

No. 68

5th Session, 14th Legislature, Alberta
11 Elizabeth II

BILL 68

A Bill respecting Landlords and Tenants

HON. MR. MANNING

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Edmonton, Alberta, 1963

Explanatory Note

General. This Bill is divided into four main Parts.

Part 1 deals with the conditions and covenants under leases. Many of these provisions are already part of the general law of the Province and are gathered together in this Bill for convenience. As indicated in the explanatory notes most of these provisions originated in English statutes dating as far back as the 13th Century.

Part 2 deals with overholding tenants.

Part 3 deals with summary proceedings for non-payment of rent.

Part 4 deals with a landlord's rights on bankruptcy. The provisions of this Part are presently found in The Landlord's Rights on Bankruptcy Act, R.S.A. c. 171.

2. Definitions.

3. The Act does not apply to mineral leases.

4. (1) and (2) Rent, etc., annexed to reversionary estate. Taken from the Conveyancing and Law of Property Act, 1881, 44 & 45 Vic. c. 4, s. 10(1).

BILL

No. 68 of 1963

An Act respecting Landlords and Tenants

(Assented to _____, 1963)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Landlord and Tenant Act*".

2. In this Act,

- (a) "crops" means the products of the soil, and includes all sorts of grain, grass, hay, hops, fruits, vegetables and other products of the soil;
- (b) "land" includes land of any tenure, buildings or parts of buildings, whether the division is horizontal, vertical or made in any other way, also a rent charged upon or payable in respect of any land, and an easement, right, privilege or benefit in, over or derived from land, but not an undivided share in land;
- (c) "landlord" includes a lessor, owner, or person giving or permitting the occupation of land and their respective successors in title.

3. This Act does not apply to minerals or any dealings in minerals.

PART 1

COVENANTS AND CONDITIONS

4. (1) Where the reversionary estate in land, or any part thereof, immediately expectant on the term granted by a lease is severed,

- (a) the rent reserved by the lease,
- (b) the benefit of every covenant or provision in the lease, relating to the leased premises and to be observed or performed on the tenant's part, and
- (c) every condition of re-entry and other condition contained in the lease,

is annexed and incident to and goes with that reversionary estate.

(2) Any rent, covenant or provision is capable of being

(3) Recovery by person entitled by conveyance. The subsection (other than the proviso) is taken from section 11 of the Conveyancing Act, 1911, c. 37.

(4) Application of section.

5. (1) Covenants of landlord annexed to reversionary estate. Taken from (1881) 44 & 45 Vic. c. 4, s. 11.

(2) and (3) Application and effect of section.

6. Condition of re-entry when land severed. Taken from 44 & 45 Vict. c. 4, s. 12.

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 a person becomes so entitled by conveyance or otherwise, he may recover, receive, enforce or take advantage of the rent, covenant or provision 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 the person becomes so entitled.

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

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

effected before the commencement of this Act.

5. (1) The obligation of a covenant entered into by a landlord relating to his leased premises

- (a) is, if and as far as the landlord has power to bind the reversionary estate immediately expectant on the term granted by the lease, annexed and incident to and goes with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and
- (b) may be taken advantage of and enforced by the person in whom the term is for the time being vested by conveyance, devolution in law, or otherwise,

and, if and as far as the the landlord has power to bind the person from time to time entitled to that reversionary estate, the obligation may be taken advantage of and enforced against any person so entitled.

(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.

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

6. Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the 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

- (a) shall remain annexed to the severed parts of the reversionary estate as severed, and

7. Merger of reversions. Taken from the Real Property Act, 1845, 8 & 9 Vict. c. 106, s. 9.

8. Waste by tenants.

9. Defects in lease made under power of leasing may take effect as a contract for the grant of a lease.

- (b) shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered or as to which the term 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.

7. Where a reversion expectant on a lease of land is surrendered or merged, the estate or interest that as against the tenant for the time being confers the next vested right to the land shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion if there had been no surrender or merger thereof.

8. (1) Subject to the express terms of any lease, or of any covenant, agreement or stipulation affecting the tenancy,

- (a) every tenant for years and every tenant for life is liable to his landlord and to every other person for the time being having a reversionary interest in the leased premises for voluntary waste and for permissive waste in respect of the premises to the extent by which the interest of the landlord and other person, if any, having a reversionary interest in the premises is detrimentally affected thereby, and
- (b) every tenant at will is liable to his landlord and every other person having a reversionary interest in the leased premises for voluntary waste in respect of the premises to the extent by which the interest of the landlord and other persons, if any, having a reversionary interest in the premises is detrimentally affected thereby.

(2) Every landlord and every person having a reversionary interest in any leased premises may in respect of any waste by a tenant in respect of the premises bring an action for damages or an injunction, or both.

9. (1) Where in the intended exercise of any power of leasing whether conferred by a statute or by any other instrument, a lease is granted, that by reason of a failure to comply with the terms of the power is invalid, if it was made in good faith, and the lessee has entered thereunder, the lease

- (a) as against the person entitled after the determination of the interest of the grantor to the reversion, or
- (b) as against any other person, who, subject to any lease properly granted under the power, would have been entitled to the land comprised in the lease,

takes effect as a contract for the grant, at the request of the lessee, of a valid lease under the power, on the same terms

as the invalid lease, subject to such variations as may be necessary in order to comply with the terms of the powers.

(2) A lessee under an invalid lease is not, by virtue of subsection (1), entitled to obtain a variation of the lease if the other persons who would have been bound by the contract are willing and able to confirm the lease without variation.

(3) Where a lease granted in the intended exercise of a power of leasing conferred by a statute or other instrument is invalid by reason of the grantor not having power to grant the lease at the date thereof, but the grantor's interest in the land comprised therein continues after the time when he might, in the exercise of the power, have properly granted a lease in the like terms, the lease takes effect as a valid lease in the like manner as if it had been granted at that date.

(4) Where during the continuance of the possession taken under an invalid lease the person for the time being entitled, subject to such possession, to the land comprised therein or to the rents and profits thereof, is able to confirm the lease without variation, the lessee, or other person who would have been bound by the lease had it been valid, is, at the request of the person so able to confirm the lease, bound to accept a confirmation thereof, and thereupon the lease has effect and is deemed to have had effect as a valid lease from the grant thereof.

(5) A confirmation under subsection (3) may be by a memorandum in writing signed by or on behalf of the persons respectively confirming and accepting the confirmation of the lease.

(6) Where a receipt or a memorandum in writing confirming an invalid lease is, upon or before the acceptance of rent thereunder, signed by or on behalf of the person accepting the rent, that acceptance is, as against the person, a confirmation of the lease.

(7) This section does not affect prejudicially

- (a) any right of action or other right or remedy that, but for this section, the lessee named in an invalid lease would or might have been entitled to under any covenant on the part of the grantor for title or quiet enjoyment contained therein or implied thereby, or
- (b) any right of re-entry or other right or remedy that, for this section, the grantor or other person for the time being entitled to the reversion expectant on the termination of the lease, would or might have been entitled to by reason of any breach of the covenants, conditions or provisions contained in the lease and binding on the lessee.

(8) Where a valid power of leasing is vested in or may be exercised by a person who grants a lease that, by reason of the determination of the interest of the grantor or otherwise, cannot have effect and continuance according to the terms

10. Implied powers of lessor.

11. Re-entry on conviction of keeping a disorderly house. For a definition of "disorderly house" see section 168 of the Criminal Code.

12. Effect of licence to breach a covenant of a lease. Taken from 1859, 22-23 Vic. c. 35, ss. 1 and 2.

thereof independently of the power, the lease shall for the purposes of this section be deemed to have been granted in the intended exercise of the power although the power is not referred to in the lease.

(9) This section takes effect without prejudice to the provision in this Act for the grant of leases in the name and on behalf of the estate owner of the land affected.

10. In every lease, unless a different intention appears therein, there are implied the following powers in the lessor, that is to say:

- (a) that he may, by himself or his agents, enter upon the demised lands and view the state of repair thereof, and may serve upon the lessee, or leave at his last or usual place of abode, or upon the demised land, a notice in writing of any defect, requiring the lessee within a reasonable time, to be therein mentioned, to repair the same, in so far as the lessee is bound to do so;
- (b) that in case the rent or any part thereof is in arrears for the space of two calendar months, or in case default is made in the fulfilment of any covenant, whether expressed or implied in the lease, on the part of the lessee, and is continued for the space of two calendar months, or in case the repairs required by the notice, as aforesaid, are not completed within the time therein specified, the lessor may enter upon and take possession of the demised land in the manner provided by law.

11. In every lease there is implied an agreement that if the tenant or any other person is convicted of keeping a disorderly house, within the meaning of the *Criminal Code* (Canada), on the demised premises, or any part thereof, the landlord may at any time thereafter, re-enter into the demised premises, or any part thereof, repossess and enjoy the premises as of his former estate.

12. (1) Where a licence is granted to a tenant to do any act, the licence, unless otherwise expressed, extends only

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

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

(2) Notwithstanding any 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 authorized or waived, in the same manner as if no licence had been granted, and

13. Where a lease provides for subletting with the landlord's consent the consent may not be unreasonably withheld.

14. Tenant to give notice of proceedings to landlord. Taken from the Common Law Procedure Act, 1852, c. 209.

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

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

- (a) to any one of two or more tenants to do any act, or to deal with his equitable share or interest, or
- (b) to any tenant, or to any one of two or more tenants to assign or underlet 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 entry when there is a breach of covenant or condition by the co-lessees of the other shares or interests in the property, or by the tenant or tenants 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 of property not the subject of the licence.

(4) Subsection (3) does not authorize the grant after the commencement of this Act of a licence to create an undivided share in a legal estate.

13. (1) In a lease containing a covenant, condition, or agreement against assigning, subletting, or parting with the possession or disposing of the land leased without licence or consent, the covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject

- (a) to a proviso to the effect that the licence or consent shall not be unreasonably withheld, and
- (b) to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of the licence or consent, but this proviso does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to the licence or consent.

(2) Where a landlord refuses or neglects to give a licence or consent to assign or sublet, a judge of the district court, upon the application of the tenant or assignee or subtenant, may make an order determining whether or not the licence or consent is unreasonably withheld, and where it is so withheld permitting the assignment or sublease to be made.

(3) An order under subsection (2) permitting an assignment or sublease is the equivalent of a licence or consent of the landlord within the meaning of the covenant or condition requiring the licence or consent, and the assignment or sublease is not a breach of the covenant or condition.

14. A tenant to whom there is delivered any process of any court for the recovery of the premises demised to or

15. In an action for re-entry the landlord is to join all parties who claim an interest under the lease.

16. Effect of waiver. Taken from 1860, 23-24 Vic. c. 38, s. 6.

17. Implied covenant. The Land Titles Act (Alberta), s. 99.

18. Notices to terminate tenancies.

held by him, or to whose knowledge any such process comes, shall forthwith give notice thereof to his landlord or his agent, and if he fails to do so, he is liable for all damages sustained by the landlord by reason of the failure to give the notice.

15. Where a landlord is proceeding by action to enforce a right of re-entry or forfeiture under a covenant, proviso or stipulation in a lease, every person claiming an interest in the demised premises under the lease and whose interest is registered in the land titles office shall be made a party to the action.

16. Where an actual waiver by a lessor, or the persons deriving title under him, of the benefit of a covenant or condition in a lease is proved to have taken place in any particular instance, the waiver does not, unless a contrary intention appears, extend to any instance, or to any breach of covenant or condition except that to which the waiver specially relates or operates as a general waiver of the benefit of the covenant or condition.

17. In every lease, unless a contrary intention appears therein, there is implied the following covenant by the lessee, that is to say, that he will at all times during the continuance of the lease keep and at the termination thereof yield up the demised land in good and tenantable repair, accidents and damage to buildings from fire, storm and tempest and reasonable wear and tear excepted.

18. (1) Unless otherwise expressly agreed upon

- (a) a weekly tenancy may be determined by one week's notice to quit, ending with the week,
- (b) a monthly tenancy may be determined by one month's notice to quit, ending with the month, and
- (c) a tenancy from year to year, other than one under an agricultural lease, may be determined by three months' notice to quit and a tenancy under an agricultural lease may be determined by not less than six months' notice to quit, ending
 - (i) in the case of a tenancy originally from year to year, with the anniversary of the last day of the first year thereof, and
 - (ii) in the case of all other tenancies from year to year, with the anniversary of the last day of the original tenancy.

(2) A notice under subsection (1) is sufficient although the day on which the tenancy terminates is not named therein.

(3) Where a tenant, upon the determination of his lease, whether created by writing or by parol, remains in possession with the consent, express or implied, of the landlord, he is deemed to be holding subject to the terms of the lease, so far as they are applicable.

19. Right of distress for rent.

20. When distress for rent may be made. Taken from 1709, 8 Anne c. 18, ss. 6, 7.

21. Distress when rent for the life of another. Taken from 32 Hen. 8, c. 37, s. 4.

22. Distress by estate of a landlord. The Trustee Act (Alberta), s. 35.

23. Attornment to a stranger.

24. Grant effective without attornment of the tenant. Taken from 1705, 4-5 Anne c. 16, ss. 9, 10.

19. Where rent is payable or reserved by virtue of a deed, transfer or other assurance, or by will, which contains no express right of distress for the recovery of the rent, the person entitled to receive the rent has the same right of distress for the recovery of the rent as if it were rent reserved upon lease.

20. Upon the determination of a lease, the person entitled as landlord to receive any rent made payable thereby may at any time

- (a) within six months next after the determination of the lease, and
- (b) within such six months during the continuance of the landlord's interest, and
- (c) within such six months during the possession of the tenant from whom the rent became due,

distrain for any rent due and in arrear in the same manner as he might have done if the lease were not determined.

21. A person entitled to rent or land for the life of another may recover by action or distress the rent due and owing at the time of the death of the person for whose life the rent or land depended as he might have done if the person by whose death the estate in the rent or land determined had continued in life.

22. (1) The executors or administrators of a landlord may distrain for the arrears of rent due to such landlord in his lifetime in like manner as such landlord might have done if living.

(2) The arrears may be distrained for at any time within six months after the determination of the term and during the continuance of the possession of the tenant from whom the arrears became due.

23. (1) An attornment of a tenant of land to a stranger claiming title to the estate of his landlord is null and void, and the possession of his landlord is not changed, altered or affected by the attornment, but nothing in this section vacates or effects an attornment made

- (a) pursuant to and in consequence of a judgment or order of a court, or
- (b) with the privity and consent of the landlord.

(2) Nothing in this section alters, prejudices or affects any rights that a vendor, mortgagee or encumbrancee may now possess under any law or statute.

24. (1) A grant or conveyance of any rent or of the reversion or remainder of land is good and effectual without an attornment of the tenant of the land out of which that rent issues, or of the particular tenant upon whose particular estate that reversion or remainder is expectant or depending.

25. Effect of surrender and renewal of head lease on underleases. Taken from 1730, 4 Geo. 2, c. 28, s. 6 and s. 103 of The Land Titles Act (Alberta).

26. Renewal of leases by court order. Taken from 11 Geo. 4 and 1 Wm. 4, c. 65, ss. 18, 20, 21, 35. And see ss. 2 to 6 of The Infants Act (Alberta) for similar provisions applicable in the case of infants only.

(2) A tenant is not prejudiced or damaged by the payment of rent to a grantor or by breach of any condition for non-payment of rent before notice to him of the grant by the grantee.

25. Where a lease is surrendered in order to be renewed, and a new lease is made and executed by the chief landlord

- (a) the new lease is, without a surrender of all or any of the under-leases, as good and valid as if all the under-leases derived thereout had been likewise surrendered at or before the time of taking of the new lease,
- (b) a person in whom an estate for life, or lives, or for years, is vested by virtue of a new lease, is entitled to the rents, covenants and duties, and has the same remedy for recovery thereof,
- (c) an under-lessee holds and enjoys the land comprised in the under-lease as if the original lease had been kept on foot and continued, and
- (d) the chief landlord has the same remedy by distress or entry in and upon the land comprised in any under-lease for the rents and duties reserved by the new lease, so far as the same do not exceed the rents and duties reserved in the lease out of which the sub-lease was derived, as he would have had if the former lease had been still continued or as he would have had if the under-lease had been renewed under the new principal lease.

26. (1) Where a person who, in pursuance of a covenant or agreement in writing, if within the Province and amenable to the process of the Supreme Court, might be compelled to execute a lease by way of renewal, is not within the Province, or is not amenable to the process of the Court, the Court upon the application, by originating notice of motion, of a person entitled to the renewal, whether that person is or is not under any disability, may direct such person as the Court thinks proper to appoint for that purpose to accept a surrender of the subsisting lease, and to make and execute a new lease in the name of the person who ought to have renewed it.

(2) A new lease executed by the person appointed under subsection (1) is as valid as if the person in whose name the lease was made was alive and not under any disability and had himself executed it.

(3) Instead of making an order under subsection (1), the Court, in its discretion, may direct an action to be brought to establish the right of the person seeking renewal.

(4) A renewed lease shall not be executed by virtue of this section in pursuance of a covenant, or agreement, unless the sum of money, if any, that ought to be paid on the renewal and the things, if any, that ought to be performed

27. Life estate in farm lands. Taken from the Landlord and Tenant Act, 1851, c. 25, s. 1.

28. Definitions.

in pursuance of the covenant or agreement by the tenant are first paid and performed.

(5) The tenant shall execute counterparts of a lease renewal pursuant to this section.

(6) All sums of money that are had, received or paid for, or on account of, the renewal of a lease by a person out of the Province or not amenable to the process of the Supreme Court, shall after a deduction of all necessary incidental charges and expenses, be paid to such person or in such manner or into Court to such account and be applied and disposed of as the Court directs.

(7) The Court may order the costs and expenses of and relating to the application, orders, directions, conveyances and transfers, or any of them, to be paid and raised out of or from the land, or rents in respect of which the same are respectively made, in such manner as the Court thinks proper.

27. Where the interest of a landlord in farm land is liable to be determined by death or by an uncertain event and where that land is held by a tenant subject to the payment of a rent that substantially represents the fair annual letting value of the land, upon the interest of the landlord being so determined

- (a) the tenant, in lieu of any claim for emblements, may continue to hold and occupy the land until the expiration of the then current year of his tenancy and shall then quit upon the terms of his tenancy in the same manner as if the tenancy were then determined by effluxion of time or other lawful means during the continuance of the landlord's estate,
- (b) the person succeeding to the interest of the landlord may recover from the tenant in the same manner as his predecessor could have done if his interest in the land had not been determined, a fair proportion of the rent for the period between the day upon which the interest of the predecessor ceased and the time of quitting, and
- (c) the person so succeeding and the tenant respectively, as between themselves and as against each other, are entitled to all the same benefits and advantages and are subject to the same liabilities as the predecessor and the tenant would have been entitled or subject to if the tenancy had been determined by effluxion of time or other lawful means at the expiration of the current year and during the continuance of the predecessor's interest in the land.

28. In sections 29 to 31,

- (a) "lease" means an agreement in writing, and a parol agreement whereby one person as landlord confers upon another person as tenant the right to

29. Enforcement of right of re-entry or forfeiture. Subsection (1) is taken from 1881, 44-45 Vic. c. 41, s. 14(1) and 1892, 55-56 Vic. c. 13, s. 5.

occupy land, and every sublease and every agreement for a sublease and every assurance whereby any rent is secured by condition;

- (b) "sublease" includes an agreement for a sublease where the sublessee has become entitled to have his sublease granted;
- (c) "subtenant" includes any person deriving title under a sublease;
- (d) "tenant" includes every lessee, occupant, subtenant and their assigns and legal representatives.

29. (1) A right of re-entry for forfeiture under a proviso or stipulation in a lease for a breach of a covenant or condition in the lease, other than a proviso in respect of the payment of rent, is not enforceable when the breach is capable of remedy or of being compensated by money payment, unless and until

- (a) the landlord serves on the tenant a notice specifying the particular breach, and requiring the tenant to remedy or to make compensation in money for the breach, and
- (b) the tenant fails, within a reasonable time after the service of the notice, to remedy the breach or to make compensation in money to the satisfaction of the landlord for the breach.

(2) Where a landlord is proceeding by action or otherwise to enforce any right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the tenant may

- (a) in the landlord's action, if any, or
- (b) if there is no such action pending, then in an action brought by himself,

apply to the court for relief, and the court may grant such relief as having regard to the proceedings and conduct of the parties under subsection (1) and to all the other circumstances the court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court thinks just.

(3) This section applies whether the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease or is implied therein.

(4) For the purposes of this section a lease limited to continue as long as the tenant abstains from committing a breach of covenant is and takes effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(5) Where a landlord brings an action to enforce a right of re-entry or forfeiture for non-payment of rent and the tenant, at any time before judgment, pays into court all the rent in arrear and the costs of the action, the cause of action is at an end.

30. Relief against forfeiture. Section 18 of The Judicature Act (Alberta).

(6) Where relief is granted under this section the tenant shall hold and enjoy the demised premises according to the lease thereof made without any new lease.

(7) This section applies to leases made either before or after the commencement of this Act and notwithstanding any stipulation to the contrary.

(8) This section does not extend

- (a) to a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased, or
- (b) to a condition for forfeiture on the bankruptcy of the tenant or on the taking in execution of the lessee's interest if contained in
 - (i) a lease of agricultural or pastoral land, or
 - (ii) a lease of a house let as a dwelling-house with the use of any furniture, books, works of art or other chattels not being the nature of fixtures, or
 - (iii) a lease of land with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the landlord, or to any person holding under him.

(9) Where the whereabouts of the tenant cannot be ascertained after reasonable inquiry or when the tenant is evading service, the notice referred to in subsection (1) may be served on the tenant by leaving it at the place of residence of the tenant with any adult person for the time being in charge thereof, and if the premises are unoccupied, the notice may be served by posting it up in a conspicuous manner upon some part of the demised premises.

30. (1) The court upon such terms as it thinks proper may relieve against a forfeiture for breach of a covenant or condition in a lease to insure against loss or damage by fire where

- (a) no loss or damage by fire has happened,
- (b) the breach has in the opinion of the court been committed through accident or mistake or otherwise without fraud or gross negligence, and
- (c) there is an insurance on foot at the time of the application to the court in conformity with the covenant to insure.

(2) The court when relief is granted shall direct a record thereof to be made by endorsement on the lease or otherwise.

(3) This section applies to leases

- (a) that are for a term of years absolute,
- (b) that are determinable on a life or lives or otherwise, or

31. Application for relief by subtenant in proceedings for forfeiture of head lease. Taken from 1892, 55-56 Vic. c. 13, s. 4.

32. Proceedings for an order for a writ of possession.

- (c) that are for the life of the lessee or for the life or lives of any other person or persons.

31. (1) Where a landlord is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under a covenant, a proviso or stipulation in a lease or for non-payment of rent, the court, on application by any person claiming as subtenant any estate or interest in the property comprised in the lease or any part thereof, may

- (a) in the landlord's action, if any, or
- (b) in any action brought or summary application made to the court by such person for that purpose,

make an order vesting for the whole term of the lease or any less term the property comprised in the lease, or any part thereof, in any person entitled as subtenant to any estate or interest in the property.

(2) An order under subsection (1) may be upon such conditions, as to the execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, as the court in the circumstances of each case thinks fit.

(3) A subtenant is not entitled under this section to require a lease to be granted to him for any longer term than he had under his original sublease.

PART 2

OVERHOLDING TENANTS

32. (1) Where a tenant, after his tenancy or right of occupation has expired or has been determined, does not go out of possession of the premises held by him, the landlord may, on not less than three days' notice of motion, apply to a judge of the Supreme Court for an order for a writ of possession.

- (2) The proceedings under this Part shall be styled:

"In the matter of (giving the name of the party complaining), landlord, against (giving the name of the party complained against), tenant."

- (3) The application of the landlord shall be supported by an affidavit

- (a) setting forth the terms of the lease or occupancy, the amount of rent in arrear, if any, and the time for which it is in arrear,
- (b) proving the expiration or determination of the tenancy or right of occupation, and
- (c) stating the refusal of the tenant to deliver up possession and the reasons given for the refusal, if any were given.

33. Issue of writ of possession.

34. Application of Rules of Court.

35. Summary proceedings for non-payment of rent.

33. (1) Where, at the time and place appointed the tenant fails to appear, the judge, if it appears to him that the tenant wrongfully holds against the right of the landlord, may order a writ of possession in Form A in the Schedule, directed to the sheriff commanding him forthwith to place the landlord in possession of the land.

(2) Where the tenant appears the judge shall, in a summary manner, hear the parties and their witnesses and examine into the matter and may take evidence orally or by affidavit as he thinks fit, and if it appears to the judge that the tenant wrongfully holds against the right of the landlord he may order the issue of a writ of possession.

34. (1) Except as otherwise varied by this Part, the provisions of the Consolidated Rules of the Supreme Court apply to applications made and proceedings had under this Part.

(2) The judge has the same power to amend or excuse irregularities in the proceedings as he has in an action.

PART 3

SUMMARY PROCEEDINGS FOR NON-PAYMENT OF RENT

35. (1) Where a tenant fails to pay his rent within seven days of the time agreed, the landlord may serve a demand in writing for the payment of the rent or delivery of possession of the premises upon the tenant or upon some adult person upon the premises, or if the premises are vacant may affix the demand to the dwelling or other building or otherwise post the demand on the premises.

(2) If after the demand, the tenant wrongfully refuses or neglects to pay the rent or deliver up the premises demised, the landlord may file with the clerk of the district court for the judicial district in which the premises are in whole or in part situated an affidavit

- (a) setting forth the terms of the lease or occupancy, the amount of rent in arrear and the time for which it is in arrear,
- (b) producing a copy of the demand made for the payment of rent or delivery of possession, and
- (c) stating the refusal of the tenant to pay the rent or deliver up possession and the reasons given for the refusal, if any were given.

(3) Upon the filing of the affidavit the clerk shall cause to be issued a summons in Form B in the Schedule calling upon the tenant, three days after service, to show cause why an order should not be made for delivering up possession of the premises to the landlord, which summons may be served in the same manner as the demand.

(4) Upon the return of the summons the judge shall hear

36. Costs.

37. Assignment of property.

the evidence adduced upon oath, either orally or by affidavit as the judge thinks proper, and make such order, either to confirm the tenant in possession or to deliver up possession to the landlord, as the facts of the case may warrant, and an order for delivery of possession may be in Form C in the Schedule.

(5) Where the order is made for the tenant to deliver up possession and he refuses, then upon there being filed with the sheriff an affidavit

(a) showing service of the order, and

(b) stating that the order has not been obeyed,

the sheriff or any of his officers shall, with such assistance as he may require, forthwith proceed under the order to eject and remove the tenant together with all goods and chattels that he may have on or about the premises, and make the rent in arrears and place the landlord in possession of the premises.

(6) If, before the execution of the order, the tenant pays the rent in arrears and all costs, the proceedings are stayed and the tenant may continue in possession as of his former tenancy.

(7) Where the premises in question are vacant, or the tenant is not found in possession, or if in possession he refuses on demand made in the presence of a witness to admit the bailiff, the latter, after a reasonable time has been allowed for admittance, may force open any outer door in order to gain an entrance, and may also force any inner door for the purpose of ejecting the tenant or occupant and giving proper possession of the premises to the landlord or his agent.

36. (1) The judge may by order award costs according to the tariff of costs contained in the Consolidated Rules of the Supreme Court, or may order payment of a lump sum by way of costs.

(2) Where a landlord is awarded costs against the tenant, the costs so awarded may be added to the cost of the levy for rent, if such levy is, or is to be made.

(3) An order for the payment of costs may be filed in the office of the clerk of the district court for the judicial district in which the demised premises are in whole or in part situated and shall thereupon become a judgment of the court.

PART 4

LANDLORD'S RIGHTS ON BANKRUPTCY

37. A tenant against or by whom a receiving order or assignment is made under the *Bankruptcy Act* (Canada) shall be deemed to have made an assignment of all his property for the general benefit of his creditors before the date of the receiving order or assignment.

38. Payment of rent after assignment.

39. Surplus rent.

40. When landlord unable to claim from tenant.

41. Rights and duties of trustee.

42. Surrender of possession by trustee.

43. Cessation of landlord's rights.

44. Dealings by the trustee.

38. As soon as the receiving order or assignment is made

- (a) the landlord of the tenant is not thereafter entitled to distrain or realize his rent by distress, and
- (b) the trustee in whom the property of the tenant vests under the provisions of the *Bankruptcy Act* (Canada), shall pay to the landlord in priority to all other debts
 - (i) an amount not exceeding in value the distrainable assets of the tenant and not exceeding three months' rent accrued due before the date of the receiving order or assignment, and
 - (ii) the costs of distress, if any.

39. The tenant is a debtor to the landlord

- (a) for all surplus rent in excess of the three months' rent accrued due at the date of the receiving order or assignment, and
- (b) for any accelerated rent to which the landlord may be entitled under the lease but not exceeding an amount equal to three months' rent.

40. Except as aforesaid the landlord has no right to claim as a debt any money due to him from the tenant for any portion of the unexpired term of the tenant's lease.

41. (1) The trustee is entitled to occupy and to continue in occupation of the leased premises for so long as he requires the premises for the purposes of the trust estate vested in him.

(2) The trustee shall pay to the landlord for the period during which the trustee actually occupies the leased premises from and after the date of the receiving order or assignment a rental calculated on the basis of the lease.

(3) A payment to be made to the landlord in respect of accelerated rent shall be credited against the amount payable by the trustee for the period of his occupation.

42. The trustee may surrender possession at any time, but if he occupies the leased premises for three months or more beyond the date of the receiving order or assignment the landlord is entitled to receive three months' notice in writing of the trustee's intention to surrender possession, or three months' rent in lieu thereof.

43. After the trustee surrenders possession of the leased premises, such of the landlord's rights as are based upon actual occupation by the trustee cease.

44. (1) This section applies only to premises leased by

- (a) a retail merchant, wholesale merchant, commission merchant or manufacturer, or

45. Disclaimer of lease by trustee.

(b) any person who as his ostensible occupation buys and sells goods, wares or merchandise that are ordinarily the subject of trade and commerce, and used by such person for the purposes of his trade.

(2) Notwithstanding the legal effect of a provision or stipulation in the lease, the trustee

(a) may, at any time while he is in occupation of leased premises for the purpose of the trust estate and before he has given notice or intention to surrender possession, or disclaimed, elect to retain the leased premises for the whole or a portion of the unexpired term, and

(b) may, upon payment to the landlord of all overdue rent, assign the lease to a person who

(i) will covenant to observe and perform its terms,

(ii) will agree to conduct upon the demised premises a trade or business that is not reasonably of a more objectionable or more hazardous nature than that that was conducted thereon by the lessee, and

(iii) is on application of the trustee approved by a judge of the Supreme Court as a person fit and proper to be put into possession of the leased premises.

(3) Notwithstanding subsection (2), before the person to whom the lease is assigned may go into occupation, he shall

(a) deposit with the landlord a sum equal to six months' rent, or

(b) supply to the landlord a guarantee bond approved by a judge of the Supreme Court in a penal sum equal to six months' rent,

as security to the landlord that he will observe and perform the terms of the lease and the covenants made by him with respect to his occupation of the premises.

45. (1) The trustee may disclaim the lease at any time

(a) before giving notice of his intention to surrender possession, or

(b) before coming under an obligation to give such notice in case of intention on his part to surrender possession.

(2) The entry of the trustee into possession of the leased premises and the occupation by the trustee of the leased premises while required for the purposes of the trust estate

(a) shall be deemed not to be evidence of an intention on his part to elect to retain the premises, and

(b) does not affect his right to disclaim or to surrender possession pursuant to this Part.

(3) If after occupation of the leased premises the trustee elects to retain them and thereafter assigns the lease to a person approved by a judge as provided by section 44,

46. Protection of interest of under-lessee.

47. Covenant of under-lessee to pay rent.

48. Rights of under-lessee.

49. Application of Part 4.

- (a) the liability of the trustee whether personal or as trustee, and whether arising out of privity of contract or of estate, and
 - (b) the liability of the estate of the lessee,
- subject to this Part, is limited and confined to the payment of rent for the period of time during which the trustee remains in possession of the leased premises for the purposes of the trust estate.

46. (1) Where the tenant before the date of the receiving order or assignment has demised by way of under-lease any of the leased premises and the trustee disclaims or elects to assign the lease, a judge of the Supreme Court upon the application of the under-lessee may make an order vesting in the under-lessee an interest in the property that is the subject of the demise to him equivalent to that interest held by him as under-lessee of the tenant.

(2) The equivalent interest referred to in subsection (1) is subject, except as to rent payable, to the same liabilities and obligations as the lessee was subject to at the date of the receiving order or assignment, and performance shall be secured under the same conditions as provided by section 44 in case of an assignment of lease made by a trustee.

47. The under-lessee, in a case falling within section 46,

- (a) shall covenant to pay to the landlord a rent not less than that payable by the under-lessee to the tenant, and
- (b) if the rent mentioned in clause (a) was greater than that payable by the tenant to the landlord, shall covenant to pay to the landlord the like greater rental.

48. (1) Section 44 shall be read subject to sections 46 and 47 so that an under-lessee if he so desires may have prior opportunity to acquire the right to the possession for any unexpired term of the premises occupied or held by him of the lessee.

(2) If it seems to a judge of the Supreme Court more desirable in the interest of the tenant's estate, and notwithstanding sections 46 and 47, an under-lessee may if he so desires be given a prior opportunity to acquire pursuant to section 44 an assignment of the head lease.

49. This Part shall be read as intending not to conflict or interfere with the operation of a law of Canada but shall be deemed merely to provide for or regulate the rights and priorities of landlords in the happening of any of the events provided for by section 49 of the *Bankruptcy Act* (Canada).

50. Section 11a taken from 1737, 11 Geo. 2, c. 19, s. 8.

(c) Subsection (3) taken from 1267, 52 Hen. 3, c. 15.

(d) Section 24a taken from 1737, 11 Geo. 2, c. 19, s. 7.

PART 5

MISCELLANEOUS

50. (1) *The Seizures Act*, being chapter 307 of the Revised Statutes, is amended

- (a) by adding the following new section after section 11:

11a. (1) The sheriff may seize under a distress for rent any growing crop of grain or roots upon the land charged with the rent.

(2) The sheriff may seize under a distress for rent any horses, cattle, swine, poultry, livestock and other domestic animals of the debtor that are grazing, pasturing or feeding upon any highway or road allowance or upon any way belonging to or appertaining to the land charged with the rent.

- (b) as to section 13, subsection (5) by adding immediately after the words "writ of execution" the words "or distress warrant",
- (c) as to section 19 by adding the following subsection:

(3) Subject to sections 11a and 24a, goods and chattels that are not, at the time of the distress, upon the premises in respect of which the rent distrained for is due shall not be distrained for rent.

- (d) by adding the following new section after section 24:

24a. (1) Where a tenant of land held under any kind of tenancy under which rent is payable, fraudulently or clandestinely removes or causes to be removed from the land so held by him any goods and chattels liable to distress,

- (a) at a time when there are arrears of rent payable in respect of land, and
- (b) with intent to prevent the landlord from distraining the goods and chattels for the arrears of rent payable,

the person charged with the execution of a warrant of distress for the rent may, within thirty days next after such removal, seize as a distress for the arrears any goods and chattels so removed, wherever they are found.

(2) Subsection (1) does not apply to goods and chattels that have been sold or mortgaged for valuable consideration before the seizure to a person not having notice of the fraudulent or clandestine removal.

(3) Where the person charged with the execution of the warrant of distress for rent has reasonable grounds to and does believe

- (a) that any goods and chattels have been fraudul-

(2)-(5) Repeal of enactments now included in this **Act**.

51. Commencement of Act.

ently or clandestinely removed for the purpose of preventing the landlord from distraining them, and

- (b) that the goods are in a building, yard, enclosure or place in such circumstances as to prevent them from being seized as a distress for arrears of rent,

he may enter into and upon the building, yard, enclosure or place, and every part thereof, for the purpose of searching for goods and chattels so removed and to seize any such goods and chattels found there for arrears of rent as he might have done if they were in an open field or place upon the premises from which they were removed.

(2) *The Land Titles Act*, being chapter 170 of the Revised Statutes, is amended

(a) by striking out sections 99 and 100,

(b) as to section 101 by striking out the words "In any such case the" and by substituting the word "The".

(3) *The Judicature Act*, being chapter 164 of the Revised Statutes, is amended by striking out section 18.

(4) *The Trustee Act*, being chapter 346 of the Revised Statutes, is amended by striking out section 35.

(5) *The Landlord's Rights on Bankruptcy Act*, being chapter 171 of the Revised Statutes, is repealed.

51. This Act comes into force on the first day of July, 1963.

FORM A

WRIT OF POSSESSION

Elizabeth the Second, by the Grace of God of
Canada the United Kingdom, Canada and Her other
To wit: Realms and Territories Queen, Head of the
Commonwealth, Defender of the Faith.

To the sheriff of

Greeting.

Whereas Judge of the district
court by his order, dated the day of 19
made in pursuance of *The Landlord and Tenant Act*, on the
complaint of against
adjudged that was entitled to the
possession of with the appurtenances,
in your bailiwick, and ordered that a writ should be issued
by our Judge accordingly, and also ordered and directed
that should pay the costs of the pro-
ceedings under the Act, which by our Judge have been taxed
at the sum of dollars;

Therefore, we command you that without delay you
cause to have possession of those lands

and premises, with the appurtenances: and we also command you that of the goods and chattels of in your bailiwick, you cause to be made the sum of dollars, being the costs so taxed by our Judge as aforesaid, and have that money before our Judge immediately after the execution hereof, to be rendered to

And in what manner you shall have executed this writ, make appear to our Judge immediately after the execution hereof; and have there then this writ,

Witness, etc.

(Signed)
Clerk of the Court.

FORM B

SUMMONS FOR EVICTION

In the matter of _____ landlord,
and _____ tenant,
and *The Landlord and Tenant Act*.

To the above named

You are hereby summoned to appear before, _____, on the third day after service of a copy hereof upon you, or as provided in *The Landlord and Tenant Act* in that behalf, at the hour of _____ o'clock in the _____ noon, to show cause why an order should not be made for the delivery up to _____ as landlord, of the premises mentioned in his demand, that is to say _____; and, further to show cause why an order should not at the same time be made for payment by you of the rent alleged to be in arrear for those premises to the landlord, to be made or levied by distress or otherwise, and also as to the costs of these proceedings.

In default of you so appearing, the landlord may proceed to obtain such order against you as to the Judge it may seem proper to grant.

Dated at _____, this _____ day of _____ 19 ____.

By the Court.

(Signed)
Clerk of the Court.

FORM C

ORDER FOR POSSESSION

In the matter of _____ landlord,
and _____
tenant,

and *The Landlord and Tenant Act*.

Upon reading the notice of demand in this case, the affidavit of service thereof, the affidavit of proof of the terms of the demise, of the summons issued herein and the affidavit of service thereof on the tenant, and no cause being shown by the tenant upon the return of the summons (or, and the tenant appearing but failing to disprove the allegations of the landlord, as the case may be), I do order that the tenant do, upon the production to him of this order, forthwith deliver up possession of the premises in question, namely (), to the landlord, or his proper agent or attorney, of whose authority the possession of this warrant is sufficient proof; and in case of refusal by the tenant so to deliver up possession, or of the tenant being absent or the premises vacant, I do hereby, in accordance with the Act in that behalf, authorize _____, with such assistance as he may require, forthwith to proceed to eject and remove the tenant, together with his goods and chattels, if any, from and out of the premises, and, whether the tenant is found in possession or the premises are vacant, put the landlord in possession thereof, that the landlord take and hold possession thereof freed from the demise; and I do further order that the _____ do make the rent in arrear for the premises, amounting to the sum of _____ together with the costs of the levy therefor, and of all necessary proceedings in respect thereof, subject to the provisions of the Act.

I further award the sum of _____ dollars to the landlord, as his costs of this proceeding, to be paid by the tenant or, in default of payment, to be proceeded for and recovered as allowed by law.

Dated at this day of 19

(Signed)

Judge

No. 68

FIFTH SESSION

FOURTEENTH LEGISLATURE

11 ELIZABETH II

1963

BILL

An Act respecting Landlords and
Tenants

Received and read the

First time

Second time

Third time

HON. MR. MANNING
