs (e) to (h) of subsection (8).

Impounding goods  
taken in  
distress

51. (1) Subject to section 48, goods or chattels taken in distress may be impounded on the demised premises or other land out of which the rent remaining unpaid issue or such other place as is fit and convenient for the purpose.

(2) Where such goods or chattels, including crops to which section 48(2) applies, are impounded on such other place, the bailiff shall, within seven days of such impounding, serve notice on the tenant or other person owing the rent of the place of the impounding.

Pound—breach  
or rescue

52. In the case of any pound-breach or rescue of goods or chattels taken in distress for rent, the person aggrieved thereby may recover by action against the offender or any person to whose use or in whose possession they have been found to come treble damages and the costs of the suit.

Replevin

53. (1) Where goods or chattels have been wrongfully taken in distress for rent, but have not yet been sold, the owner may apply

to a magistrate for an order requiring the bailiff or other person wrongfully distraining to return the goods or chattels to the owner.

(2) No order shall be made under subsection (1) unless the owner—

- (a) lodges with the magistrate a deposit sufficient in the magistrate's opinion to be security for all costs which may be incurred in defending an action in replevin; or
- (b) enters into a recognisance, with at least two sureties sufficient in the opinion of the magistrate, conditioned upon the owner commencing an action in replevin in the High Court within one month.

(3) If the replevisor succeeds in his action, any deposit paid under subsection (2)(a) shall be restored to him and the defendant shall pay to him any costs or other expenses incurred in the replevin or which may be awarded to him by the court.

(4) If the replevisor loses his action, the court may either—

- (a) order him to return the goods or chattels which were distrained to the bailiff; or
- (b) give judgment against him for the value of such goods or chattels or the amount of the rent for which the distress was made, whichever is less;

and may make such order as to costs as it thinks fit, including requiring them to be met out of any deposit made or under any recognisance entered into under subsection (2).

54. (1) Except where an application has been made under section 53(1), the goods or chattels taken in distress for rent shall be sold by the bailiff after the expiration of five days from the taking in distress and the leaving of notice thereof (including the cause of such taking) in a prominent place at the demised premises or other land out of which the rent remaining unpaid issues.

Sale of goods  
taken in  
distress

(2) Upon request by the landlord or other person entitled to the rent in respect of which the distress has been levied, a magistrate shall specify a date by which the said sale must take place.

(3) The said sale shall be by public auction and for the best price reasonably obtainable.

(4) For the purposes of the sale, the goods or chattels shall, if their owner so requests the bailiff in writing, be removed to a public auction-room or some other suitable place for an auction as may be specified by the said owner.

(5) The proceeds of sale shall be applied by the bailiff in satisfaction of the rent in respect of which the distress was levied and of all charges and expenses of the distress and sale, and any surplus shall be paid to the owner of the goods or chattels sold or as he directs.

Irregularity in  
levying distress

55. (1) Where any distress is made for any rent justly due and any irregularity or unlawful act is done afterwards, the distress itself shall not be deemed to be unlawful, nor shall it be deemed to involve a trespass *ab initio*.

(2) Any party aggrieved by any such irregularity or unlawful act may recover by action in a court full satisfaction for any special damage thereby sustained, together with the full costs of his action.

Wrongful distress

56. Where any goods or chattels are levied in distress or sold by a bailiff or other person, who knew at the time of the application that no rent remained unpaid in respect of the demised premises or other land to which the warrant related, the owner of the said goods or chattels may recover by action in court against such bailiff or other person a sum by way of damages equal to twice the value of the goods or chattels so distrained or sold, together with the full costs of his action.

Goods taken in  
execution

57. (1) Where up to one year's rent is in arrear, no goods or chattels lying or being in or upon the demised premises may be taken in execution unless the party, at whose suit the said execution is sued out, before the removal of such goods or chattels by virtue of the said execution pays to the landlord all such rent due at the time of the taking in execution.

(2) Where the arrears exceed one year's rent, the party at whose suit the execution is sued out, on paying to the landlord one year's rent, may proceed to execute his judgment.

(3) The Marshall or other officer shall levy and pay to the execution creditor as well the money so paid for rent as the execution money.

Costs and charges  
of distress

58. (1) If any bailiff, or any person acting as his agent in the distress for rent takes, receives or deducts any other or more costs and charges in respect of the said distress, or any matter done in connection therewith, than those which may be prescribed from time to time, he is guilty of an offence and liable on conviction to a fine of \$1,000, or to imprisonment for three months, or both.

(2) The bailiff shall furnish the person or persons whose goods or chattels have been taken in distress with a copy signed by

him of all his or his agent's costs and charges in respect of the said distress and, on default, is guilty of an offence and liable on conviction to a fine of \$500.

## PART V

### TERMINATION OF TENANCIES

59. (1) From the commencement of this Act, a tenancy shall be terminated only in accordance with the provisions of this Part, and any provision to the contrary in any tenancy agreement is void. Termination of tenancies

(2) Nothing in this part affects the law of disclaimer or the law of merger.

60. (1) A tenancy granted for a specific period of time terminates, unless terminated under any other provision of this Part, when that period expires. Termination under agreement

(2) Subject to the provisions of this Part, a tenancy agreement which is terminable by notice by either party terminates on the expiration of such notice.

61. (1) A tenancy may be terminated by surrender by— Termination by surrender  
(a) express agreement in writing of the parties; or  
(b) such unequivocal conduct of the parties as is inconsistent with the continuance of the tenancy.

(2) The surrender of a part of the demised premises does not in any way prejudice or affect the rights of the landlord with respect to the residue of the said premises.

(3) A tenancy may be surrendered for the purpose of obtaining a renewal thereof, without a surrender of any tenancy derived thereout.

(4) The tenant under the new tenancy agreement, and any person deriving title under him, is entitled to the same rights and remedies in respect of the rent reserved by, and the covenants, conditions and agreements contained in, any sub-tenancy agreement, as if the original tenancy had not been surrendered but was or remained vested in him.

(5) Each sub-tenant, and any person deriving title under him, is entitled to hold and enjoy the land comprised in the sub-tenancy agreement (subject to the payment of any rent reserved by, and to the observance of the covenants, conditions and agreements contained in, the sub-tenancy agreement) as if the tenancy out of which the sub-tenancy was derived had not been surrendered.

(6) The landlord granting the new tenancy, and any person deriving title under him, is entitled to the same rights and remedies in respect of the rent reserved by, and the covenants, conditions and agreements contained in, the new tenancy agreement (so far as only the rent, covenants, conditions and agreements do not exceed or impose greater burdens than those reserved by, or contained in, the original tenancy agreement out of which the sub-tenancy agreement is derived) as he would have had if—

(a) the original tenancy agreement has remained on foot; or

(b) the new sub-tenancy agreement derived out of the new tenancy agreement had been granted to the sub-tenant or a person deriving title under him;

as the case may require.

(7) For the removal of doubt, it is hereby declared to be, and always to have been, the law that the landlord, upon the surrender of a tenancy, is bound by any sub-tenancy validly created by the tenant to the same extent as that tenant would have been bound if there had been no such surrender.

(8) This section does not affect the power of the court to give relief against forfeiture.

Termination by  
notice

62. (1) A periodic tenancy shall be terminated by a notice to determine in writing signed by the party giving notice or his authorised agent, as follows—

(a) a tenancy from year to year shall be terminated, if fixed in relation to quarter days (that is to say, unless there are other days specially applicable to the tenancy in question, March 31, June 30, September 30 and December 31), by at least two quarters' notice, or otherwise by at least six months' notice, to expire in either case at the end of a yearly period;

(b) a tenancy from month to month, in respect of which the rent does not exceed \$1,500 per annum, shall be terminated by at least fourteen days' notice to expire at the end of a monthly period;

(c) any other periodic tenancy based on a period of less than a year shall be terminated by at least one period's notice to expire at the end of a period.

(2) Any notice to determine served in accordance with subsection (1) dates from the day on which it is served on the party to whom it applies.

(3) Where the period of notice specified in a notice to determine served under subsection (1) is insufficient, that notice, if

otherwise valid, operates to terminate the tenancy on the expiration of the requisite minimum period of notice for the tenancy in question which next occurs after the said service.

(4) Unless the contrary is proved by reference to the tenancy agreement or otherwise, it shall be presumed that—

- (a) a tenancy from year to year commences on the last day of the calendar year on which rent becomes due and payable;
- (b) in the case of a periodic tenancy less than from year to year, the period upon which the tenancy is based is the same as the period by reference to which the rent is payable.

(5) A notice to determine may be served by a person entitled to a severed part of the reversion on a lease, but, where such notice extends to part only of the demised land, the lessee may within one month determine the lease in regard to the rest of the land by giving the owner of the reversionary estate therein a counter-notice expiring at the same time as the original notice.

(6) In this section, "notice to determine" includes a notice to quit served by a landlord on his tenant and an equivalent notice served by a tenant on his landlord.

(7) This section applies only if and as far as a contrary intention is not expressed in the tenancy agreement and takes effect subject to the terms of that agreement and to the provisions therein contained.

63. (1) Where any tenancy for a term not exceeding three years, in respect of which the rent (if any) payable does not exceed \$6,000 per annum, has or has been validly determined, and the tenant or other occupier of the demised premises refuses to give up possession of the same, the landlord or his agent may make a complaint on oath before a magistrate in such form as may be prescribed.

Summary recovery  
of land

(2) Upon the making of such a complaint, the magistrate shall issue a summons, in such form as may be prescribed, directed to such tenant or occupier and requiring him to appear before the said magistrate, as directed therein and in any case within a time being not less than three days after service of the summons.

(3) A summons issued under subsection (2) may be served either personally or by leaving the same with some person being in and apparently residing at the place of abode of the tenant or other occupier holding over as aforesaid, but, if such person cannot be found and either his place of abode is not known or admission thereto cannot be obtained, the posting up of the said

summons on some conspicuous part of the premises held over shall be deemed to be good service on such person.

(4) If the tenant or occupier fails to appear as directed by the summons and to show to the satisfaction of the magistrate reasonable cause why possession should not be given up and continues not to give up possession, the magistrate may, upon proof—

- (a) as to the nature of the tenancy and its determination;
- (b) as to the landlord's right to possession;
- (c) of service of the summons and of the tenant's or occupiers refusal to give up possession;

order the said tenant or occupier to pay a fine of \$100 and the costs incurred by the said landlord or his agent.

(5) Within thirty days of the making of such an order, the magistrate shall, subject to subsection (8), issue a warrant, in such form as may be prescribed, to any constable in the district in which the demised premises are situated directing him, within a period specified in the warrant, but in any case not being less than three nor more than seven days from its date, to enter, by force, if necessary, the said premises and to restore possession to the landlord or his agent.

(6) Nothing in this section affects the liability of any person, on whose application any such warrant is issued, where such person had no lawful right to possession, and the issue of a warrant in such circumstances shall be deemed to be a trespass by him against the tenant or occupier, even though no entry on the demised premises is made under the warrant, but no action or prosecution may be brought, in such circumstances, against the magistrate issuing the warrant or any constable executing it.

(7) Where the landlord had a lawful right to possession at the time of applying for issue of a warrant under subsection (5), neither he nor his agent shall be deemed a trespasser by reason only of an irregularity or informality in executing the warrant for obtaining possession, but the party aggrieved by such irregularity or informality may by action recover any special damage he can establish, together with the costs of his action.

(8) Where the tenant or occupier enters into a recognisance, with at least two sureties sufficient in the opinion of the magistrate, conditioned upon him bringing an action in trespass without delay and paying all the costs of such action if it is lost, dismissed or abandoned, execution of a warrant issued under subsection (5) shall be stayed until judgment is given in the said action or the action is dismissed or abandoned.

(9) Where a warrant has been issued under subsection (5), the landlord or his agent who made the complaint under sub-

section (1) may, within two days of the warrant issue, by notice in writing served on the tenant or occupier of the demised premises, indicate his intention to abandon the warrant and thereupon it shall cease to have any effect.

64. (1) A landlord may apply, by way of originating summons, to the court for an order to terminate the tenancy where—

Termination for breach of tenant's obligations and on other events

- (a) the tenant is in breach of any obligation under the tenancy agreement;
- (b) the tenancy agreement is terminable by its terms on the bankruptcy of the tenant, or on the occurrence of any other event.

(2) Where, by reason of the seriousness of the damage to the demised premises, or the landlord's interest therein, which has resulted from the said breach or is imminent, the landlord considers that immediate action is required, he may, without having to comply with paragraphs (b) and (c) of section 65(1), apply to a judge in chambers for an interim order to be made under subsection (4), and the judge may, if he thinks fit, make such an order without first requiring the appearance of the tenant or any other interested party.

(3) Subsection (2) does not prejudice the landlord's right to seek other relief in such circumstances, whether by way of injunction, specific performance or otherwise.

(4) Subject to subsection (5), the tenancy agreement, and all obligations arising thereunder, continues and remains enforceable unless and until the court makes an order under subsection (1).

(5) Pending final determination of an application under subsection (1), the court may make such interim orders for—

- (a) suspension or variation of the performance of the obligations of the parties under the tenancy agreement, as between themselves or in relation to third parties who may have joined in the proceedings;
- (b) for the giving of security by the tenant while he remains in possession, both for his good behaviour and for compliance with the terms of the tenancy agreement;

as the court thinks fit in all the circumstances of the case.

(6) In considering whether to make an order under subsection (1), the court shall have regard to all the circumstances of the case, including whether—

- (a) the landlord acted reasonably in instituting the proceedings;

- (b) the tenant had a reasonable opportunity or has taken reasonable steps to remedy the breach of obligation (where possible);
- (c) the tenant has continued during the currency of the proceedings to observe his obligations under the tenancy agreement.

(7) Subject to subsection (8), there is no right to apply for or obtain relief after an order under subsection (1) is made.

(8) The court may in its discretion stay execution upon an order made under subsection (1), subject to such conditions as it thinks fit.

(9) Where an order is made under subsection (1), the court may, subject to taking into consideration all the circumstances of the case, and in particular those referred to in subsection (6), order the tenant to pay all the costs and other expenses of the landlord incurred in relation to proceedings under this section.

(10) Where an order is made under subsection (1) on the ground of non-payment of rent, the court may, as part of the order, enter judgment against the tenant for all rent remaining due to the landlord at the date of the order.

(11) From the commencement of this Act, any reference in any tenancy or other agreement or in any statute, including this Act, to a right or power of re-entry or forfeiture shall be construed as a reference to the right to make an application under subsection (1).

Proceedings under  
section 64

65. (1) Where an application is made under section 64(1), no prior notice of intention to commence proceedings or, in the case of non-payment of rent by the tenant, no proof of the making of any demand for rent or of the existence of any clause or condition of re-entry or forfeiture in the tenancy agreement is necessary but the landlord shall—

- (a) specify in his summons with particularity the breach or event upon which he intends to rely;
- (b) serve notice of the proceedings on any—
  - (i) person in occupation of the demised premises;
  - (ii) other person who to his knowledge or belief has or may have an interest in the tenancy, which is likely to be affected by any order made in the proceedings;
  - (iii) other person specified by the court;
- (c) serve on the tenant notice of the persons on whom he has so served notice, whereupon the tenant may

require notice to be served on other persons, as having such an interest in the tenancy.

(2) Where proceedings under section 64(1) are commenced, the tenant may apply for a stay on the ground that their continuance would be oppressive because—

- (a) he has taken steps to remedy the breach; or
- (b) the damage to the landlord's interest in the demised premises is or would be trivial; or
- (c) in all the circumstances of the case, termination of the tenancy would be unreasonable.

66. (1) Subject to the provisions of this section, where the court makes an order under section 64(1), all interests derived out of the tenancy thereupon cease to exist.

Position of third parties

(2) Where an application is made under section 64(1), any person claiming an interest in the demised premises as a sub-tenant may apply to the court for an order vesting in him, for the whole sub-term or any less term, the said premises or any part thereof:

Provided that, if the landlord has offered the sub-tenant of part of the said premises a tenancy of that part on the same terms as those on which he previously held as sub-tenant, the court shall not vest the whole of the premises in the sub-tenant.

(3) In making a vesting order under subsection (2), the court may impose such terms and conditions with respect to the tenancy as it thinks fit and, in the case of an order in respect of part of the demised premises, may vest in the sub-tenant any ancillary rights previously enjoyed by him which it considers necessary for the reasonable use and enjoyment of that part.

(4) When a vesting order is made under subsection (2) in favour of a mortgagee of a leasehold term, it vests in the mortgagee a term free from any right in the mortgagor to redeem, but the following provisions apply—

- (a) The mortgagor may bring an action for sale as if he were entitled to redeem;
- (b) section 124 of the Land Law and Conveyancing Act, 1981, applies to an action for sale alone,

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except that the court may not allow any time for redemption or for the payment of any mortgage money; and the mortgagor is a plaintiff to whom subsection (3) of the said section applies; and for the purposes of the said section the "mortgaged property" is the term so vested in the mortgagee;

- (c) if the mortgagee assigns the term, at law or in equity, section 137 of the Land Law and Conveyancing Act, 1981, applies to such an assignment as if it were an exercise of the mortgagee's statutory power of sale, and section 138 of the said Act applies to the proceeds thereof;
- (d) if the mortgagee sublets, at law or in equity, all or part of the demised premises comprised in the vesting order, section 131 of the Land Law and Conveyancing Act, 1981, applies as if the mortgagee were exercising the leasing powers of a mortgagee in possession; and
- (e) any mortgages which—
  - (i) affected the tenancy immediately before the making of the order under section 64(1); and
  - (ii) ranked in priority after the mortgage of the mortgagee in whose favour the vesting order is made;
 affect the term vested under subsection (2) to the same extent and in the same order as they affected the said tenancy.

(5) Subsections (2) to (4) apply only to persons whose interests were created before the commencement of proceedings under section 64(1).

Termination for  
breach of landlord's  
obligations

67. (1) A tenant may apply to the court for an order to terminate the tenancy where the landlord is in breach of any obligation under the tenancy agreement and the provisions of sections 64 to 66 apply to such an application, subject to the following modifications—

- (a) "tenant" is to be substituted for "landlord" and vice versa;
- (b) section 64(4) does not apply where the breach dispossesses the tenant entirely of the demised premises, in which case the tenant's obligations are suspended from the commencement of the proceedings, but without prejudice to any right of set-off or to damages accruing from the time of dispossession to the time of the said commencement;
- (c) paragraph (b) of section 64(5) does not apply;
- (d) under paragraph (a) of section 64(6), the court shall in addition consider whether the landlord had knowledge of the breach;

(e) section 64(10) and (11) does not apply;

(f) paragraph (b) of section 65 does not apply.

(2) Without prejudice to subsection (1), on an application under the said subsection, the tenant may apply for, or the court may in its discretion make, as an alternative remedy, an order authorising the tenant to withhold from the landlord payment of the rent, or any part thereof, until the landlord desists from or makes good the breach of obligation.

(3) The court may make an order under subsection (2) upon such terms as it thinks fit in all the circumstances of the case, including requiring the tenant, during the period of withholding, to pay the rent into court or as the court may otherwise direct.

(4) Until, on an application to the court, an order under subsection (2) is withdrawn, the landlord is not entitled to claim any of the rent governed by the order, or to exercise any remedy for non-payment thereof, but this is without prejudice to his right otherwise to claim arrears of rent upon such order being withdrawn.

68. (1) Subject to this section, where an event or change of circumstances has occurred which has brought about a situation outside the contemplation of the parties at the time when they entered into the tenancy (or when the terms thereof were subsequently varied), so that the purposes for which the tenancy was granted can no longer be fulfilled substantially in accordance with the intention of the said parties, the court may, on the application of either of the said parties, make an order to terminate the tenancy.

Termination for  
frustration

(2) On an application under sub-section (1), the court may, at the request of both parties, as an alternative remedy, make an order varying the terms of the tenancy as the court thinks fit in all the circumstances of the case, provided that consideration is given to the interests of third parties.

(3) Subject to subsection (4), the rights and obligations of the said parties continue until the date of the order of the court or such other date as the court may declare therein.

(4) Pending final determination of an application under subsection (2), the court may make such interim orders for suspension or variation of the performance of the obligations of the parties to the tenancy, as between themselves or in relation to third parties who have joined in the proceedings, as the court thinks fit in all the circumstances of the case.

(5) In making an order under subsection (1), the court may, in addition, grant such other relief as it considers just.

Proceedings under  
section 68

69. (1) An applicant under section 68(1) shall—

- (a) serve notice of the proceedings on any—
  - (i) person in occupation of the premises;
  - (ii) other person who to his knowledge or belief has or may have an interest in the tenancy likely to be affected by an order made in the proceedings;
  - (iii) other person specified by the court;
- (b) serve on the respondent notice as to the persons on whom he has so served notice, whereupon the respondent may require notice to be served on other persons, as having such an interest in the tenancy.

(2) Any third party so served with notice or who satisfies the court that he has such an interest in the tenancy may join in the proceedings and be heard upon all issues.

(3) In making an order under section 68, the court may make such provision as to the interests of any third party joining in the proceedings as it thinks just, including making an order for the termination or variation of those interests upon terms.

(4) An order to terminate under section 68 (1) extinguishes all third party interests which did not exist at the time of the application and all interests of third parties who did not join in the proceedings.

Registration of  
termination

70. (1) Where the tenancy is held under a lease registered under Part IV of the Land Registration Act, 1981, any notice to determine it served, or order of the court made, under this Part may be registered as a deed under the said Part of the 1981 Act.

1981 No.

(2) Where the tenancy is held under a lease registered under Part XII of the said 1981 Act, no termination under this Act is effective until it is registered in accordance with the provisions of the said Part XII of the 1981 Act.

Unlawful eviction  
harassment

71. (1) If any person unlawfully evicts a tenant or other lawful occupant or otherwise deprives him of his occupation of the demised premises or any part thereof, or attempts to do so, he is guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the tenant or other lawful occupant had ceased to occupy the said premises.

(2) If any person with intent to cause a tenant or other lawful occupant to—

- (a) give up the occupation of the demised premises or any part thereof; or
- (b) refrain from exercising any right or pursuing any remedy in respect of the said premises;

does acts calculated to interfere with the peace and comfort of the tenant or his family or any other lawful occupant of the premises, or persistently withdraws or withholds services or facilities reasonably required for the occupation of the premises for the purposes of the tenancy, or other lawful purpose, he is guilty of an offence.

(3) A person guilty of an offence under this section shall be liable on conviction to a fine of \$5,000 or imprisonment for a term of twelve months or both.

(4) Nothing in this section is to be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

## PART VI

### MISCELLANEOUS

72. The provisions of section 186 of the Land Law and Conveyancing Act, 1981, apply to notices to be served or given under this Act as they apply to notices to be served or given under that Act.

Notices  
1981 No.

73. (1) Subject to the provisions of this Act, section 188 of the Land Law and Conveyancing Act, 1981 applies as between a landlord and tenant as it applies as between a vendor and purchaser.

Jurisdiction and  
rules of court  
1981 No.

(2) Rules of court may be made by the Rules Committee under section 76 of the Supreme Court of Judicature Act, 1962, for regulating the practice and procedure in respect of proceedings of any kind under this Act.

1962 No. 12

74. The Minister may make rules or regulations governing any matter to be prescribed under this Act or respecting any matter necessary or convenient to carry out the intent and purposes of this Act.

Rules or  
regulations

75. (1) The enactments specified in the first column of the First Schedule are repealed to the extent specified in the second column thereof.

Repeals and  
amendments

(2) The enactments specified in the first column of the Second Schedule are amended in the manner specified in the second column thereof.

(3) All statutes of general application of the Imperial Parliament relating to the subject-matter of this Act and still in force in the State by virtue of section 12 of the Supreme Court of Judicature Act, 1962, are repealed to the extent that they so relate.

1962 No. 12

Adaptation of  
references

76. References in any document to any provisions repealed by this Act shall be construed as references to the corresponding provision of this Act.

Application to the  
State  
1981 No.

77. Subject to section 194(2) of the Land Law and Conveyancing Act, 1981, which applies to this Act as it applies to that Act, this Act binds the State.

#### FIRST SCHEDULE

##### REPEALS

(Section 75(1))

<i>First Column</i> <i>Enactment</i>	<i>Second Column</i> <i>Extent of Repeal</i>
Letting of Houses (Implied Terms) Ordinance, Ch. 27. No. 8	The whole Ordinance
Landlord and Tenant Ordinance, Ch. 27. No. 16	The whole Ordinance
Summary Ejectment Ordinance, Ch. 27. No. 17	The whole Ordinance
Summary Ejectment (Amendment) Act, No. 2 of 1964	The whole Act

#### SECOND SCHEDULE

##### AMENDMENTS

(Section 75(2))

<i>First Column</i> <i>Enactment</i>	<i>Second Column</i> <i>Extent of Amendment</i>
Bankruptcy Ordinance, Ch. 6. No. 6	In section 39(2) substitute the words "section 57 of the Landlord and Tenant Act, 1981" for the words "section 14 of the Landlord and Tenant Ordinance".
Slum Clearance and Housing Ordinance, Ch. 37. No. 2	In section 34(1) substitute the words "regulations made under the Landlord and Tenant Act, 1981" for the words "Third Schedule to the Summary Ejectment Ordinance" and "Act No. of 1981" for the marginal note.
Agricultural Small Holdings Tenure Ordinance, No. 32 of 1961	In section 38(4) substitute the words "Act, 1981" for the word "Ordinance" and "Act No. of 1981" for the marginal note.

Passed in the House of Representatives this 26th day of March, 1981.

R. L. GRIFFITH  
*Acting Clerk of the House*

Passed in the Senate this 16th day of June, 1981.

M. CARRINGTON  
*Acting Clerk of the Senate*