

# BILL

No. 44 of 1924.

An Act respecting the Law of Landlord and Tenant.

(Assented to \_\_\_\_\_, 1924)

**H**IS 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, 1924.*"

## INTERPRETATION.

- 2.** In this Act, unless the context otherwise requires,—
- (a) "Crops" shall mean and include all sorts of grain, grass, hay, hops, fruits, pulse and other products of the soil;
  - (b) "Landlord" shall mean and include lessor, owner, the person giving or permitting the occupation of the premises in question and his or their heirs and assigns and legal representatives;
  - (c) "Standing crops" shall mean crops standing or growing on the demised premises;
  - (d) "Tenant" shall include lessee, occupant, sub-tenant, under-tenant, and his or their assigns and legal representatives.

## RELATION OF LANDLORD AND TENANT.

**3.** The relation of landlord and tenant shall not depend on tenure, and a reversion in the lessor shall not be necessary in order to create the relation of landlord and tenant, or to make applicable the incidents by law belonging to that relation; nor shall it be necessary in order to give a landlord the right of distress that there shall be an agreement for that purpose between the parties.

## COVENANTS RUNNING WITH REVERSION, ETC.

**4.** All persons being grantees or assignees of the King, or of any other person than the King, and the heirs, executors, successors and assigns of every of them, shall have and enjoy like advantage against the lessees, their executors, administrators and assigns, by entry for non-payment of

the rent, or for doing of waste, or other forfeiture, and also shall have and enjoy all and every such like and the same advantage, benefit and remedies, by action only, for not performing of other conditions, covenants or agreements, contained and expressed in the indentures of their said leases, demises or grants against all and every of the said lessees, and fermors, and grantees, their executors, administrators and assigns as the said lessors or grantors themselves, or their heirs or successors, might have had and enjoyed at any time or times.

5. 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 or 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 in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by any person from time to time entitled, subject to the term, to the income of the whole or any part, as the same may require, of the land leased.

6. All lessees and grantees of lands, tenements, rents, portions, or any other hereditaments for term of years, life or lives, their executors, administrators and assigns shall and may have like advantage, action and remedy against all and every person and persons who shall have any gift or grant of the King, or of any other persons, of the reversion of the same lands, tenements and other hereditaments so let, or any parcel thereof, for any condition, covenant, or agreement, contained or expressed in the indentures of their leases as the same lessees or any of them, might and should have had against their said lessors, and grantors, their heirs or successors.

7. The obligation 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, such obligation may be taken advantage of and enforced against any person so entitled.

## APPORTIONMENT OF CONDITION OF RE-ENTRY.

8. 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 shall remain annexed to the severed parts of the reversionary estate as severed, and 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.

## MERGER, ETC., OF REVERSIONS.

9. Where the reversion expectant on a lease of land merges or is surrendered, the estate which for the time being confers as against the tenant under the lease the next vested right to the land shall, to the extent of and for preserving such incidents to and obligations on the reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the lease.

## RIGHT OF RE-ENTRY.

10.—(1) In every demise, whether by parol or in writing and whenever made, unless it is otherwise agreed, there shall be deemed to be included an agreement that if the rent reserved, or any part thereof, shall remain unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand thereof shall have been made, it shall be lawful for the landlord at any time thereafter, into and upon the demised premises, or any part thereof in the name of the whole, to re-enter and the same to have again, repossess and enjoy as of his former estate.

(2) In every such demise as aforesaid there shall be deemed to be included an agreement that if the tenant or any other person shall be convicted of keeping a disorderly house, within the meaning of *The Criminal Code*, on the demised premises, or any part thereof, it shall be lawful for the landlord at any time thereafter, into the demised premises, or any part thereof, to re-enter and the same to have again, repossess and enjoy as of his former estate.

## FORFEITURE OF LEASES.

**11.**—(1) In this section and the next following three sections—

- (a) "Lease" shall include an original or derivative underlease and an agreement for a lease where the lessee has become entitled to have his lease granted;
- (b) "Lessee" shall include an original or derivative under-lessee and the executors, administrators and assigns of a lessee;
- (c) "Lessor" shall include an original or derivative under-lessor and the executors, administrators and assigns of a lessor;
- (d) "Mining lease" shall mean a lease for mining purposes, that is a searching for, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away or disposing of mines or minerals, and substances in, on or under the land, obtainable by underground or by surface working or purposes connected therewith and shall include a grant or license for mining purposes;
- (e) "Under-lease" shall include an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;
- (f) "Under-lessee" shall include any person deriving title under or from an under-lessee.

(2) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

(3) Where a lessor 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 lessee may in the lessor's action, if any, or 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 the foregoing provisions of this section 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 may deem just.

(4) This section shall apply, although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease, in pursuance of the directions of a statute.

(5) For the purposes of this section a lease limited to continue as long as the lessee abstains from committing a breach of covenant shall be and take 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.

(6) Where the action is brought to enforce a right of re-entry or forfeiture for non-payment of rent and the lessee, at any time before judgment, pays into court all the rent in arrear and the costs of the action the proceedings in the action shall be forever stayed.

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

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

(9) This section shall not extend—

- (a) to a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or
- (b) in the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(10) Where the right of re-entry or forfeiture is in respect of a breach of a covenant or condition to insure, relief shall not be granted if at the time of the application for relief there is not an insurance on foot in conformity with the covenant or condition to insure except, in addition to any other terms which the Court may impose, upon the term that the insurance is effected.

#### LEASES, UNDER-LEASES, FORFEITURE.

**12.** Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, the Court, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part

thereof, either in the lessor's action, if any, or in any action brought by such person for that purpose, may 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 under-lessee to any estate or interest in such property upon such conditions, as to 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 shall think fit; but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

**13.** Where a lessor is proceeding by action to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lease, if it be known to the lessor that he claims such right or interest or if the instrument under which he claims is registered in the proper registry or land titles office, shall be made a party to the action.

**14.** In every lease made after the commencement of this Act containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without license or consent, such covenant, condition or agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that such license or consent shall not be unreasonably withheld.

#### LICENSES.

**15.** Where a license to do any act which without such license would create a forfeiture, or give a right to re-enter under a condition or power reserved in a lease, is given to a lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant, or to the actual assignment, under-lease or other matter thereby specifically authorized to be done, but shall not prevent a proceeding for any subsequent breach unless otherwise specified in such license, and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made dispunishable of such license, in the same manner as if such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done.

**16.** Where in a lease there is a power or condition of re-entry on assigning or under-letting or doing any other specified act without license, and a license has been or is given to one of several lessees or co-owners to assign or under-let his share or interest, or to do any other act prohibited to be done without license, or has been or is given to a lessee or owner, or any one of several lessees or owners to assign or under-let part only of the property, or to do any other such act in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or owner or owners of the other shares or interest in the property, or by the lessee or owner of the rest of the property, over or in respect of such shares or interest or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

#### WAIVER OF COVENANT.

**17.** Where an actual waiver of the benefit of a covenant or condition in a lease, on the part of a lessor or his heirs, executors, administrators or assigns, is proved to have taken place in any one particular instance such actual waiver shall not be assumed or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears.

#### COVENANT TO PAY TAXES.

**18.—(1)** A covenant by a lessee for payment of taxes shall not be deemed to be an obligation to pay taxes assessed for local improvements, or drainage or irrigation rates.

**(2)** This section shall not apply to a lease made after the coming into force of this Act, in which it is otherwise specifically provided.

#### LENGTH OF NOTICE TO QUIT.

**19.** A week's notice to quit and a month's notice to quit, respectively, ending with the week or the month, shall be sufficient notice to determine, respectively, a weekly or monthly tenancy.

#### DISTRESS.

**20.** Every person may have the like remedy by distress, and by impounding and selling the property distrained in cases of rent seck, as in the case of rent reserved upon lease.

**21.** A person having any rent due and in arrear, upon any lease for life or lives, or for years, or at will, ended or determined, may distrain for such arrears, after the determination of the lease, in the same manner as he might have done if the lease had not been ended or determined, if such distress is made within six months after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due.

**22.** A person entitled to any 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 such rent or land depended as he might have done if the person by whose death the estate in such rent or land determined had continued in life.

**23.** Distress, whether for a debt due to the Crown or to any person, shall be reasonable.

PROPERTY LIABLE TO DISTRESS.

**24.** A person having rent due and in arrear upon any demise, lease or contract may seize and secure any sheaves or cocks of grain, or grain loose, or in the straw, or hay, lying or being in any barn or granary or otherwise upon any part of the land charged with such rent, and may lock up or detain the same, in the place where the same is found, for or in the nature of a distress until the same is replevied; and in default of the same being replevied, may sell the same after appraisement thereof to be made; but such grain or hay so distrained shall not be removed by the person distraining, to the damage of the owner thereof, out of the place where the same is found and seized, but shall be kept there, as impounded, until it is replevied or sold in default of replevying.

**25.—(1)** A landlord may take and seize, as a distress for any arrears of rent, any cattle or live stock of his tenant feeding or pasturing upon any highway, or on any way belonging to the demised premises or any part thereof.

**(2)** Subject to the provisions of subsection (4), a landlord may take and seize standing crops as a distress for arrears of rent, and may cut, gather, make, cure, carry and lay up the same, when ripe, in the barns or other proper place on the demised premises, and if there is no barn or proper place on the demised premises then in any other barn or proper place which the landlord hires or otherwise procures for that purpose as near as may be to the premises, and may in convenient time appraise, sell or otherwise dispose of the same towards satisfaction for the rent for which such distress is made and of the charges of such distress,



appraisement and sale in the same manner as other goods and chattels may be seized, distrained and disposed of, and the appraisement thereof shall be taken when cut, gathered, cured and made and not before.

(3) Notice of the place where the goods and chattels so distrained are lodged or deposited shall, within one week after the lodging or depositing thereof, be given to the tenant or left at his last place of abode.

(4) If after a distress of standing crops so taken for arrears of rent, and at any time before the same are ripe and cut, cured or gathered, the tenant pays to the landlord for whom the distress is taken the whole rent then in arrear, with the full costs and charges of making such distress and occasioned thereby, then, upon such payment or lawful tender thereof, the same and every part thereof shall cease, and the standing crops so distrained shall be delivered up to the tenant.

(5) Where standing crops are distrained for rent they may, at the option of the landlord, be advertised and sold in the same manner as other goods; and it shall not be necessary for the landlord to reap, thresh, gather or otherwise market the same.

(6) Any person purchasing standing crops at such sale shall be liable for the rent of the land upon which the same are standing at the time of the sale, and until the same are removed, unless the rent has been paid or has been collected by the landlord, or has been otherwise satisfied, and the rent shall, as nearly as may be, be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land, and to the time during which the purchaser occupied it.

#### EXEMPTIONS FROM DISTRESS.

**26.**—(1) The goods and chattels exempt from seizure under execution shall not be liable to seizure by distress by a landlord for rent, except as hereinafter provided.

(2) In the case of a monthly tenancy, the exemption shall not apply to two months' arrears of rent.

(3) The person claiming such exemption shall select and point out the goods and chattels which he claims to be exempt.

**27.**—(1) A landlord shall not distrain for rent on the goods and chattels of any person except the tenant or person who is liable for the rent, although the same are found on the premises; but this restriction shall not apply in favor of a person claiming title under an execution against the tenant, or in favor of a person whose title is derived by purchase, gift, transfer or assignment from the tenant, whether abso-

lute or in trust, or by way of mortgage or otherwise, nor to the interest of the tenant in any goods or chattels on the premises in the possession of the tenant under a contract for purchase, or by which he may or is to become the owner thereof upon performance of any condition, nor where goods or chattels have been exchanged between tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of the right of distress by the landlord, nor shall the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant or by any other relative of his, if such other relative lives on the premises as a member of the tenant's family, or by any person whose title is derived by purchase, gift, transfer, or assignment from any relative to whom such restriction does not apply.

(2) "Tenant" in this section shall include a sub-tenant and the assigns of a tenant and any person in actual occupation of the premises under or with the assent of the tenant during the currency of the lease, or while the rent is due or in arrear, whether or not he has attorned to or become the tenant of the landlord.

**28.**—(1) A tenant may set off against the rent due a debt due to him by the landlord.

(2) Notice of the claim of set-off, form A, may be given before or after the seizure.

(3) When the notice is given the landlord shall be entitled to distrain, or to proceed with the distress, only for the balance of the rent, after deducting any debt justly due by him to the tenant which is mentioned in the notice.

**29.**—(1) Service of notices under sections 19 and 21 shall be made either personally or by leaving the same with a grown-up person in and apparently residing on the premises occupied by the person to be served.

(2) If the tenant cannot be found and his place of abode is not known, or admission thereto cannot be obtained, the posting up of the notice on some conspicuous part of the premises shall be good service.

**30.** No proceeding under the next preceding two sections shall be rendered invalid by any defect in form.

#### WHERE DISTRESS MAY BE TAKEN.

**31.** Save as is hereinafter provided, goods or chattels which 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.

## FRAUDULENT REMOVAL.

**32.**—(1) Where any tenant, for life or lives, term of years, at will, sufferance or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is reserved, due or made payable, fraudulently or clandestinely conveys away, or carries off or from such premises his goods or chattels to prevent the landlord from distraining the same for arrears of rent so reserved, due or made payable the landlord or any person by him for that purpose lawfully empowered, may within thirty days next ensuing such conveying away or carrying off, take and seize such goods and chattels wherever the same are found, as a distress for such arrears of rent, and the same sell or otherwise dispose of in such manner as if such goods and chattels had actually been distrained by the landlord upon such premises for such arrears of rent.

(2) No landlord or other person entitled to such arrears of rent shall take or seize, as a distress for the same, any such goods or chattels which have been sold in good faith and for a valuable consideration, before such seizure made, to any person not privy to such fraud.

**33.** Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant, his servant, or agent, or other person aiding or assisting therein, are or are believed to be in any house, barn, stable, outhouse, yard, close or place, locked up, fastened, or otherwise secured so as to prevent them from being taken or seized as a distress for arrears of rent, the landlord or his agent may take and seize, as a distress for rent, such goods and chattels, first calling to his assistance a constable or peace-officer who is hereby required to aid and assist therein, and in case of a dwelling-house, oath being also first made of a reasonable ground to believe that such goods or chattels are therein, and, in the day time, break open and enter into such house, barn, stable, outhouse, yard, close or place and take and seize such goods and chattels for the arrears of rent as he might have done if they were in an open field or place upon the premises from which they were so conveyed or taken away.

**34.** If a tenant so fraudulently removes, conveys away or carries off his goods or chattels, or if any person wilfully or knowingly aids or assists him in so doing, or in concealing the same, every person so offending shall forfeit and pay to the landlord double the value of such goods, to be recoverable by action in any Court of competent jurisdiction.

## IMPOUNDING DISTRESS.

**35.** Any person lawfully taking any distress for any kind of rent may impound, or otherwise secure the distress so made, in such place or on such part of the premises chargeable with the rent as is most fit and convenient for that purpose, and may appraise, sell and dispose of the same upon the premises; and it shall be lawful for any person to come and go to and from such place or part of the premises where any distress for rent is so impounded and secured to view, appraise and buy, and to carry off or remove the same on account of the purchaser thereof.

## POUND BREACH, OR RESCUE.

**36.** Upon any pound breach or rescue of goods or chattels distrained for rent the person offending, or the owner of the goods distrained, in case the same are afterwards found to come to his use or possession, shall forfeit to the person aggrieved twenty dollars in addition to the damages sustained by him.

## SALE OF GOODS DISTRAINED.

**37.** Where any goods or chattels are distrained for any rent reserved and due upon any demise, lease or contract, and the tenant or owner of them does not, within five days next after such distress taken and notice thereof, with the cause of such taking, left at the dwelling-house or other most conspicuous place on the premises charged with the rent distrained for, replevy the same, then after such distress and notice and the expiration of such five days, the person distraining shall cause such goods and chattels so distrained to be appraised by two appraisers, who shall first be sworn to appraise the same truly, according to the best of their understandings, a memorandum of which oath is to be indorsed on the inventory, and after such appraisement the person so distraining may lawfully sell the goods and chattels so distrained for the best price which can be got for the same towards satisfaction of the rent for which the same were distrained and of the charges of such distress, appraisement and sale, and shall hold the overplus, if any, for the owner's use and pay the same over to him on demand.

## WRONGFUL OR IRREGULAR DISTRESS.

**38.** Where any distress is made for any kind of rent, justly due, and any irregularity or unlawful act shall afterwards be done by the person distraining, or by his agent, or if there has been an omission to make the appraisement under oath, the distress itself shall not be therefore deemed to be unlawful, nor the person making it be deemed a trespasser *ab initio*, but the person aggrieved by such unlawful act or irregularity may recover by action full satisfaction for the special damage sustained thereby.

**39.**—(1) A distrainer who takes an excessive distress or takes a distress wrongfully, shall be liable in damages to the owner of the goods or chattels distrained.

(2) Where a distress and sale are made for rent pretended to be in arrear and due when, in truth, no rent is in arrear or due to the person distraining, or to the person in whose name or right such distress is taken, the owner of the goods or chattels distrained or sold, his executors or administrators shall be entitled, by action to be brought against the person so distraining, to recover full satisfaction for the damage sustained by the distress and sale.

**GOODS TAKEN IN EXECUTION NOT TO BE REMOVED WITHOUT  
PAYMENT OF RENT.**

**40.**—(1) Goods or chattels lying or being in or upon any land leased for life or lives, or term of years, at will, or otherwise, shall not be liable to be taken by virtue of any execution issued out of the Supreme Court or out of a District Court on any pretence whatsoever, unless the party at whose suit the execution is sued out before the removal of such goods or chattels from the premises by virtue of such execution pays to the landlord or his bailiff all money due for rent of the premises at the time of the taking of such goods or chattels by virtue of such execution if the arrears of rent do not amount to more than one year's rent.

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

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

**CROPS SEIZED UNDER EXECUTION.**

**41.** Where all or any part of the standing crops of the tenant of any land is seized and sold by any sheriff or other officer by virtue of any writ of execution such crops, so long as the same remain on the land in default of sufficient distress of the goods and chattels of the tenant, shall be liable for the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, and that notwithstanding any bargain and sale or assignment which may have been made or executed of such crops by any such sheriff or other officer.

## EXECUTORS OR ADMINISTRATORS.

**42.** The executors or administrators of a landlord may distrain for the arrears of the rent due to such landlord in his lifetime, and may sue for the same in like manner as such landlord might have done if living, and the powers and provisions contained in this Act relating to distresses for rent shall be applicable to the distresses so made.

## BANKRUPTCY OF TENANT.

**43.** 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.

**44.** 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.

**45.** 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.

**46.** 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.

**47.** 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.

**48.** 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.

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

**50.—(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.

**51.** 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 50 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.

**52.** 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 50 hereof in case of an assignment of lease made by a trustee.

**53.** 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.

**54.** The provisions of section 50 hereof shall be read subject to the provisions of sections 52 and 53 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 interests of the lessee's estate and notwithstanding the provisions of sections 52 and 53 hereof, a prior opportunity to acquire, pursuant to section 50 hereof, an assignment of the head lease.

**55.** Sections 43 to 55 inclusive are to be 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*.



## LIABILITY OF TENANTS OVERHOLDING.

**56.** Where a tenant for any term, for life, lives or years, or other person who comes into possession of any land, by, from or under, or by collusion with such tenant, wilfully holds over such land or any part thereof after the determination of such term, and after notice in writing given for delivering the possession thereof by his landlord or the person to whom the remainder or reversion of such land belongs or his agent thereunto lawfully authorized, such tenant or other person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to such person or his assigns at the rate of double the yearly value of the land so detained for so long as the same is detained, to be recovered by action in any court of competent jurisdiction, against the recovering of which penalty there shall be no relief.

**57.** Where a tenant gives notice of his intention to quit the premises by him holden at a time mentioned in such notice and does not accordingly deliver up the possession thereof at the time mentioned in such notice, the tenant shall from henceforward pay to the landlord double the rent or sum which he should otherwise have paid, to be levied, sued for and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid while such tenant continues in possession.

## OVERHOLDING TENANTS.

**58.—(1)** Where a tenant after his lease or right of occupation, whether created by writing or by parol, has expired or been determined, either by the landlord or by the tenant, by a notice to quit or by a notice pursuant to a proviso in any lease or agreement in that behalf, or has been determined by any other act whereby tenancy or right of occupancy may be determined or put an end to, wrongfully refuses or neglects to go out of possession of the land demised to him, or which he has been permitted to occupy, his landlord may apply upon affidavit to the judge of the District Court of the district in which the land lies to make the inquiry hereinafter provided for.

(2) The Judge shall in writing appoint a time and place at which he will inquire and determine whether the person complained of was tenant to the complainant for a term or period which has expired or has been determined by a notice to quit or for default in payment of rent or otherwise, and whether the tenant holds the possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses to go out of possession.

(3) Notice in writing of the time and place appointed, stating briefly the principal facts alleged by the complainant as entitling him to possession, shall be served upon the tenant or left at his place of abode at least three days before the day so appointed, if the place appointed is not more than twenty miles from the tenant's place of abode, and one day in addition for every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles, to which notice shall be annexed a copy of the judge's appointment and of the affidavit on which it was obtained, and of the documents to be used upon the application.

**59.** The proceedings shall be intituled in the District Court of the judicial district in which the land lies, and 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."

**60.**—(1) If 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 and that the right to possession may properly be determined in a proceeding under this Act, may order a writ of possession, directed to the sheriff of the district in which the land lies, to be issued, commanding him forthwith to place the landlord in possession of the land.

(2) If the tenant appears, the judge shall, in a summary manner, hear the parties and their witnesses, and examine into the matter, and if it appears to the judge that the tenant wrongfully holds against the right of the landlord and that the right to possession may properly be determined in a proceeding under this Act, he may order the issue of the writ.

**61.**—(1) An appeal shall lie to a judge of the Supreme Court sitting in Chambers from the order of the judge granting or refusing a writ of possession.

(2) When any question of fact is involved in the appeal, the evidence taken by the judge appealed from bearing upon the question shall, subject to any special order, be brought before the judge who hears the appeal as follows:

- (a) as to any evidence taken by affidavit, by the production of copies of the affidavit;
- (b) as to any evidence given orally, by the production of the judge's or stenographer's notes, or such other material as the judge hearing the appeal deems expedient.

**62.**—(1) If the judge hearing the appeal is of opinion that the right to possession should not be determined in a proceeding under this Act, he may discharge the order, granting or refusing the writ, and the landlord may in that case proceed by action for the recovery of possession.

(2) When the order is discharged, if possession has been given to the landlord under a writ of possession, the judge may direct that possession be restored to the tenant.

(3) If the judge hearing the application finds that the tenant wrongfully holds against the right of the landlord but, nevertheless, is of opinion that the right to possession should not be determined in a proceeding under this Act, he may refuse the writ and the landlord may in that case proceed by action for the recovery of possession.

#### ATTORNMENT.

**63.** Every attornment of a tenant of any land to a stranger claiming title to the estate of his landlord shall be absolutely null and void; and the possession of his landlord shall not be deemed to be changed, altered or affected by any such attornment; but nothing herein shall vacate or affect any attornment made pursuant to and in consequence of a judgment or order of a court, or made with the privity and consent of the landlord, or to any mortgagee after the mortgage has become forfeited.

**64.**—(1) Every grant or conveyance of any rent or of the reversion or remainder of any land shall be good and effectual without any attornment of the tenant of the land out of which such rent issues, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

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

#### RENEWALS—CHIEF LEASE MAY BE RENEWED WITHOUT SURRENDER OF UNDER-LEASE.

**65.**—(1) Where a lease is duly surrendered in order to be renewed, and a new lease is made and executed by the chief landlord, the new lease shall, without a surrender of all or any of the under-leases, be as good and valid as if all the under-leases derived thereout had been likewise surrendered at or before the time of taking of such new lease.

(2) Every person in whom any estate for life, or lives, or for years, is from time to time vested by virtue of such new lease shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under-

lessees shall hold and enjoy the land in the respective under-leases comprised as if the original lease had been kept on foot and continued, and the chief landlord shall have and be entitled to such and the same remedy by distress or entry in and upon the land comprised in any such under-lease for the rents and duties reserved by such new lease, so far as the same do not exceed the rents and duties reserved in the lease out of which such under-lease was derived, as he would have had if such former lease had been still continued or as he would have had if the respective under-leases had been renewed under such new principal lease.

#### RENEWAL OF LEASE BY ABSENTEES.

**66.**—(1) Where any person who, in pursuance of any covenant or agreement in writing, if within Alberta and amenable to the process of the Supreme Court, might be compelled to execute any lease by way of renewal, is not within Alberta, or is not amenable to the process of the Court, the Court, upon the motion of any person entitled to such renewal, whether such 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 the same.

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

(3) In every such case it shall be in the discretion of the Court to direct an action to be brought to establish the right of the person seeking the renewal, and not to make the order for such new lease unless by the judgment to be made in such action, or until after it shall have been entered.

(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant or agreement unless the sum or sums of money, if any, which ought to be paid on such renewal and the things, if any, which ought to be performed in pursuance of such covenant or agreement by the tenant to be first paid or performed, and counterparts of every such new lease shall be duly executed by the tenant.

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

(6) The Court may order the cost and expenses of and relating to the applications, orders, directions, conveyances

and transfers, or any of them, to be paid and raised out of or from the land, or the rents in respect of which the same are respectively made, in such manner as the Court shall deem proper.

GENERAL PROVISIONS.

**67.** Section 5 of *The Distress Act*, being chapter 96 of the Revised Statutes of Alberta, 1922, is hereby repealed.

**68.** This Act shall come into force on

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SCHEDULE.

(*Section 28*).

FORM A.

NOTICE TO LANDLORDS.

Take notice that, under *The Landlord and Tenant Act*, 1924, I wish to set off against rent due by me to you, the debt which you owe to me on your promissory note for .....dated.....(*as the case may be*)

Dated this.....day of.....19...  
C.D., (*Tenant*).

No. 44.

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FOURTH SESSION  
FIFTH LEGISLATURE  
14 GEORGE V  
1924

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**BILL**

An Act respecting the Law of Land-  
lord and Tenant.

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. BROWNLEE.

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