

THE LAND TENANTS (SECURITY OF TENURE) ACT, 1981

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Fifth Session First Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 11 of 1981

[L.S.]

AN ACT relating to the security of tenure of Land
Tenants.

[Assented to 1st June, 1981]

WHEREAS it is enacted by subsection (1) of section 13 of ^{Preamble} the Constitution, that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly;

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all members of that House.

And whereas it is necessary and expedient that the provisions of this Act shall have effect notwithstanding sections 4 and 5 of the Constitution.

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:—

Short title

1. (1) This Act may be cited as the Land Tenants (Security of Tenure) Act, 1981.

Sections 4 and 5 of Constitution

(2) This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation

2. In this Act unless the context otherwise requires—

“agricultural land” has the meaning assigned
32 of 1961 to it by section 2 of the Agricultural Small Holdings Tenure Ordinance, 1961;

“appointed day” means the date of coming into operation of this Act;

“chattel house” includes a building erected by a tenant upon land comprised in his tenancy with the consent or acquiescence of the landlord and affixed to the land in such a way as to be incapable of being removed from its site without destruction;

“existing tenancy” means a tenancy to which the Act applies as subsisting immediately before its conversion to a statutory lease by section 4;

“Land Commission” or “Commission” means the Land Commission to be established by the Land Registration Act, 1981; but if on the passing of this Act the Land Registration Act, 1981 has not yet come into operation then, until the coming into operation of that Act, all references in this Act to the Land Commission shall be construed, *mutatis mutandis*, as references to the High Court or a Judge thereof;

- “landlord” means any person who under a contract of tenancy is, as between himself and the tenant for the time being, entitled to receive the rents and profits of the land, and includes his successors in title;
- “statutory lease” means a statutory lease into which an existing tenancy has been converted by section 4;
- “tenant” means any person entitled in possession to land under a contract of tenancy whether express or implied, and whether the interest of such person was acquired by original agreement or by assignment or by operation of law or otherwise; and includes a tenant at will and a tenant at sufferance and “tenancy” shall be construed accordingly.

3. (1) Subject to subsection (2), this Act applies ^{Application of Act} to tenancies in respect of land in Trinidad and Tobago on which at the time specified in section 4(1) a chattel house used as a dwelling is erected or a chattel house intended to be used as a dwelling is in the actual process of being erected.

- (2) This Act does not apply to—
- (a) a tenancy of agricultural land;
 - (b) a tenancy of land owned by a local authority as defined in section 2 of the Statutory Authorities Act, 1966;
 - (c) a tenancy of land owned by the Borough of Point Fortin;
 - (d) a tenancy of land vested in the Tobago House of Assembly;
 - (e) a tenancy of land, the unexpired term of which exceeds 30 years on the appointed day.

(3) This Act shall not bind the State.

4. (1) Notwithstanding any law or agreement to the contrary but subject to this Act, every tenancy to which this Act applies subsisting immediately before the appointed day shall as from the appointed day become a statutory lease for the purposes of this Act. ^{Conversion of tenancies to statutory leases}

(2) A statutory lease shall be a lease for thirty years commencing from the appointed day and, subject to subsection (3), renewable by the tenant for a further period of thirty years.

(3) In order to exercise the right of renewal conferred by subsection (2), the tenant shall serve on the landlord a written notice of renewal at least six months before the expiration of the original term of the statutory lease.

(4) Upon service of the notice by the tenant under subsection (3), the statutory lease shall be deemed to be renewed for a period of thirty years subject to the same terms and conditions and to the same covenants, if any, as the original term of the statutory lease but excluding the option for renewal.

Terms and
conditions of
statutory leases

5. (1) The terms and conditions of any existing tenancy converted into a statutory lease by section 4 shall, subject to this section, be incorporated in the statutory lease as terms and conditions in such lease.

(2) On the conversion of an existing tenancy into a statutory lease, any term or condition of such tenancy inconsistent with the terms and conditions of a statutory lease set out in this section, or with any other provisions of this Act, shall be void to the extent of such inconsistency.

(3) The rent under any statutory lease shall be as follows:—

(a) for each of the first three years of the statutory lease, the annual ground rent for the land comprised in the lease shall be one per cent of two-thirds of the open market value of the land as assessed without taking into account the chattel house thereon (referred to in this section as “the prescribed value”)—such value to be agreed between the landlord and the tenant, and in default of agreement, to be determined by the Land Commission at the instance of either party;

(b) at the beginning of each of the next four succeeding periods of three years, the rent shall be increased by one per cent of two-thirds of the prescribed value;

- (c) at the end of the fifteenth year after the appointed day and thereafter at the end of each succeeding period of fifteen years of the statutory lease, the prescribed value of the land shall be re-defined by agreement between the landlord and the tenant and in default of agreement by the Land Commission at the instance of either party for the purpose of computing the ground rent;
- (d) the rent assessed under paragraphs (a), (b) and (c) shall be payable by the tenant annually in advance or as otherwise agreed by the parties and should in no case be more than five per cent of the prescribed value or less than the rent payable before the commencement of this Act;
- (e) the open market value for the purposes of paragraph (a) shall be determined by the Land Commission as if the land were available for sale on the open market with vacant possession at—
 - (i) in the case of paragraph (a) or (b), the appointed day;
 - (ii) in the case of paragraph (c), the day immediately following the expiration of each fifteen year period.
- (f) a tenant shall not be required to pay to the landlord any fine, premium or other like sum or to give any consideration in addition to the rent as a condition of the grant, renewal or continuance of a tenancy or a statutory lease;

(4) If the rent payable or any part thereof is in arrear for six months the landlord may apply to the Land Commission for redress and—

- (a) where the chattel house erected on the land is of a type such as is expressly included within the meaning of "chattel house" in the definition of this expression

in section 2, the Land Commission may, subject to section 7(3), order the termination of the statutory lease and grant the landlord possession of the land subject to the payment by the landlord to the tenant of compensation for the chattel house assessed by the Land Commission under section 7;

- (b) where the chattel house erected on the land is not of such a type, the Land Commission may make an order for the termination of the statutory lease, for the tenant's eviction from the land and for the removal of the chattel house from the land by the tenant.

(5) The tenant shall have an option to purchase the land at any time during the term of the statutory lease at a price not exceeding fifty per cent of the open market value of the land without the chattel house ascertained at the date of the service on the landlord of notice of purchase under section 9(1).

(6)(a) The landlord and the tenant may agree for payment of the purchase price to be made by instalments and in that event the statutory lease shall continue in force and the rents continue to be payable until the final instalment of the purchase price is paid.

(b) Such memorandum of the agreement as may be prescribed by regulations under section 18 shall be deposited with the Land Commission.

(c) The landlord shall have the same powers of enforcing the payment of instalments as are conferred on him by subsection (4) for enforcing the payment of rent, and subject to any regulations made under section 18, the Land Commission shall have power, on the application of the Landlord, to make such orders as may be necessary or expedient for enforcing the agreement between the parties.

(7)(a) A tenant who purchases the land under subsection (5) shall not, before the expiration of five years from the date of the purchase, be entitled to sell the

land to any person other than the State at a price exceeding fifty per cent of the open market value ascertained at the date of the agreement for sale.

(b) A tenant who purchases land under subsection (6) shall not, save with the landlord's consent, sell the land to any person other than the State before completion of payment of the purchase price unless the purchase price exceeds the unpaid balance of the purchase price and a portion of the purchase price equal to such unpaid balance is paid directly by the purchaser to the landlord.

(c) The Registrar General shall not register any transfer of the interest of a tenant made in contravention of this subsection.

(8) A tenant has the right to assign or sublet with the consent of the landlord whose consent shall not be unreasonably withheld; but the rent payable by any sub-tenant shall not exceed the rent payable by the tenant to the landlord under this Act.

6. Where under section 4 a tenant has an option for renewal of his lease and gives notice of renewal under section 4(3), the rights and obligations of the landlord and the tenant arising from the notice shall ensure for the benefit of and be enforceable against them, their executors, administrators and assigns to the like extent (but no further) as rights and obligations arising under a binding contract for sale freely entered into between the landlord and the tenant; and accordingly references to the tenant and the landlord in relation to matters arising out of any such notice shall include their respective executors, administrators and assigns.

Option for
renewal

7. (1) Where a landlord applies to the Land Commission pursuant to section 5(4)(a) the Commission shall assess the amount of compensation to be paid by the landlord to the tenant for the chattel house at a sum equivalent to the price of the open market value of the chattel house and may make such orders in the circumstances as may be just.

Landlord's
redress for non-
payment of rent

(2) Where pursuant to section 5(4) the Land Commission makes an order for possession in favour of the landlord, the title of the landlord thereby conferred shall be subject to any existing subtenancy.

(3) Subject to such regulations as may be made under section 18, an order made against a tenant under section 5(4) shall be conditional on the failure of the tenant, within a period of 30 days of the order or such of the period as may be prescribed, to pay all arrears of rent, and if the tenant satisfies the Commission in the prescribed manner that all arrears of rent have been paid within such period, the Commission shall cancel the order.

(4) (a) The open market value for the purposes of subsection (1) shall be determined by the Land Commission as if the chattel house alone were available for sale on the open market at the relevant date in vacant possession and free from encumbrance.

(b) In this subsection "relevant date" means the date of the application to the Land Commission pursuant to section 5(4).

8. Nothing in this Act precludes the landlord and the tenant from entering into an agreement for the surrender by the tenant, in consideration of an agreed sum to be paid to him by the landlord, of his right to compensation in respect of the chattel house.

9. (1) In order to exercise the option to purchase conferred by section 5(5), the tenant shall, in the prescribed manner, serve a written notice on the landlord of his desire to purchase the land and, where to his knowledge the land is mortgaged, shall at the same time notify the mortgagee in writing and, subject to the provisions of this Act, the landlord shall be bound to make to the tenant, and the tenant to accept, at the price and conditions so provided, a grant of the land free from the landlord's encumbrances, if any, and save as aforesaid the landlord shall not be bound to convey to the tenant any better title than that which he has.

(2) Where a tenant gives the landlord notice, in accordance with this Act, of his desire to purchase the land, the landlord shall, within two months of the notice, give to the tenant a notice in reply stating whether or not the landlord admits the tenant's right to purchase the land (subject to any question as to the

agreement as to
tenant's rights of
compensation
at any time

Option to
purchase

correctness of the particulars given in the tenant's notice) and if the landlord does not admit the tenant's right, the notice shall state the grounds on which it is not admitted and thereupon either party may apply to the Land Commission to determine the matter.

(3) Where the landlord fails to reply within two months of the giving of the tenant's notice, the tenant may apply to the Land Commission with a view to the enforcement of his right to purchase the land.

(4) Where the landlord admits the tenant's right and upon the expiration of three months from the service of the notice the tenant and the landlord have not reached agreement as to the open market value or where the landlord cannot be found in order to reach an agreement as to the open market value then the same shall be referred to the Land Commission by the tenant or the landlord, as the case may be, to determine the open market value and the determination of the Commission shall be binding and enforceable against the parties.

(5) The open market value for the purposes of subsection (4) shall be determined by the Land Commission as if the land were available for sale on the open market with vacant possession at the relevant date.

(6) In subsection (5) "relevant date" means the date of service of a notice to purchase under subsection (1).

(7) In its determination under subsection (4), the Land Commission may order the payment of the purchase price in such instalments and on such conditions including interest and security for payment as it sees fit and if the tenant fails to pay three successive instalments the landlord may refer the matter to the Land Commission which may make such order as it sees fit.

(8) Where the parties agree as to the open market value, that agreement shall be binding and enforceable against the parties.

(9) The provisions of section 6 shall apply to the rights and obligations of the landlord and the tenant arising out of the service of a notice for purchase under subsection (1) as they apply to such rights and obligations arising out of the service of a notice of renewal under section 4(3).

(10) In the event of any default by the landlord or the tenant in carrying out the obligations arising from a notice under subsection (1), the other of them shall have the like rights and remedies as in the case of a binding contract for sale.

Tenant's right
to assign or
sub-let

10. (1) A tenant who wishes to exercise his right pursuant to section 5(8) shall serve on the landlord an application in writing for the landlord's consent.

(2) Within one month of receipt of the application, the landlord shall serve on the tenant notice in writing of his consent or refusal and, in the case of refusal, the reasons therefor.

(3) Where the landlord fails to serve notice in accordance with subsection (2) within the period therein mentioned, he shall be deemed to have consented to the application.

(4) A tenant who is aggrieved by a refusal may apply to the Land Commission which may dispense with the landlord's consent unless it appears to the Commission that the refusal is reasonable.

Jurisdiction
of the land
Commission

11. (1) The Land Commission shall have jurisdiction to hear and determine all questions and claims between a landlord and a tenant relating to the purchase price of a chattel house or of the land on which a chattel house is erected and all matters in dispute whether of law or fact between a landlord and a tenant capable of settlement under this Act irrespective of the value of the house or land and to make such order as may be necessary to give effect to any provision of this Act.

(2) In any proceedings falling within the jurisdiction of the Land Commission under the provisions of this Act, the costs of the proceedings shall be in the discretion of the Commission.

Appeal

12. (1) There shall be a right of appeal to the Court of Appeal against the whole or any part of any decision of the Land Commission on any question of law.

(2) Every such appeal shall be made by giving notice of appeal within six weeks after the date of the decision appealed against.

(3) In its determination of any appeal the Court of Appeal may confirm, modify, or reserve the decision or any part of the decision appealed against.

(4) The rules of practice and procedure governing appeals to the Court of Appeal in civil matters shall apply to appeals from the Land Commission under this Act.

13. Any person who in any manner, direct or indirect, knowingly makes or attempts to make any representation to the Land Commission which he knows to be false or does not believe to be true, the onus of proof as to his knowledge or belief being upon him whereby the Land Commission may or might be misled in any matter relating to its jurisdiction is guilty of an offence and liable on summary conviction before a Magistrate to a fine of five thousand dollars or to imprisonment for a term of one year. ^{Offence and penalty}

14. (1) Any notices or documents required to be served on any person may be served by delivering it to that person, or by leaving it at his usual or last known place of abode or business, or by posting it by registered letter addressed to him at his usual or last known place of abode or business, and if so posted, it shall be deemed to have been served at the time when the registered letter would be delivered in the ordinary course of post. ^{Service of notices}

(2) If the person is absent from Trinidad and Tobago the notice or document may be served in any such manner as aforesaid on his agent in Trinidad and Tobago. If he is deceased the notice may be served in any such manner as aforesaid on his personal representative.

(3) If the person has no known agent in Trinidad and Tobago or is deceased and has no personal representative, the notice or document may be served in such manner as may be directed by the Land Commission.

15. Where a tenant having a right under this Act to purchase the land is unable to give notice of his desire to purchase the land because the person to be served ^{Where landlord cannot be found}

with the notice cannot be found, or his identity cannot be ascertained then, on an application made by the tenant, the Land Commission may give such directions to the applicant concerning the giving of the notice and upon the applicant's compliance therewith the Land Commission may make such order as it thinks fit with a view to the land being vested in the tenant, his executors, administrators or assigns for the like estate and on the like terms (so far as the circumstances permit) as if he had at the date of his application to the Land Commission given notice of his desire to purchase the land.

Agreement relating to the erection of buildings to be void unless they are in writing

16. From and after the commencement of this Act any agreement between a landowner and another person whereby such other person erects or agrees or undertakes to erect a building which is incapable of removal without destruction on the land of such landowner shall be void unless the agreement is in writing and expressly defines the rights of the parties in respect of the building.

Discharge of mortgages, etc.

17. (1) Subject to subsection (2) a conveyance executed to give effect to section 9(1) shall, as regards any charge on the landlord's land (however created or arising) to secure a mortgage not being a mortgage subject to which the conveyance is to be made or which would be overreached apart from this section, be effective by virtue of this section to discharge the land from the mortgage and from the operation of any order made by a court for the enforcement of the mortgage and shall do so without the persons entitled to or interested in the mortgage or in any such order becoming parties to or executing the conveyance.

(2) Where in accordance with subsection (1) the conveyance to a tenant will be effective to discharge the land from a mortgage, the tenant shall deposit with the Land Commission the price payable for the land and shall notify the mortgagee of such payment.

(3) The Land Commission shall apply the price deposited under subsection (2) towards the redemption of any such mortgage and, if there is more than one, then according to the priorities.

(4) For the purposes of determining the amount payable in respect of any mortgage under this section a person entitled to the benefit of a mortgage to which this section applies shall not be permitted to exercise any right to consolidate that mortgage with a separate mortgage on other property.

(5) On the application of a mortgagee to which the section applies, the Land Commission may make such order as may be just and equitable, having due regard to the interests and circumstances of both the landlord and the mortgagee, for the purpose of mitigating any hardship imposed on the mortgagee by the provisions of this section, including an order requiring the landlord to give further security for the mortgage debt so as to compensate for the loss of security resulting from the application of this section.

18. Subject to negative resolution of Parliament, ^{Regulations} the Minister may make any regulations necessary or expedient for carrying out the purposes of this Act and for prescribing anything to be prescribed under this Act.

19. (1) Save as hereinbefore provided nothing in ^{Savings} this Act is intended to avoid any agreement in writing between a landlord and a tenant with respect to a chattel house;

(2) Nothing in this Act shall be construed as derogating from or abridging any provision of the Alien's (Landholding) Ordinance.

Ch. 21. No. 3

Passed in the House of Representatives this 23rd day of March, 1981.

J. E. CARTER
Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House that is to say by the votes of 23 of the House.

J. E. CARTER
Clerk of the House

Passed in the Senate this 19th day of May, 1981.

R. L. GRIFFITH
Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate that is to say by the votes of 23 Senators.

R. L. GRIFFITH
Clerk of the Senate