

BILL

No. 42 of 1924.

An Act to Regulate the Rights and Priorities of Landlords
after a Voluntary Assignment for the Benefit
of Creditors.

(Assented to _____, 1924).

WHEREAS, by section 52 of *The Bankruptcy Act* of the Dominion of Canada, it is provided that when a receiving order or assignment is made against or by any lessee under that Act, the same consequences shall ensue as to the rights and priorities of his landlord as would have ensued under the laws of the Province in which the demised premises were situated if the lessee at the time of such receiving order of assignment had been a person entitled to make and had made an abandonment or voluntary assignment of his property for the benefit of his creditors pursuant to the laws of the Province, and it was further provided in the said section that nothing in the said Act should be deemed to suspend, limit or affect the legislative authority of any Province to enact any law for or regulating the rights and priorities of landlords consequent upon any such abandonment or voluntary assignment; and it was further provided by the said section that nothing in the said Act should be deemed to interfere or conflict with the operation of any such Provincial law heretofore or hereafter enacted insofar as it provides for or regulates the rights and priorities of landlords in such an event;

And whereas, there is at present no law of the Province providing for voluntary assignment of property for the benefit of creditors generally;

And whereas, it is advisable that provision should be made for such assignment and for regulating the rights and priorities of landlords upon such assignment being made;

Now therefore, His 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's Rights (Bankruptcy) Act, 1924.*"

2. Any person may make a voluntary assignment of all his property for the general benefit of his creditors.

2. Any lessee against or by whom a receiving order or assignment is made under *The Bankruptcy Act* shall be deemed to have made an assignment of all his property for the general benefit of his creditors prior to the date of the said receiving order or assignment.

3. As soon as such order or assignment is made then the landlord of such lessee shall thereafter not be entitled to distrain or realize his rent by distress and the trustee in whom the property of the lessee vests under the provisions of *The Bankruptcy Act* (hereinafter called "the trustee"), shall pay to the landlord in priority to all other debts, an amount not exceeding in value the distrainable assets of the said lessee, and not exceeding three months' rent accrued due prior to the date of such order or assignment (hereinafter referred to as "the said date"), and the costs of distress, if any.

4. The said lessee shall be a debtor to the landlord for all surplus' rent in excess of the said three months' rent, which has accrued due at the said date and also for any accelerated rent to which he may be entitled under his lease, not exceeding an amount equal to three months' rent.

5. Except as aforesaid, the landlord shall not have any right to claim as a debt any money due to him from the lessee for any portion of the unexpired term of his lease, but the said trustee shall pay to the landlord for the period during which he actually occupies the leased premises from and after the said date a rental calculated on the basis of the said lease.

6. The trustee shall be entitled to continue in occupation of the leased premises for so long as he shall require the premises for the purposes of the trust estate which vested in him and any 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.

7. The trustee may surrender possession at any time, but if he occupies for three months or more beyond the said date the landlord shall be entitled to receive three months' notice in writing of the trustee's intention to surrender possession, or three months' rent in lieu thereof.

8. After the trustee surrenders possession such of the landlord's rights as are based upon actual occupation by the trustee shall cease.

9.—(1) Notwithstanding the legal effect of any provision or stipulation in the lease, the trustee may at any time while he is in occupation of leased premises for the purposes of the trust estate and before he has given notice of intention to surrender possession, or disclaimed, elect to retain the leased premises for the whole or any portion of the unexpired term, and he may, upon payment to the landlord of all overdue rent, assign the lease to any person who will covenant to observe and perform its terms and agree to conduct upon the demised premises a trade or business which is not reasonably of a more objectionable or more hazardous nature than that which was thereon conducted by the lessee, and who on application of the trustee is approved by a judge of the Supreme Court as a person fit and proper to be put into possession of the leased premises:

Provided, however, that before the person to whom the lease is assigned may be permitted to go into occupation, he shall deposit with the landlord a sum equal to six months' rent or supply to him 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 such person will observe and perform the terms of the lease and the covenants made by him with respect to his occupation of such premises.

(2) This section shall only apply to premises leased by a trader and used by him for the purposes of his trade.

(3) In this section "trader" shall mean a retail merchant or a wholesale merchant or a commission merchant or a manufacturer, or any person who, as his ostensible occupation, buys and sells goods, wares, or merchandise, ordinarily the subject of trade and commerce.

10. The trustee shall have the further right at any time before giving notice of intention to surrender possession, and before becoming under obligation to give such notice in case of intention on his part to surrender possession, to disclaim any such lease, and his entry into possession of the leased premises and their occupation by him while required for the purposes of the trust estate shall not be deemed to be evidence of an intention on his part to elect to retain the premises, nor affect his right to disclaim or to surrender possession pursuant to the provisions of this Act; and if after occupation of the leased premises he elects to retain them and thereafter assigns the lease to a person approved by a judge as by section 9 hereof provided, the liability of the trustee, whether personal or as trustee, and whether arising out of privity of contract or of estate and also all liability of the estate of the lessee shall, subject to the provisions of this Act, be 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.

11. Where the lessee has, before the said date, demised by way of underlease any premises and the trustee disclaims or elects to assign the lease, a judge of the Supreme Court may, upon the application of such under-lessee, make an order vesting in the under-lessee an equivalent interest in the property, the subject of the demise to him, to that held by him as under-lessee of the lessee, but subject, except as to rental payable, to the same liabilities and obligations as the lessee was subject to at the said date, performance to be secured as and pursuant to the same conditions as is provided by section 9 hereof in case of an assignment of lease made by a trustee.

12. The under-lessee shall, in such an event, be required to covenant to pay to the landlord a rental not less than that payable by the under-lessee to the lessee, and if such last mentioned rental was greater than that payable by the lessee to the landlord, the under-lessee shall be required to covenant to pay to the landlord the like greater rental.

13. The provisions of section 9 hereof shall be read subject to the provisions of sections 11 and 12 hereof, 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, and further if it seems to a judge of the Supreme Court most desirable in the interest of the lessee's estate and notwithstanding the provisions of sections 11 and 12 hereof, a prior opportunity to acquire, pursuant to section 9 hereof, an assignment of the head lease.

14. This Act is to read as intended not to conflict or interfere with the operation of any law of the Dominion, but merely to provide for, or regulate the rights and priorities of landlords in the happening of any of the events provided for by section 52 of *The Bankruptcy Act*, hereinbefore recited.

15. This Act shall have effect from the thirtieth day of June, 1923, save with regard to any payments made or transactions completed prior to the date of the passing of this Act.

No. 42.

FOURTH SESSION
FIFTH LEGISLATURE
14 GEORGE V
1924

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Received and read the

First time.....

Second time.....

Third time.....

MR. PEARSON.

EDMONTON:
J. W. JEFFERY, KING'S PRINTER
A.D. 1924