

12 GEO. VI. No. 31, 1948. *Landlord and Tenant Act.*

LANDLORD AND TENANT.

- (1) *Landlord and Tenant Act of 1948* .. 12 *Geo. VI. No. 31*
- (2) *Landlord and Tenant Act Amendment Act of 1948* 12 *Geo. VI. No. 46*
- (3) *Landlord and Tenant Act Amendment Act of 1949* 13 *Geo. VI. No. 31*

An Act Relating to the Determination of Fair Rents of Dwelling-houses and the Recovery of Possession of Premises, and for other purposes.

12 GEO. VI.
No. 31.
THE
LANDLORD
AND TENANT
ACT OF 1948.

[ASSENTED TO 1ST SEPTEMBER, 1948.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

PART I.—
PRELIMINARY.

1. This Act may be cited as "*The Landlord and Tenant Act of 1948.*"

Short title
and
construction.

2. This Act and every Order in Council and regulation made under this Act shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment hereof or provision of any such Order in Council or regulation would but for this section have been construed as being in excess of that power it shall nevertheless be a valid enactment or provision to the extent to which it is not in excess of that power.

Construction
of Act.

3. This Act is divided into Parts, as follows:—

Parts of Act.

PART I.—PRELIMINARY ;

PART II.—RENT CONTROL—

Division I.—The Court ;

Division II.—Fair Rents ;

Division III.—General ;

PART III.—RECOVERY OF POSSESSION ;

PART IV.—MISCELLANEOUS.

Crown, &c.,
not bound.**4.** This Act shall not bind—

- (a) The Crown in right of the Commonwealth or of the State ; or
- (b) The Queensland Housing Commission ; or
- (c) Any Local Authority in relation to dwelling-houses provided by that Local Authority as a function of Local Government.

Repeal of
10 Geo. V.
No. 31 ;
2 Geo. VI.
No. 26.**5.** **“ The Fair Rents Acts, 1920 to 1938,”* are hereby repealed.

Savings.

6. (1.) In this section the term “ the Commonwealth Regulations ” means the National Security (Landlord and Tenant) Regulations of the Commonwealth, and the term “ the Controller ” means the Commonwealth Rent Controller appointed under those regulations and any delegate appointed by him to exercise in Queensland any of his powers and functions under those regulations, and the term “ expiration,” where used with reference to the Commonwealth Regulations, means ended by repeal or revocation, or by effluxion of time, or otherwise howsoever.

(2.) Any determination of the fair rent of any dwelling-house (or of any dwelling-house and goods leased therewith) made under and in force at (or which would, if those regulations had not expired, have come into force on any date after) the expiration of the Commonwealth Regulations shall continue in force under this Act as if it were a determination made and brought into force hereunder until that fair rent is increased or decreased by a determination under this Act.

The provisions of this subsection shall apply as respects a determination by the Controller—

- (i.) Mentioned in paragraph (a) of subsection four of this section in every case where the right to have the appeal against that determination heard and determined under this Act is abandoned ; or
- (ii.) Mentioned in paragraph (c) of subsection four of this section in every case where the right to proceed under this Act as provided in the said paragraph (c) is not duly exercised.

* 10 G. 5 No. 31 and amending Act.

1948.

Landlord and Tenant Act.

(3.) The provisions of Part II. of this Act relating to the determination of fair rents and any provisions of this Act incidental to those provisions shall extend to and with respect to all dwelling-houses (and to all goods leased therewith) the subject of determinations under the Commonwealth Regulations continued in force under subsection two of this section.

(4.) (a) Any appeal against a determination by the Controller of the fair rent of any dwelling-house (or of any dwelling-house and goods leased therewith) under the Commonwealth Regulations commenced before, and pending at the expiration of those regulations, may be heard and determined under this Act as if such appeal were an application under this Act for a determination by the Court having jurisdiction to make a determination under this Act in respect of that dwelling-house (or dwelling-house and goods).

(b) Any application to the Controller to determine the fair rent of any dwelling-house (or of any dwelling-house and goods leased therewith) under the Commonwealth Regulations made before, and pending at the expiration of, those regulations may be continued under this Act by the applicant as if it were an application by him for a determination hereunder and may be heard and determined by the Court having jurisdiction to make a determination under this Act of the fair rent of that dwelling-house (or dwelling-house and goods leased therewith).

(c) Where an appeal against a determination by the Controller of the fair rent of any dwelling-house (or of any dwelling-house and goods leased therewith) under the Commonwealth Regulations had not been commenced before the expiration of those Regulations, and the period allowed under those Regulations for making such appeal had not expired at the expiration thereof, any person who had a right to make that appeal under the Commonwealth Regulations may, within fourteen days after the passing of this Act, apply hereunder for a determination of the fair rent of the dwelling-house (or dwelling-house and goods) concerned by the Court having jurisdiction in the matter under this Act.

(5.) For the purposes of subsection four of this section—

(a) The Under Secretary, Department of Justice, shall obtain or cause to be obtained from the

Controller a list of all applications and appeals specified in subsection four of this section, and all such applications, and all forms, notices, declarations, and other documents relating to such applications or appeals which are in the custody or under the control of the Controller ;

- (b) The said Under Secretary shall inform or cause to be informed in writing the registrar of the Court having jurisdiction to determine under this Act the fair rent of any dwelling-house (or dwelling-house and goods leased therewith) the subject of any such application or appeal of that application or appeal and shall furnish or cause to be furnished to that registrar the relevant application and all forms, notices, declarations, and other documents relating to that application or appeal received from the Controller ;
- (c) The said Under Secretary shall make arrangements with the Clerk of every Fair Rents Board under and within the meaning of the Commonwealth Regulations for the transfer to and filing in the office of the registrar of the Court having jurisdiction to determine under this Act the fair rent of any dwelling-house (or dwelling-house and goods leased therewith) the subject of any such appeal of any notice, form, declaration, or other document relating to that appeal which is in the custody or under the control of that Clerk ;
- (d) The registrar shall notify the applicant or appellant in writing that he is entitled to prosecute the application or appeal by way of an application for a determination by the Court of which he is such registrar (specifying that Court) of the fair rent of the dwelling-house (or dwelling-house and goods) the subject of the application or appeal.

The registrar shall in such notice require the applicant or appellant to inform the registrar in writing, within seven days after the date of the notice (or if the registrar is of the opinion that the circumstances are

1948.

*Landlord and Tenant Act.*PART I.—
PRELIMINARY.

such that a period longer than seven days should be allowed, within such longer period as is specified in the notice), whether he elects to prosecute or to withdraw the application or appeal ;

- (e) If the applicant or appellant fails to inform the registrar as required by the notice within the time specified therein, or duly informs the registrar that he elects to withdraw the appeal or application, the appeal or application shall be deemed to have been abandoned by the applicant or appellant and the registrar shall give to all other persons who according to the records in his possession have, before the expiration of the Commonwealth Regulations, been served with or given notice of the appeal or application a further notice of abandonment as aforesaid ;
- (f) An application or appeal abandoned as aforesaid shall be deemed not to be, or ever to have been, an application for a determination under this Act of the fair rent of the dwelling-house (or dwelling-house and goods) the subject thereof ;
- (g) If the applicant or appellant duly informs the registrar that he elects to prosecute the application or appeal, the matter shall, subject as hereinafter provided, proceed as if it were an application by him for a determination under this Act of the fair rent of the dwelling-house (or dwelling-house and goods) the subject of the application or appeal.

In that case the application for such determination under this Act shall be deemed to be made upon the date upon which the registrar receives such information :

Provided that—

- (i.) All notices, forms, declarations, and other documents in writing relating to the application or appeal under the Commonwealth Regulations which have been received by the registrar (excepting notices of such application or appeal given to or

- served upon other persons who are entitled to be parties to the proceedings before the Court upon the determination) shall, as far as may be, be deemed to relate to the matter of that determination under this Act and shall have force accordingly ;
- (ii.) The prescribed notice of such application under this Act shall be served upon all persons other than the applicant or appellant who are entitled thereto, and every such person who desires to appear as a party upon the prosecution of the application for the determination under this Act shall give notice as prescribed of such appearance by him ;
- (iii.) Except where any notice, form, declaration, or other document (not being notices required under paragraph (ii.) of this proviso) specified in paragraph (i.) of this proviso is, or is to the like effect as, any notice, form, declaration, or other document required under this Act to be given or served by, to, or upon the registrar, or the applicant or appellant, or any other person, in relation to the application under this Act, the registrar, or the appellant or applicant, or that other person, as the case may be, shall serve or give every notice, form, declaration, or other document required in his case under this Act ;
- (iv.) Save in so far as is necessary to give effect to the foregoing provisions of this paragraph (g) (including this proviso), those provisions shall be read so as not to limit or prejudice any other provision of this Act relating to any application or appeal specified in subsection four of this section ;
- (h) Until revoked, amended, altered, or otherwise modified under this Act the Rules for regulating the procedure of Fair Rents Boards made by the Governor in Council and published in the *Gazette* of the twenty-seventh day of November, one thousand nine hundred and forty-three, shall be deemed to

1948.

*Landlord and Tenant Act.*PART I.—
PRELIMINARY.

be Rules made under this Act for regulating the procedure of Courts having jurisdiction under Part II. hereof, and, subject to this Act, such Rules shall apply accordingly.

In so applying such Rules the following terms shall, unless the context of such Rules otherwise indicates or requires, have the meanings respectively assigned to them hereunder in substitution for the meanings assigned to or which those terms bear under the said Rules, that is to say—

“ Clerk ”—Registrar.

“ Fair Rents Board ” or “ Board ”—A Court having jurisdiction under Part II. of this Act ;

“ The Act ”—This Act.

“ The Regulations ”—This Act.

In printing supplies of any form under the said Rules for the purposes of this Act, the caption thereof and any term appearing in any other printed matter therein may be altered so as to conform to the requirements of this Act and of the said Rules in their application under this Act.

Alterations as aforesaid may also be made in any form under the said Rules printed before the passing of this Act and available for the purposes of this Act ;

- (i) Where any proceeding relating to the termination of tenancies of prescribed premises, the recovery of possession of prescribed premises, and the ejectment of lessees from prescribed premises, has been commenced before, or is pending at the expiration of the Commonwealth Regulations and is continued after the passing of this Act, the provisions of Part III. of this Act shall be observed in relation to such continuance and every such proceeding shall be carried on and prosecuted accordingly but so that this paragraph shall not require any matter or thing done in relation thereto under any provision of the Commonwealth Regulations to be again done under the corresponding provision of this Act.

Any matter or thing done in continuation of any such proceeding, or for the purpose of commencing or continuing any like proceeding, during the period from the expiration of the Commonwealth Regulations to the passing of this Act, which, if done after the passing of this Act, would contravene or be not in compliance with any provision of this Act shall be void and of no legal effect whatsoever.

Meaning of terms.

7. (1.) In this Act, unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say :—

Application.

“ Application ”—An application to the Court for a determination under this Act ;

Determination.

“ Determination ”—A determination of the fair rent of any dwelling-house, or of any dwelling-house together with goods leased therewith, made or continued in force under this Act ;

Dwelling-house.

“ Dwelling-house ”—Any premises (including shared accommodation) leased for the purposes of residence and includes—

- (a) The premises of any lodging-house or boarding-house ; and
- (b) Holiday premises ; and
- (c) Any part of any premises which is leased separately for the purposes of residence, but does not include—
- (d) Any premises part of which is used as a shop, but this paragraph (d) shall be read so that where part of any premises is used as a shop, every other part of that premises which is leased separately for the purposes of residence (including shared accommodation), or for a lodging-house or boarding-house, under a tenancy which does not include that shop shall be and be deemed to be a dwelling-house ; or
- (e) Any licensed premises under and within the meaning of **“ The Liquor Acts, 1912 to 1947 ”* ; or

1948.

*Landlord and Tenant Act.*PART I.—
PRELIMINARY.

- (f) The premises of any registered club or exempted club under and within the meaning of **The Liquor Acts, 1912 to 1947*”; or
- (g) Any premises which are for the time being used, or which are ordinarily used, as a grazing area, farm, orchard, market garden, dairy farm, poultry farm, pig farm, or bee farm :

The term includes any part of, and any land or appurtenances leased with or with any part of, any premises which is or are a dwelling-house within the meaning of the foregoing provisions of this definition ;

“ Holiday premises ”—Any dwelling-house ^{Holiday} which— ^{premises.}

- (a) During the period commenced on the first day of March, one thousand nine hundred and forty-five, and ending on the date of the passing of this Act has ordinarily been leased for holiday purposes only ; and
- (b) Has not at any time during that period been leased to or occupied by any lessee for a continuous period exceeding three months ; and
- (c) Was not on the date of the passing of this Act leased for purposes other than holiday purposes—
but does not include any such premises which at any time after the date of the passing of this Act—
- (i.) Are leased for purposes other than holiday purposes ; or
- (ii.) Are leased to or occupied by any lessee for a continuous period exceeding three months ;

“ Lease ”—Includes every contract for the letting ^{Lease.} of any dwelling-house, whether the contract is express or implied, or is made orally, in writing or by deed, and includes a contract for the letting of a dwelling-house together

with goods, but does not include any lease arising under an attornment clause in a mortgage or in an agreement for the sale and purchase of land ;

Lessor.
Lessee.

“ Lessor ” and “ lessee ”—The parties to a lease, or their respective successors in title, and include—

(a) A mesne lessor and a mesne lessee ;

(b) A sublessor and sublessee ; and

(c) In respect of premises which are subject to a mortgage, a mortgagee who enters or has entered into possession of the premises under the mortgage and a person who was the lessee of the premises under the mortgage immediately prior to the mortgagee entering into possession,

respectively ;

Local
Authority.

“ Local Authority ”—Includes Brisbane City Council and any Joint Local Authority ;

Minister.

“ Minister ”—The Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act ;

Part.

“ Part ”—Part of this Act ;

Person.

“ Person ”—Includes any body corporate ;

Prescribed.

“ Prescribed ”—Prescribed by this Act ;

Prescribed
premises.

“ Prescribed premises ”—Any premises, other than—

(a) Premises which are for the time being used, or which are ordinarily used, as a grazing area, farm, orchard, market garden, dairy farm, poultry farm, pig farm, or bee farm ; or

(b) Any licensed premises under and within the meaning of * “ *The Liquor Acts, 1912 to 1947* ” ; or

(c) The premises of any registered club or exempted club under and within the meaning of * “ *The Liquor Acts, 1912 to 1947* ” ; or

(d) Holiday premises ; or

1948.

*Landlord and Tenant Act.*PART I.—
PRELIMINARY.

- (e) Any premises, or the premises included in any class of premises, declared by the Governor in Council by Order in Council to be excluded from the operation of this Act,
and includes any part of any premises and any land or appurtenances leased with any premises.
- “ Rates ”—Includes any rates or charges made ^{Rates} or levied by any Local Authority or other local governing body ;
- “ Registrar ”—The registrar of a Fair Rents ^{Registrar.} Court under this Act ;
- “ Regulations ”—Regulations made under this ^{Regulations.} Act ;
- “ Rent ”—The actual rent payable under a lease, ^{Rent.} and includes—
- (a) The value to the lessor of any covenants, conditions, or other provisions of, or relating to, the lease to be performed by the lessee, other than covenants, conditions, and provisions usually entered into by a lessee ; and
- (b) Any rates or taxes payable by a lessee in respect of any dwelling-house, other than excess water rates,
and where, in any lease—
- (c) It is provided that a reduced amount, as rent, shall be accepted by the lessor upon any condition to be performed by the lessee, that reduced amount shall be deemed to be the rent payable under the lease ; and
- (d) Any rebate, discount, allowance, or other reduction is provided for, the amount payable after each such reduction is made shall be deemed to be the rent payable under the lease ;
- “ Rules ”—Rules made under this Act ; ^{Rules.}
- “ Shared accommodation ”—Any premises leased, ^{Shared accommodation.} or intended to be leased, for the purpose of residence and forming part of other premises, but does not include any premises forming a complete residence in themselves ;

PART I.—
PRELIMINARY.*Landlord and Tenant Act.* 12 GEO. VI. No. 31.

- Tax.** “Tax”—Includes any tax, whether on land or on income derived from land, imposed by any law of the Commonwealth or of the State ;
- This Act.** “This Act”—This Act and all Orders in Council, rules, and regulations hereunder.
- Lessee.** (2.) For the purposes of this Act “lessee” includes a person who remains in possession of premises after the termination of his lease of the premises, and “lessor” has a corresponding meaning.
- Lessor.**
- Rent.** (3.) Where the lessor of any dwelling-house supplies or provides any service in connection with the premises and a separate charge is made for that service, the amount charged shall for the purposes of this Act be deemed to form part of the rent payable under the lease.
- (4.) The fact that the lessor lives in any dwelling-house (including any shared accommodation) shall not raise a presumption that the lessee is a lodger rather than a tenant.

PART II.—
RENT
CONTROL—
*Division I.—
The Court.*

PART II.—RENT CONTROL.

*Division I.—The Court.***Fair Rents
Court.**

8. (1.) Subject as hereinafter in this Part provided, for the purposes of determinations and applications under this Part the term “Court” means a court of petty sessions for the district within which (or within twenty miles of the boundary of which) the premises the subject of the determination or application are situated, sitting as a Fair Rents Court.

**Constitution
of the Court.**

(2.) The Court shall be constituted by a stipendiary magistrate or acting stipendiary magistrate sitting alone except in the following cases, that is to say :—

- (i.) Where the Governor in Council is of the opinion that this Part can be better or more effectively administered in any petty sessions district or group of two or more such districts by the appointment of a particular stipendiary magistrate, acting stipendiary magistrate, or justice of the peace qualified for appointment as a stipendiary magistrate to constitute the Court, the Governor in Council may, by Order in Council published in the *Gazette*, make such appointment, and while such

1948.

Landlord and Tenant Act.

PART II.—
RENT
CONTROL—

Division I.—
The Court.

appointment remains in force the Court for that district or for any district comprised in that group of districts shall be constituted by the person so appointed ;

- (ii.) Where there is no stipendiary magistrate or acting stipendiary magistrate available to constitute the Court at any place appointed for holding courts of petty sessions, the Governor in Council may, by Order in Council published in the *Gazette*, appoint a justice or justices of the peace to constitute the Court for that place, and while such appointment remains in force the justice or justices so appointed sitting in petty sessions may constitute the Court for that place.

(3.) Two or more Courts may sit concurrently at the same place for the more speedy disposal of business, and for the purpose of giving effect to the provisions of this subsection as respects any petty sessions district for which the Court is to be constituted by a person appointed under paragraph (i.) of subsection two of this section, two or more concurrent appointments may be made under that paragraph.

Two or more
Courts may
sit con-
currently at
same place.

(4.) The Court shall be a Court of Record.

The Court to
be a Court
of Record.

9. (1.) The clerk of petty sessions or acting clerk of petty sessions at every place appointed for holding courts of petty sessions shall, by virtue of his office as such, be the registrar of the Court for that place at all times during which a registrar appointed under subsection two of this section is not in office.

Registrar.

(2.) The Governor in Council may from time to time appoint a person other than the clerk of petty sessions at any place to be the registrar of the Court for that place.

Notice of every such appointment shall be published in the *Gazette*.

(3.) The clerk or other officer having custody of the books or other records relating to the valuations, rates, and other charges of a Local Authority shall allow the registrar to inspect and take copies of or extracts from such books and records, and shall not be entitled to charge any fee in respect of such inspection, copies, or extracts.

Inspection of
records of
Local
Authorities.

PART II.—
RENT
CONTROL—
Division I.—
The Court.
Rules.

Landlord and Tenant Act. 12 GEO. VI. No. 31,

10. (1.) The Governor in Council may from time to time, by Order in Council published in the *Gazette*, make all such rules as may be deemed necessary or convenient for regulating the procedure and practice of the Court and may from time to time in like manner revoke, amend, alter, add to, or otherwise modify any such rules.

(2.) Subject to this Act and to the rules made under subsection one of this section, the Court shall have and exercise all the ordinary powers of justices of the peace in petty sessions, and the practice and procedure of the Court shall, so far as is practicable, be regulated by **The Justices Acts, 1886 to 1948.*"

Jurisdiction
of the Court.

11. The jurisdiction of the Court shall be exclusive and every determination of the Court fixing the fair rent of any dwelling-house shall be final and conclusive and without appeal and no writ of prohibition or certiorari shall lie in respect thereof.

Appearances
before Fair
Rents Court.

12. (1.) Any person who is a party to proceedings under this Part or who may be affected by the result of any such proceedings may be represented by counsel, solicitor, or an agent who may examine witnesses and address the Court on that person's behalf.

(2.) (a) The fees or other remuneration which counsel, solicitor, or an agent may be allowed by the Court to charge and receive for or in respect of any matter or thing done by him in relation to proceedings under this Part, and the maximum amount of such fees or other remuneration, may be prescribed.

(b) It shall be unlawful for counsel, solicitor, or an agent to demand or receive any sum by way of a fee or remuneration for or in respect of any matter or thing done by him in relation to proceedings instituted under this Part unless that sum has been allowed by the Court.

(c) The Court shall not allow—

(i.) A sum for any fee or other remuneration in excess of the prescribed maximum, if any ; or

(ii.) (Where the regulations prescribe that fees or other remuneration shall not be charged or received by counsel, solicitor, or an agent

1948.

Landlord and Tenant Act.

PART II.—
RENT
CONTROL—
Division I.—
The Court.

except for or in relation to the matters and things set out in the regulations) a sum by way of a fee or other remuneration for any matter or thing not provided for in the regulations.

(3.) Any counsel, solicitor, or agent who unlawfully demands or receives any sum by way of a fee or remuneration for or in respect of any matter or thing done by him in relation to proceedings instituted under this Part shall be guilty of an offence against this Act.

(4.) Any such sum unlawfully received by counsel, solicitor, or an agent shall be recoverable in any court of competent jurisdiction as a debt from him by the person who made the payment, but the provisions of this subsection shall not affect his liability to punishment for an offence under subsection three of this section.

Division II.—Fair Rents.

Division II.—
Fair Rents.

13. (1.) Notwithstanding any term, condition, or covenant in any lease in force at any time after the passing of this Act the rent payable by the lessee of any dwelling-house (or of any dwelling-house together with goods) in respect of any period after the passing of this Act shall, unless the rent is fixed by a determination of the Court under this Part of this Act, not exceed the following rent, that is to say:—

- (i.) If the dwelling-house was leased at the date upon which the National Security (Landlord and Tenant) Regulations of the Commonwealth ceased to be in force, the rent shall not exceed the rent lawfully payable in respect thereof under those regulations immediately prior to that date (including the rent of any goods then leased therewith and the charge for any service then provided in connection with the lease); or
- (ii.) If the dwelling-house was not leased at the date upon which the National Security (Landlord and Tenant) Regulations of the Commonwealth ceased to be in force, the rent shall not exceed the rent lawfully payable in respect thereof under the lease whereby the dwelling-house shall be or shall have been

first let after that date (including the rent of any goods then leased therewith and the charge for any service then provided in connection with that lease).

(2.) Until any rent fixed by virtue of subsection one of this section is increased or decreased by a determination, the rent so fixed shall be the fair rent of the dwelling-house (or of the dwelling-house together with goods leased therewith) in respect of which it is so fixed, notwithstanding any alterations, additions, repairs, or renovations to the dwelling-house (whether structural or otherwise) or any change in ownership or tenancy of the dwelling-house (or, as the case may be, of the dwelling-house and the goods leased therewith), or in the nature or value of the services supplied by the lessor or in the goods leased with the dwelling-house.

(3.) Nothing in this section shall affect the operation of any determination.

(4.) Where the rent of any dwelling-house (or of any dwelling-house together with goods leased therewith) is fixed by virtue of this section, the lessee may, by notice in writing given to the lessor, require him to furnish to the lessee a statement in writing as to what is the rent so fixed as aforesaid.

If the lessor fails within fourteen days to furnish a statement as aforesaid he shall be guilty of an offence and liable to a penalty of not more than twenty pounds, and if the lessor furnishes a statement as aforesaid which is false in any material particular, he shall be guilty of an offence and liable to a penalty of not more than fifty pounds.

Where any lessor is a body (whether corporate or unincorporate) any statement which that lessor is required to furnish under this subsection shall be furnished by some officer or member of the body having knowledge of the facts.

Application
to determine
rent.

14. (1.) Subject to this Part an application for a determination may be made to the Court from time to time, by—

(a) The lessor ; or

(b) A lessee who has paid, or who has offered (either to the lessor personally or to the person to whom the rent is ordinarily paid)

1948.

*Landlord and Tenant Act.*PART II.—
RENT
CONTROL—*Division II.—
Fair Rents.*

the money payable for, all rent due and payable under the lease up to a date not earlier than fourteen days before the date of the application,

of any dwelling-house (or of any dwelling-house together with goods leased therewith).

(2.) The application shall be made to the registrar in the form prescribed by the rules.

(3.) The applicant shall have the carriage of the proceedings upon the application before the Court.

(4.) Each of the following persons (including that one of them who is the applicant) shall be entitled to be a party to the proceedings before the Court upon an application under this section for a determination in respect of a dwelling-house (or of a dwelling-house together with goods leased therewith), namely :—

- (i.) The lessor ;
- (ii.) The lessee ;
- (iii.) (Where the applicant is a mesne lessor, a mesne lessee, sublessor, or sublessee) the superior lessor of the applicant ;
- (iv.) (Where a superior lessor who is entitled to be a party to the proceedings under paragraph (iii.) of this subsection is himself a lessee, a mesne lessee, or sublessee) his superior lessor ;
- (v.) (Where the dwelling-house is the subject of any mortgage) the mortgagee under that mortgage,

and every such person other than the applicant shall be entitled to notice of the application unless service upon him of such notice is dispensed with under the rules.

(5.) (a) The Court may upon the application of any person who is entitled under this Part to make, and who has made or who satisfies the Court that he intends to make, an application for a determination of the fair rent of any dwelling-house (or of any dwelling-house and goods leased therewith) or who is entitled to be a party to the proceedings upon any such application make an order authorising the applicant, or any person named in the order, or both the applicant and such person

When Court may authorise entry and inspection.

to enter upon that dwelling-house for the purpose of inspecting, or valuing, or inspecting and valuing the dwelling-house (or dwelling-house and goods).

(b) Any person who, upon production to him of an order under this subsection, prevents or obstructs or attempts to prevent or obstruct the entry upon a dwelling-house or the inspection or valuing of a dwelling-house (or dwelling-house and goods leased therewith) by the person or persons authorised by that order to make such entry, or inspection, or valuation shall be guilty of an offence against this Act.

Hearing and
determina-
tion of
application.

15. (1.) The Court shall hear the application for a determination and determine the fair rent of the dwelling-house.

(2.) (a) On the hearing of an application to determine the fair rent of a dwelling-house together with goods leased therewith the Court shall determine the fair rent of that dwelling-house irrespective of the goods, and may also, in its discretion, determine the fair rent of the goods.

(b) This Part of this Act shall apply and extend in relation to dwelling-houses together with goods leased therewith and any reference in this Part to a dwelling-house shall, so far as applicable, include a reference to goods leased therewith.

(3.) The Court may inspect any dwelling-house (together with goods, if any, leased therewith) in connection with the determination of the fair rent thereof.

(4.) The Court shall not allow costs :

Provided that this subsection shall not limit or restrict the power of the Court under this Part to allow counsel, solicitor, or an agent to charge and receive from his principal any sum by way of a fee or remuneration for or in respect of any matter or thing done by him in relation to proceedings under this Part.

(5.) On the hearing of the application the Court shall make a thorough investigation without regard to legal forms or solemnities and shall not be bound by any rules of evidence, but may inform itself in such manner as it thinks fit.

1948.

*Landlord and Tenant Act.*PART II.—
RENT
CONTROL—Division II.—
Fair Rents.

(6.) All forms, notices, declarations, and other documents prescribed by the rules to be filed with the registrar by the applicant or by any other party in relation to an application under this section for a determination shall be produced to the Court by the registrar at the hearing of that application and shall upon such production be evidence in the proceedings, but without prejudice to the right of the party who filed any such form, notice, declaration, or other document to adduce evidence in relation to, or to his liability to be cross-examined upon, any information or particular contained therein.

Moreover, the Court may, if it thinks fit, require any of the following persons to appear and be examined and cross-examined upon any information or particulars contained in any such form, notice, declaration, or other document, that is to say:—

- (a) The applicant or other party who filed with the registrar that form, notice, declaration, or other document; or
- (b) (Where it appears that some other person supplied the information or particulars in question) that other person,

and failing obedience to such requirement may reject that information or particulars.

(7.) (a) Any person who is entitled to the rents and profits of any dwelling-house may, notwithstanding that the premises are not leased, make application in writing to the Court to determine the fair rent of the dwelling-house.

Power to fix fair rent of premises not let at time of application.

(b) Upon such application the fair rent of the dwelling-house may be determined in manner provided by this Part and the provisions of this Part shall, with all necessary modifications, apply accordingly. The person making the application shall be deemed to be the lessor of the premises.

(c) Where that dwelling-house is the subject of any mortgage, the mortgagee shall be entitled to be a party to the proceedings upon the application.

16. The Court shall by its determination fix the fair rent of any dwelling-house at such amount that the annual rental thereof (after allowing for any services provided by the lessor in connection with the lease, for the annual rates and insurance premiums paid by the

Maximum rentals.

lessor in respect of the dwelling-house, and for the estimated annual cost to the lessor of repairs, maintenance, and renewals of the dwelling-house and fixtures thereon) shall not exceed six pounds per centum of the capital value of the dwelling-house including any land or appurtenances leased with it.

For the purposes of this section the capital value of any dwelling-house existing on the thirty-first day of December, one thousand nine hundred and forty, shall be the capital value thereof as at that date, and the capital value of any dwelling-house not existing at that date shall be the capital value thereof as at the date upon which the erection of such lastmentioned premises was completed.

Matters
to be
considered in
determining
fair rent.

17. (1.) In determining the fair rent the Court shall have regard to—

- (a) The capital value of the dwelling-house as ascertained in accordance with the appropriate provisions of section sixteen of this Act ;
- (b) The annual rates and insurance premiums paid in respect of the dwelling-house ;
- (c) The estimated annual cost of repairs, maintenance, and renewals of the dwelling-house and fixtures thereon ;
- (d) The estimated amount of annual depreciation in the value of the dwelling-house and the estimated time per annum during which the dwelling-house may be vacant ;
- (e) The rents of comparable dwelling-houses in the locality of the dwelling-house the subject of the application ;
- (f) The rate of interest charged upon overdrafts by the Commonwealth Bank of Australia ;
- (g) Any services provided by the lessor or lessee in connection with the lease ;
- (h) Any obligation on the part of the lessee to effect any improvements, alterations, or repairs to the dwelling-house at his own expense ;
- (i) The justice and merits of the case and the circumstances and conduct of the parties ;
and

1948.

*Landlord and Tenant Act.*PART II.—
RENT
CONTROL—Division II.—
Fair Rents.

- (j) Any hardship which would be caused to the lessor or lessee or any other person by the making of a determination increasing or reducing the rent of the dwelling-house including (but without limiting the generality of the word "hardship") any loss which might be imposed upon the lessor by a determination fixing the rent of the dwelling-house at an amount less than the lessor's liability under a mortgage of, or contract of sale in respect of, the dwelling-house, or under a hire-purchase agreement or contract of sale in respect of any goods leased with the dwelling-house.

(2.) Except where the Court is satisfied, regard being had to any of the matters set out in subsection one of this section, that an increase is equitable, the fair rent shall not exceed the rent lawfully payable for the dwelling-house under and in accordance with the provisions of section thirteen of this Act :

Provided that for the purposes of this subsection the purchase price paid by the lessor shall not be a matter rendering an increase in rent equitable unless the Court is satisfied that such price was fair and equitable, regard being had to the capital value of the dwelling-house in question as ascertained in accordance with the appropriate provisions of section sixteen of this Act.

18. (1.) The Court shall not be bound by the provisions of section sixteen of this Act as respects the determination of the fair rent of any dwelling-house at any time when that dwelling-house is "holiday premises" under and within the meaning of this Act.

Fair rents
of holiday
premises.

(2.) In determining the fair rent of any holiday premises the Court shall have regard to—

- (a) The estimated greater annual depreciation in the value of the holiday premises and fixtures thereon arising from the estimated time per annum during which those holiday premises may be vacant ;
- (b) The estimated greater annual cost of repairs, maintenance and renewals of the holiday premises and fixtures thereon arising from frequent changes in the tenancy of those holiday premises ; and

- (c) The lesser annual amount of rental derived by the lessee by reason of the letting thereof as holiday premises only.

(3.) Subject to having regard to the matters set out in subsection two of this section, the Court shall have regard to the matters set out in subsection one of section seventeen of this Act and to the proviso to subsection two of that section in determining the fair rent of any holiday premises.

(4.) Where the fair rent of holiday premises as such has been determined the fact that the dwelling-house comprising those holiday premises is no longer "holiday premises" under and within the meaning of this Act shall be a ground for further proceedings to determine the fair rent of the premises in question as a dwelling-house and not as holiday premises, and those further proceedings may be commenced at any time notwithstanding that a period of twelve months has not elapsed since such firstmentioned determination.

Period for which fair rent may be fixed.

19. Any determination under this Act fixing the fair rent of any dwelling-house may fix the rent to be so payable at an amount payable for every week, month, or other period.

Date from which determination to operate.

20. Every determination shall be in force on and from a date fixed by the Court, which date shall be not earlier than the date of the application.

Effect of fixing fair rent.

21. (1.) If the fair rent of any dwelling-house (or of any dwelling-house together with goods leased therewith) has been fixed under—

(i.) The provisions of section thirteen of this Act ;

(ii.) A determination under this Part,

then until the fair rent so fixed is increased or decreased by a further determination (or, in the case of any such fair rent fixed under the provisions of the said section thirteen, by a determination) under this Part, and notwithstanding any alterations, additions, repairs, or renovations to the dwelling-house (whether structural or otherwise) or any change in ownership or tenancy of the dwelling-house (or, as the case may be, of the dwelling-house and the goods leased therewith), or in the nature or value of the services supplied by the lessor or in the goods leased with the dwelling-house, the rent which shall be payable in respect of the dwelling-house shall not exceed the fair rent fixed as aforesaid.

1948.

Landlord and Tenant Act.

PART II.—
RENT
CONTROL—

Division II.—
Fair Rents.

(2.) Any amount by which the rent charged in respect of the dwelling-house (or of the dwelling-house and the goods leased therewith) is in excess of the fair rent fixed as aforesaid shall, notwithstanding any agreement to the contrary, be irrecoverable by the lessor.

22. Where any sum has been paid on account of any rent, being a sum which by virtue of this Part would have been irrecoverable by the lessor, the sum so paid shall be recoverable in any court of competent jurisdiction as a debt from the lessor who received the payment by the lessee by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by that lessee from any rent payable by him to such lessor within six months after the date of the payment.

23. If the fair rent of any dwelling-house (or of any dwelling-house together with goods leased therewith) has been fixed under—

- (i.) The provisions of section thirteen of this Act and that fair rent is the fair rent as fixed by a determination made prior to the passing of this Act under, and in force at the expiration of, the National Security (Landlord and Tenant) Regulations of the Commonwealth ; or
 - (ii.) A determination under this Act,
- no further proceedings under this Act for the fixing of the rent of those premises shall be commenced until after a period of twelve months from the time the fair rent was fixed as aforesaid (such time being, in the case of any such determination under the said Regulations of the Commonwealth, the date when that determination was made) except on the ground that—

- (a) By an error or omission, an injustice has been occasioned by the determination ; or
- (b) Increased outgoings or losses have been or will be incurred by the lessor by reason of the use made by the lessee of the dwelling-house since the date of the determination ; or
- (c) The determination has been based on an incorrect estimate of the value of the dwelling-house or of goods leased therewith or of the services supplied by the lessor, or of premises

Recovery of
overpaid
rent.

When appli-
cation may
be made for
fresh
determina-
tion.

of which the dwelling-house forms part, or on an incorrect calculation, and by reason thereof an injustice has been occasioned by the determination ; or

- (d) There has been a substantial alteration in the terms and conditions upon which the dwelling-house is leased, or
- (e) Substantial alterations or additions have been made to the dwelling-house, to the goods leased therewith, or to the services supplied by the lessor, since the determination was made ; or
- (f) The value of the dwelling-house, of the goods leased therewith, or of the services supplied by the lessor has materially decreased or increased since the determination was made ; or
- (g) In the case of any shared accommodation, since the determination fixing the fair rent came into force any of the matters set out in section twenty-four of this Act has occurred ; or
- (h) (In the case of a determination based on the consent of the applicant and of any other person or persons who were entitled to be parties to the application) the person commencing the further proceedings for a determination did not so consent.

24. Where, after the fair rent of any shared accommodation has been fixed under—

- (i.) A determination made prior to the passing of this Act under, and in force at the expiration of, the National Security (Landlord and Tenant) Regulations of the Commonwealth, which is continued in force by this Act ; or
- (ii.) A determination under this Act—
 - (a) Any part of the shared accommodation is leased separately ; or
 - (b) The whole or any part of the shared accommodation is leased as part of other shared accommodation ; or

Determina-
tion upon
variation in
arrangement
of shared
accommoda-
tion.

1948.

Landlord and Tenant Act.

PART II.—
RENT
CONTROL—

*Division II.—
Fair Rents.*

- (c) The shared accommodation is leased—
 - (i.) Without the use of any convenience or service which was available to the tenant at the time when the determination was made ; or
 - (ii.) With the use of any convenience or service which was not so available ; or
- (d) Any services, not supplied at the date of the determination, are supplied to any lessee,

such further determination or determinations as could, except for the provisions of section twenty-three of this Act, be applied for in the circumstances, may be applied for and made under this Act.

Division III.—General.

*Division III.—
General.*

25. (1.) Any person who, whether as principal or agent or in any other capacity, in any rent book or similar document wilfully makes any entry showing or purporting to show any lessee as being in arrear in respect of any sum which by virtue of this Act is irrecoverable shall be guilty of an offence against this Act.

Penalty for demanding rent in excess of fair rent fixed.

(2.) Any person who, whether as principal or agent or in any other capacity, wilfully demands or wilfully receives as rent in respect of any dwelling-house (or of any dwelling-house together with goods leased therewith) any sum which by virtue of this Act is irrecoverable shall be guilty of an offence against this Act.

(3.) Any person who is knowingly a party to any contract or arrangement under which any sum is paid or agreed to be paid to that person as rent for any dwelling-house (or of any dwelling-house together with goods leased therewith) shall, if that sum is, by virtue of this Act, irrecoverable, be guilty of an offence against this Act.

26. (1.) Any lessor of any dwelling-house who fails, by himself or his agent, to keep or cause to be kept a record showing the rent received in respect of that dwelling-house (or of that dwelling-house together with any goods leased therewith) shall be guilty of an offence against this Act.

Record of rents.

(2.) Any lessor of any dwelling-house (or of any dwelling-house together with goods leased therewith) or any agent of any such lessor who wilfully makes or

wilfully allows to be retained, in any record showing the rent of that dwelling-house (or of that dwelling-house and goods), any entry which is false in a material particular shall be guilty of an offence against this Act.

Certain pay-
ments
prohibited.

27. (1.) A person shall not, whether as principal or agent or in any other capacity—

- (a) Require, give, or receive, or offer, promise, or agree to give or receive, any bonus, premium, or sum of money (other than rent), or require the purchase or exchange of any goods or goodwill in consideration of or in association with—
 - (i.) The grant, acceptance, assignment, or transfer of any lease of ; or
 - (ii.) The renewal or extension of a lease or the continuance of a letting of ; or
 - (iii.) Any agreement for a lease or for the renewal, extension, assignment, or transfer of a lease of ; or
 - (iv.) His consenting to a sublease of ; or
 - (v.) The vacating of,
any dwelling-house except with the consent of the Court ;
- (b) Pay, give, or receive, or offer, promise, or agree to pay, give, or receive, any sum of money or other consideration—
 - (i.) For obtaining or making available a key of any dwelling-house ; or
 - (ii.) For information as to a tenancy, or as to the possibility or likelihood of obtaining a tenancy, of any dwelling-house ; or
- (c) Make it a condition of the granting of any lease of a dwelling-house that the lessee shall effect any improvements, alterations, or repairs at his own expense ; or
- (d) Require a lessee or prospective lessee of any dwelling-house to pay more than two months' rent in advance or, if the rent is payable or to be payable by the week, more than four weeks' rent in advance.

1948.

Landlord and Tenant Act.

PART II.—
RENT
CONTROL—

Division III.
General.

(2.) Any person who contravenes or fails to comply with any provision of subsection one of this section shall be guilty of an offence against this Act.

(3.) Any sum paid in contravention of this section may be recovered by the person who paid it from the person to whom it was paid in an action for debt in any court of competent jurisdiction, or, if the person to whom it was paid is the lessor, may, without prejudice to any other method of recovery, be deducted by the lessee from any rent payable by him to the lessor within six months after the date of the payment.

(4.) Where a person has, in contravention of this section, been required to purchase or exchange any goods or goodwill, he may recover in any court of competent jurisdiction, from the person guilty of the contravention, so much of any amount paid, in accordance with the requirement, for the goods or goodwill purchased as exceeds the fair value thereof, or, as the case may be, an amount equal to the excess of the fair value of the goods which he has exchanged over the fair value of the goods which he has received in exchange.

(5.) The provisions of subsections three and four of this section shall be read so as not to affect the liability of any person to be punished for an offence against subsection one of this section.

28. Upon application describing any dwelling-house, and upon payment of a fee of one shilling, the registrar concerned shall give or (in the case of an application made by post) send by post to the person so applying a statement in writing as to whether any determination or order fixing the fair rent of that dwelling-house is in force and the amount and other particulars of such rent.

Supply of
particulars
as to rent of
premises.

29. If the payment of the rent of any dwelling-house (or of any dwelling-house and of goods leased therewith) is guaranteed and subsequently to the giving of the guarantee the fair rent of the dwelling-house (or dwelling-house and goods) is fixed under this Act, then, if the rent so fixed is less than the amount so guaranteed, the guarantee shall be construed as if the amount guaranteed to be paid was the amount fixed as the fair rent under this Act; but in any other case the fixing of the fair rent under this Act shall not affect the guarantee.

Effect on
guarantee of
fixing rent.

PART II.—
RENT
CONTROL—

Landlord and Tenant Act. 12 GEO. VI. No. 31,

Division III.—
General.

Certificate
as to fair
rent.

30. (1.) In any proceedings before the Court, a certificate by the registrar of that Court (or of the Court at some other place appointed for holding courts of petty sessions) that, in respect of a period specified in the certificate, the fair rent of any dwelling-house (or of any dwelling-house and goods leased therewith) was fixed under this Act, and specifying the amount thereof, shall be evidence of the matters certified to.

(2.) Judicial notice shall be taken of the signature of the person signing any such certificate and of the fact that he is, or has been, the registrar of the Court concerned.

Threats, &c.,
against
lessees
prohibited.

31. A person shall not use, either verbally or in writing, threatening, intimidatory, offensive, or insulting words to a lessee or to the wife, child, or parent of a lessee of a dwelling-house—

- (a) To dissuade or prevent that lessee from making or prosecuting an application for a determination ; or
- (b) On account of that lessee making or prosecuting an application for a determination ; or
- (c) For the purpose of procuring that lessee to refrain from making or prosecuting an application for a determination ; or
- (d) For the purpose of procuring that lessee to discontinue the prosecution of an application for a determination.

Boycotts,
&c.

32. (1.) Any owner of a dwelling-house or his agent who refuses or who procures or attempts to procure any person to refuse a lease, or the renewal or extension of a lease, of a dwelling-house to any other person on the ground that such other person has made or prosecuted an application for a determination under this Act, or under **“The Fair Rents Acts, 1920 to 1938,”* or under the National Security (Landlord and Tenant) Regulations of the Commonwealth shall be guilty of an offence against this Act.

(2.) In any prosecution for an offence against subsection one of this section, where all the facts and circumstances constituting the contravention, other than the ground of the refusal or, as the case may be, upon which the refusal was procured, are proved, it shall be upon the

1948.

Landlord and Tenant Act.

PART II.—
RENT
CONTROL—

Division III.—
General.

defendant to prove that the ground of refusal or, as the case may be, upon which the refusal was procured or attempted to be procured was not the ground alleged in the charge, but without prejudice to the right of the prosecutor to adduce evidence proving or tending to prove that the ground so alleged was the ground of refusal or, as the case may be, upon which the refusal was procured or attempted to be procured.

(3.) Any person who does, or attempts to do, or procures or attempts to procure the doing of, any act or thing for the purpose of imposing any detriment or disadvantage upon another person on the ground that such other person has made or prosecuted any application specified in subsection one of this section shall be guilty of an offence against this Act.

33. (1.) A person shall not refuse, or procure any person to refuse, to lease a dwelling-house to any person on the ground that it is intended that a child shall live in the dwelling-house.

Offence to
refuse lease
of
dwelling-
house to
applicant
with family.

(2.) In any prosecution for an offence against subsection one of this section, where all the facts and circumstances constituting the contravention, other than the ground of the refusal, are proved, it shall lie upon the defendant to prove that the ground of refusal was not the ground alleged in the charge, but without prejudice to the right of the prosecutor to adduce evidence proving or tending to prove that the ground so alleged was the ground of refusal.

(3.) A person shall not—

- (a) Instruct any other person not to lease ; or
- (b) State his intention, whether by advertisement or otherwise, not to lease,

a dwelling-house to any person if it is intended that a child shall live in the dwelling-house.

(4.) A person shall not, for the purpose of determining whether or not he will lease a dwelling-house, inquire from any prospective tenant of the dwelling-house whether—

- (a) The prospective tenant has any children ; or
- (b) It is intended that a child shall live in the dwelling-house if it is let to that prospective tenant.

PART II.—
RENT
CONTROL—

Landlord and Tenant Act. 12 GEO. VI. No. 31,

Division III.—
General.

(5.) In any prosecution for an offence against subsection four of this section, where all the facts and circumstances constituting the contravention, other than the purpose of the inquiry, are proved, it shall lie upon the defendant to prove that the purpose of the inquiry was not the purpose alleged in the charge, but without prejudice to the right of the prosecutor to adduce evidence proving or tending to prove that the purpose so alleged was the purpose of the inquiry.

Certain
representa-
tions, &c.,
prohibited.

34. A person shall not make any representation, or do any other act, whereby a person is informed that, upon the purchase or exchange of any goods, he will receive or obtain, or be entitled to receive or obtain, the grant, transfer, or assignment, renewal or extension of a lease, or consent to a sublease, of a dwelling-house.

Dwelling-
house not to
be let unless
in good
repair.

35. A person shall not let any dwelling-house which is not at the date of the letting in fair and tenantable repair.

Abolition of
distress for
rent of
dwelling-
house.

36. A person shall not levy or make any distress for rent of a dwelling-house (or of a dwelling-house and goods leased therewith).

Intervention
by
Minister.

37. The Minister may, at any stage of any proceeding before the Court, intervene by counsel, solicitor, or agent on behalf of the Crown in right of the State, and may adduce evidence, examine and cross-examine witnesses, and address the Court.

Receipts
for rent.

38. The person receiving any payment of rent of a dwelling-house (or of a dwelling-house together with goods leased therewith) shall at the time of receiving the payment give or cause to be given, to the person making the payment, a receipt for the payment specifying the date of the payment, the amount paid, the period in respect of which the payment is made, and the dwelling-house in respect of which the payment is made.

Power to
determine
fair rent of
prescribed
premises.

39. (1.) The Governor in Council may from time to time, by Order in Council, declare that the application of this Part shall extend to and with respect to all or any prescribed premises, and thereupon the application of this Part shall, notwithstanding anything contained in this Act, extend to and with respect to all or any prescribed premises (including goods leased therewith) the subject of the Order in Council in question.

1948.

*Landlord and Tenant Act.*PART II.—
RENT
CONTROL—Division III.—
General.

(2.) The power to make any Order in Council under this section shall include power to make that Order in Council so that it shall be limited in its application—

- (i.) To any one or more prescribed premises ;
- (ii.) To all prescribed premises included in any class of premises ;
- (iii.) To all prescribed premises situated in, or in any part of, the Area of any Local Authority ;
- (iv.) To all prescribed premises included in any class of premises situated in, or in any part of, the Area of any Local Authority ;
- (v.) Otherwise as to place or circumstance as is prescribed therein.

(3.) The Governor in Council may by a further Order in Council revoke any Order in Council made under this section and thereupon this Part shall cease to apply to and with respect to prescribed premises (including goods leased therewith) the subject of the revoked Order in Council :

Provided that the Governor in Council may at any later time again make an Order in Council under this section applying this Part to and with respect to all or any of those prescribed premises (including goods leased therewith).

(4.) This section and every Order in Council made under this section shall apply so as not to limit the operation of this Part, or of any provision of this Part, in its application to dwelling-houses (including holiday premises.)

PART III.—RECOVERY OF POSSESSION.

PART III.—
RECOVERY OF
POSSESSION.

40. (1.) This Part shall be read with the **Summary Ejectment Act of 1867*," and with the †*Distress Replevin and Ejectment Act of 1867*," as amended by subsequent Acts, and with any other Act, or law, or rule, or practice of law relating to the termination of tenancies or the recovery of possession of premises or the ejectment of tenants therefrom, and every such Act, or law, or rule, or practice of law shall, save in so far as it is inconsistent with this Part, continue to apply as heretofore to and with respect to the recovery of tenements unlawfully held over.

Interpreta-
tion and
application
of Part III.

* 31 V. No. 27.

† 31 V. No. 16.

(2.) Subject to subsection three of this section, this Part shall apply to and with respect to all premises which are prescribed premises under and within the meaning of this Act.

(3.) The Governor in Council may, from time to time, by Order in Council declare that this Part shall not apply to or with respect to premises, or the premises included in any class of premises, specified in the Order in Council.

While any such Order in Council remains in force this Part shall not apply to or with respect to any premises, or any premises included in any class of premises, specified in that Order in Council.

Restriction
on eviction.

41. (1.) Except as provided by this Part the lessor of any prescribed premises shall not give any notice to terminate the tenancy or take or continue any proceedings to recover possession of the premises from the lessee or for the ejection of the lessee therefrom.

(2.) A notice to quit given in contravention of this section shall not operate so as to terminate the tenancy in respect of which the notice was given.

(3.) Subject to this Part, a lessor may take proceedings in any court of competent jurisdiction for the recovery of possession by him of any prescribed premises (or of any goods leased therewith) or for the ejection of the lessee therefrom if the lessor, before taking the proceedings, has given to the lessee, upon one or more of the prescribed grounds but upon no other ground, notice to quit in writing for a period determined in accordance with the next succeeding section, and that period of notice has expired.

(4.) Service of the notice to quit may, without prejudice to any other mode of service, be effected by delivering the notice to—

- (a) Some person apparently over the age of sixteen years and apparently residing in or in occupation of the premises ; or
- (b) The person by whom the rent of the premises is customarily paid.

1948.

*Landlord and Tenant Act.*PART III.—
RECOVERY OF
POSSESSION.

- (5.) The prescribed grounds shall be—
- (a) That the lessee has failed to pay the rent in respect of a period—
 - (i.) Where the lessee's period of occupation does not exceed six months—of not less than seven days ;
 - (ii.) Where the lessee's period of occupation exceeds six months but does not exceed twelve months—of not less than fourteen days ; and
 - (iii.) In any other case—of not less than twenty-eight days ;
 - (b) That the lessee has failed to perform or observe some other term or condition of the lease and the performance or observance of that other term or condition has not been waived or excused by the lessor ;
 - (c) That the lessee has failed to take reasonable care of the premises, or of any goods leased therewith, or has committed waste ;
 - (d) That the lessee has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers ;
 - (e) That the lessee or any other person has been convicted, during the currency of the lease, of any offence arising out of the use of the premises for any illegal purpose or that a court of competent jurisdiction has found or declared that the premises have, during the currency of the lease, been used for some illegal purpose ;
 - (f) That the lessee has given notice of his intention to vacate the premises and, in consequence of that notice, the lessor has agreed to sell or let the premises or has taken any other steps as a result of which he would be seriously prejudiced if he could not obtain possession ;
 - (g) That the premises—
 - (i.) Being a dwelling-house—are reasonably required by the lessor for occupation by himself, or by some person who ordinarily resides with, and is wholly or partly dependent upon, him ; or

- (ii.) Not being a dwelling-house—are reasonably required for occupation by the lessor or by a person associated or connected with the lessor in his trade, profession, calling, or occupation.
- (h) That the premises are used as, or have been acquired for use as, a parsonage, vicarage, presbytery, or other like premises and are reasonably required for the personal occupation of a minister of religion (including a person who, although not ordained, is performing all the duties of a minister of religion);
- (i) That the lessor is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon, him;
- (j) That the lessor is a person, body, or authority carrying on a hospital, or a trustee for such a person, body, or authority, and the use of the premises is reasonably required for the purposes of the hospital (including the accommodation of the staff of the hospital);
- (k) That the premises have been occupied or are occupied, by some person in consequence of his employment (whether as an independent contractor or as an employee) by the lessor and are reasonably required for the personal occupation in consequence of that employment of some other person employed, or about to be employed (whether as another independent contractor or as another employee) by the lessor;
- (l) That the lessor has agreed to sell the premises by an agreement which requires the purchaser to pay not less than one-fourth of the whole purchase money within twelve months from the date thereof and by which the purchaser is entitled to vacant possession of the premises, and the premises—
- (i.) Being a dwelling-house—are reasonably required by the purchaser for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or

1948.

*Landlord and Tenant Act.*PART III.—
RECOVERY OF
POSSESSION.

- (ii.) Not being a dwelling-house—are reasonably required for occupation by the purchaser or by a person associated or connected with the purchaser in his trade, profession, calling, or occupation ;
- (m) That the premises are reasonably required by the lessor for reconstruction or demolition ;
- (n) That the lessee has become the lessee of the premises by virtue of an assignment or transfer which the lessor has not consented to or approved ; or
- (o) That the lessee has sublet the premises or some part thereof by a sublease which has not been consented to or approved by the lessor.

(6.) In subsection five of this section, unless the contrary intention appears, “lessor” includes, where there is more than one lessor, any one or more of the lessors, and “lessee” includes, where there is more than one lessee, any one or more of the lessees.

(7.) Notice to quit on a ground specified in paragraph (n) or in paragraph (o) of subsection five of this section—

(a) Shall not be given—

- (i.) Where the lessee became the lessee by virtue of an assignment or transfer made before the fourteenth day of March, one thousand nine hundred and forty-seven or the sublease was granted before that date ;
 - (ii.) Where the lease is for a fixed term—unless that term has expired ; or
 - (iii.) In the case of a periodic lease—unless the period which was current at the date on which the assignment, transfer, or sublease took effect has expired ; and
- (b) May be given whether or not the assignment, transfer, or sublease was in breach of any covenant or condition.

42. (1.) The period for which notice to quit shall be given shall be not less than a period of seven days, together with an additional seven days for each completed period of six months of occupation. Period of notice to quit.

(2.) Nothing in subsection one of this section shall—

(a) Require the giving of notice to quit for—

(i.) A period exceeding fourteen days if the notice is given on any grounds specified in paragraph (c), (d), (e), or (f) of subsection five of section forty-one of this Act and not on any other ground ; or

(ii.) A period exceeding thirty days if the notice is given on any other ground ; or

(iii.) In the case of shared accommodation—a period exceeding fourteen days ; or

(b) Allow the giving of notice to quit for a period shorter than the period which, but for this section, would be required.

Notice to
quit not to
be given
within six
months
after deter-
mination.

43. A lessor shall not—

(i.) After the lessee has made an application for a determination ;

(ii.) After the passing of this Act, if the lessee had made an application for a determination under the National Security (Landlord and Tenant) Regulations of the Commonwealth, or if the lessor had received from the Commonwealth Rent Controller or his delegate for this State, notice of his intention to determine the fair rent of his own motion under those regulations,

except with the consent of the court having jurisdiction to hear and determine the matter of the recovery of possession by the lessor of the prescribed premises concerned or for the ejection of the lessee therefrom, give a notice to quit on any ground specified in paragraphs (f), (g), (h), (i), (j), (k), or (l) of subsection five of section forty-one of this Act until after the expiration of six months after the making of the determination on the application or in pursuance of the notice, but if a determination applied for, whether under this Act or under the said Commonwealth Regulations, has not been made within a period of six months after the date of the application—

(a) By the Court in the case of an application under this Act ;

1948.

Landlord and Tenant Act.

- (b) Under the said Regulations of the Commonwealth, or by the Court pursuant to its power to make under this Act determinations applied for under those Regulations and not made thereunder before the expiration thereof,

such a notice to quit may be given upon the expiration of that period, or if, in the case of notice of intention as aforesaid to make a determination, the Controller or his delegate had not made that determination prior to the expiration of the said Regulations, such a notice to quit may be given at any time after the passing of this Act.

44. (1.) A person who becomes the lessor of any dwelling-house by purchase thereof shall not, within a period of six months after the date of the agreement for the purchase, give a notice to quit on the ground specified in paragraph (g) of subsection five of section forty-one of this Act to any person who was a lessee of the dwelling-house at the date of the agreement for the purchase. Notice to quit where dwelling-house sold.

(2.) A lessor of any dwelling-house shall not give a notice to quit on the ground specified in paragraph (l) of subsection five of section forty-one of this Act to any person who was a lessee of that dwelling-house at the date of the agreement referred to in that paragraph within a period of six months after the date of the agreement.

45. A notice to quit shall specify the ground relied upon and shall give the particulars thereof and, in the proceedings, the lessor shall not be entitled to rely upon any ground not so specified. Notice to specify ground.

46. A notice to quit given in accordance with the provisions of section forty-one of this Act shall, if the tenancy in respect of which the notice was given has not otherwise terminated, operate so as to terminate the tenancy of the premises at the expiration of the period specified in the notice, but nothing in this section shall operate so as to determine any tenancy before the date on which it would have terminated if this section had not been enacted. Notice to quit to terminate lease.

47. (1.) Where a lessor has taken proceedings in any court of competent jurisdiction to recover possession of any prescribed premises from the lessee or for the ejection of the lessee therefrom and that court has (whether Notice to quit after failure of eviction proceedings

before or after the passing of this Act) refused to make an order in favour of the lessor, the lessor shall not give to the lessee any notice to quit (whether on the same ground as a previous notice to quit or on some other ground) within six months after the decision of the court unless he has first obtained the leave of a court having jurisdiction to hear and determine the matter of the recovery of possession by him of the prescribed premises concerned or for the ejection of the lessee therefrom.

(2.) Where, under subsection one of this section, such a court refuses to make an order in favour of a lessor it may, at the same time, grant leave for the purposes of this section.

Competent
courts of
petty
sessions.

48. Unless constituted by a stipendiary magistrate or an acting stipendiary magistrate sitting alone a court of petty sessions shall not be a court of competent jurisdiction for the purposes of section forty-one of this Act.

Court to
consider
hardship.

49. (1.) On the hearing of any proceedings by a lessor for an order for the recovery of possession of any prescribed premises or for the ejection of the lessee therefrom (whether the proceedings were commenced before or after the passing of this Act) the court having jurisdiction in the matter shall take into consideration, in addition to all other relevant matters—

- (a) Any hardship which would be caused to the lessee or any other person by the making of the order ;
- (b) Any hardship which would be caused to the lessor or any other person by the refusal of the Court to make the order ; and
- (c) Where the application is made on any one or more of the grounds specified in paragraphs (g), (h), (i), (j), (k), (l), and (m) of subsection five of section forty-one of this Act—whether reasonably suitable alternative accommodation in lieu of the prescribed premises is, or has been since the date upon which notice to quit was given, available for the occupation of the person occupying the prescribed premises or for the occupation of the lessor or other person by whom the prescribed premises would be occupied if the order were made,

1948.

*Landlord and Tenant Act.*PART III.—
RECOVERY OF
POSSESSION.

and may, in its discretion, make the order or may, on such conditions (if any) as it thinks fit, refuse to make the order notwithstanding that one or more of the prescribed grounds has been established.

(2.) Where the application is made on either of the grounds specified in paragraphs (n) and (o) of subsection five of section forty-one of this Act, the court of competent jurisdiction shall not refuse, in the exercise of the discretion vested in it by subsection one of this section, to make the order unless it is satisfied—

- (a) That special circumstances exist by reason of which the order should not be made ; or
- (b) Without limiting the generality of the last preceding paragraph, in a case where the ground specified in the said paragraph (o) applies, that the subletting was in the course of a business of subletting carried on by the lessee.

(3.) Where the application is made on either of the grounds specified in paragraphs (n) and (o) of subsection five of section forty-one of this Act in respect of—

- (a) The premises of any lodging-house or boarding-house ; or
- (b) Any premises leased by the lessor for the purpose of enabling the lessee to carry on thereon the business of subletting shared accommodation,

the court of competent jurisdiction shall, notwithstanding the discretion vested in it by subsection one of this section, refuse to make the order unless it is satisfied—

- (i.) That, having been requested to consent to or approve of an assignment or transfer of the lease or a sublease of those premises, the lessor had just cause for refusing that consent or approval ; or
- (ii.) That the lessor, not having just cause for refusing his consent or approval as aforesaid, has offered to pay to the lessee a fair and reasonable price for the lease, but in this case the Court shall suspend the execution of the order until the lessor has paid that price to the lessee.

(4.) On the hearing of an application specified in subsection two or in subsection three of this section, any assignee, sublessee, or person in occupation of the prescribed premises concerned or any part thereof shall be entitled to be heard.

Power to
stay
proceedings
or orders.

50. In respect of any proceedings referred to in section forty-nine of this Act the court having jurisdiction to hear and determine the matter of the recovery of possession of the prescribed premises concerned or for the ejection of the lessee therefrom may—

- (a) From time to time, subject to such conditions (if any) and for such period as it thinks fit—
 - (i.) Adjourn the proceedings ;
 - (ii.) Stay or suspend the execution of any judgment or order which has been made or given in the proceedings ; or
 - (iii.) Postpone the date for recovery of possession or for ejection specified in any such judgment or order ; or
- (b) (Subject to such conditions (if any) as it thinks fit) vary, discharge, or rescind any such judgment or order ; or
- (c) (Where a warrant of possession has been issued, and whether the warrant has expired or not) from time to time extend the period stated in the warrant for the execution thereof—
 - (i.) If the court is satisfied that, because of the illness of the lessee or for other sufficient cause, it is or has been impracticable for the officer to whom the warrant is directed to execute the warrant within the period stated therein—for such period as it thinks fit ; or
 - (ii.) If the court is not so satisfied—for a period not exceeding seven days from the date on which the extension is granted.

Certain
applications
to operate as
stay of
execution.

51. (1.) An application to stay or suspend the execution of, or to vary, discharge, or rescind, any judgment or order referred to in section fifty of this Act, or to postpone the date for recovery of possession or for ejection specified in any such judgment or order, shall,

1948.

*Landlord and Tenant Act.*PART III.—
RECOVERY OF
POSSESSION.

when filed with the proper officer of the court concerned, stay the execution of any warrant and operate to postpone the date for recovery of possession of the prescribed premises or for the ejection of the lessee therefrom until the court has heard the application.

(2.) Notwithstanding anything contained in paragraph (c) of section fifty of this Act, the court may, on the hearing of any such application, extend for such period as it thinks fit the period stated in any warrant for the execution thereof (whether the warrant has expired or not).

(3.) Where, in respect of any proceedings referred to in section forty-nine of this Act, the court has refused to grant an application of any of the kinds referred to in subsection one of this section no further application of any of those kinds shall be made in respect of those proceedings except with the leave of that court.

52. Proceedings for the recovery of possession of any dwelling-house or for the ejection of a lessee therefrom may, with the consent of all parties, be disposed of in chambers; but nothing in this section shall affect the power of any court of competent jurisdiction to dispose of any such proceedings in chambers otherwise than under this section. Hearing in chambers.

In this section the term “in chambers” means, in relation to a court of petty sessions, the holding of that court in the office of the stipendiary magistrate or acting stipendiary magistrate by whom it is constituted.

53. (1.) Except as provided in this section, there shall be no appeal, in proceedings under this Part, from a judgment or order of a court of competent jurisdiction referred to in section forty-eight of this Act. Appeals.

(2.) There shall be an appeal, as to questions of law only, to the Supreme Court from any judgment or order of any such court in proceedings under this Part.

54. Notwithstanding anything in any Act no order (other than an order made under this Part or under the corresponding provisions of the National Security (Landlord and Tenant) Regulations of the Commonwealth) made by any court for the recovery by the lessor of possession of any prescribed premises (or of any goods leased therewith) or for the ejection of the lessee shall be enforceable. Ejection orders not enforceable unless made under Act.

Court may order compensation for misrepresentation.

55. Where a lessor has obtained an order for the recovery of possession of any prescribed premises or for the ejectment therefrom of a lessee and it is subsequently proved that the order was obtained by a fraudulent representation or the concealment of material facts, the court which made the order may order the lessor to pay to the former lessee such sum as appears to that court to be sufficient as compensation for damage or loss sustained by the lessee as a result of the order, and the like proceedings may be taken upon the order as if the order had been a judgment of that court in favour of the former lessee.

Premises not to be sold or relet in certain cases.

56. (1.) If a notice to quit is given on the ground specified in paragraph (g), (h), (i), (j), or (k) of subsection five of section forty-one of this Act, or was given on the corresponding ground specified in the National Security (Landlord and Tenant) Regulations of the Commonwealth prior to the passing of this Act, and the prescribed premises in respect of which the notice is or was given is, or has before the passing of this Act been, vacated in accordance with the notice, or if an order for the recovery of possession of the premises or for the ejectment therefrom of the lessee is or has, before the passing of this Act, been made on any such ground, the prescribed premises shall not, without the consent of the appropriate court, be again leased or sold, or agreed to be leased or sold, until after the expiration of the period of twelve months immediately succeeding the date on which the premises were vacated, possession of the premises was recovered, or the ejectment effected.

(2.) Any person who lets or sells or who agrees to let or sell any prescribed premises in contravention of a provision of subsection one of this section shall be guilty of an offence against this Act.

(3.) Nothing in subsection one of this section shall prevent—

(a) The letting of any portion of the prescribed premises in question which is not reasonably required by the lessor or purchaser, as the case may be, but so that the total rent obtained is not greater than a reasonable rent for the whole of the premises less a reasonable deduction for the portion of the premises not so let; or

1948.

Landlord and Tenant Act.

PART III.—
RECOVERY OF
POSSESSION.

(b) (Where notice to quit has been given on the ground specified in the said paragraph (h), (i), or (k)) the letting of the prescribed premises—

- (i.) To a minister of religion ;
 - (ii.) To a beneficiary under the trust ; or
 - (iii.) To some person employed, or about to be employed (whether as an independent contractor or as an employee) by the lessor in consequence of that employment,
- respectively.

(4.) A transaction entered into in contravention of subsection one of this section shall not thereby be invalidated, but nothing in this subsection shall affect the liability of any person to any penalty in respect of any contravention of that subsection.

(5.) In this section “ the appropriate court ” means—

- (a) Where an order has been made by a court for the recovery of possession of the premises or for the ejection therefrom of the lessee—that court ; and
- (b) In any other case—a court of petty sessions constituted by a stipendiary magistrate or acting stipendiary magistrate sitting alone.

57. An order for the recovery of possession of any prescribed premises (or of any goods leased therewith) or for the ejection of a lessee therefrom made by a court under this Part may be enforced in the same manner as a like order if made by that court otherwise than under this Part might be enforced.

Enforcement
of
orders.

58. Where notice to quit any prescribed premises has been given, whether before or after the passing of this Act—

Acceptance
of rent not
to waive
notice to
quit.

- (a) Any demand by the lessor for payment of rent, or of any sum of money as rent, in respect of any period within six months after the giving of the notice ; or
- (b) The commencement of proceedings by the lessor to recover rent, or any sum of money as rent, in respect of any such period ; or

- (c) The acceptance of rent, or of any sum of money as rent, by the lessor in respect of any such period,

shall not of itself constitute evidence of a new tenancy or operate as a waiver of the notice.

Persons not to interfere with use or enjoyment of premises.

59. (1.) A person shall not, without the consent of the lessee of any prescribed premises, or without reasonable cause (proof whereof shall lie upon the defendant), do, or cause to be done, any act, or omit, or cause to be omitted, any act whereby the ordinary use or enjoyment by the lessee of the premises or of any goods leased therewith, or of any conveniences usually available to the lessee, or of any service supplied to, or provided in connection with, the premises is interfered with or restricted.

(2.) Where the lessor, or any agent or servant of the lessor, has been convicted of an offence against the last preceding subsection, the court recording the conviction may order the lessor to do such things as are necessary to enable the lessee to resume the ordinary use or enjoyment of the premises, goods, conveniences, or service, and the lessor shall comply with the provisions of the order.

(3.) For the purposes of this section conveniences shall be deemed to be usually available to the lessee where, prior to the use of the conveniences having been interfered with or restricted without his consent, he has been allowed at all times during the tenancy to use those conveniences as he desired or he has been allowed to use those conveniences at times agreed to by the lessor and lessee or at times equivalent to those times.

Protection of sublessees.

60. (1.) Where—

- (a) A lessor has consented to or approved a sublease of any prescribed premises or any part thereof by the lessee, or a lessee has sublet any prescribed premises or any part thereof in the course of a business of subletting carried on by the lessee ; and
- (b) The lessee ceases to be in possession of the prescribed premises, following upon—
- (i.) The obtaining of an order by the lessor for the recovery of possession of the premises from the lessee or for the ejection of the

1948.

*Landlord and Tenant Act.*PART III.—
RECOVERY OF
POSSESSION.

lessee from the premises on any of the grounds specified in paragraphs (a) to (f), both inclusive, of subsection five of section forty-one of this Act ; or

(ii.) The surrender of his lease by the lessee,

the sublessee shall (if he is in possession of the whole or portion of the prescribed premises sublet to him) be deemed to become the lessee thereof from the lessor upon the same terms and conditions as the terms and conditions of the sublease, as in force immediately prior to—

- (c) The date on which the lessor gave notice to quit to the lessee ; or
- (d) The date on which the lessee notified the lessor of his intention to surrender the lease (or, if he did not so notify the lessor, the date on which the lessee surrendered the lease),

as the case may be.

(2.) In a case to which subparagraph (i.) of paragraph (b) of subsection one of this section applies, the order shall not be enforced against the sublessee.

(3.) Where, prior to the lessor of any prescribed premises giving notice to quit to the lessee upon any of the grounds specified in subsection five of section forty-one of this Act the lessee of the prescribed premises has sublet the whole or any part thereof—

- (a) The lessee shall, upon service of the notice to quit, forthwith notify the lessor in writing of the name and address of each person to whom he has so sublet and who is a sublessee of the dwelling-house or any part thereof at the date of service of the notice to quit ; and
- (b) The lessor shall, upon taking proceedings for the recovery of possession of the prescribed premises or for the ejection of the lessee therefrom, file the notice given to him under this section with the proper officer of the court in which the proceedings are taken ; and
- (c) The proper officer of that court shall thereupon give notice by registered post to each person specified in the notice, at the address so specified, of the date of hearing of the proceedings by that court.

(4.) On the hearing of any proceedings by a lessor for an order for the recovery of possession of any prescribed premises or for the ejectment of the lessee therefrom, every person who is a sublessee of such premises or any part thereof shall be entitled to be heard.

Protection of
certain
persons in
possession of
prescribed
premises.

61. Where the lessee of any prescribed premises dies and a person (not being a lodger or boarder) who resided with the lessee immediately prior to his death is actually in possession of the premises immediately after his death that person shall have the like right to continue in possession of the premises as the lessee would have had if he had not died, but proceedings may be taken against that person for the ejectment of that person from the premises or for the recovery of possession of the premises from that person in accordance with the provisions of this Part as if he were a lessee of the premises.

Costs not to
be allowed.

62. No costs shall be allowed in any proceedings in relation to which this Part applies, not being proceedings in respect of an offence arising under this Part.

Exclusion of
premises let
for a short
term from
operation of
this Part.

63. (1.) The lessor or former lessor under a lease, or the proposed lessor under a proposed lease, of any prescribed premises for a fixed term not exceeding six months may, at any time while the lessee or former lessee is in occupation of the premises, or prior to the commencement of the term of the proposed lease, make application in writing to a court of petty sessions having jurisdiction to hear and determine the matter of recovery of possession of those premises or for the ejectment of the lessee therefrom to exclude the premises from the operation of such of the provisions of this Part of this Act as do not apply to holiday premises as such.

(2.) The applicant shall furnish such information in relation to the application as the aforementioned court requires.

(3.) The court may, in its discretion, make an order excluding the premises, for such period as is specified in the certificate, from the operation of the provisions of this Part, and the premises shall be excluded accordingly.

1948.

*Landlord and Tenant Act.*PART III.—
RECOVERY OF
POSSESSION.

(4.) The court may at any time revoke or vary any order made under the last preceding subsection or any certificate issued under the corresponding provisions of the National Security (Landlord and Tenant) Regulations of the Commonwealth (and, subject to this subsection, any such certificate shall be deemed to be an order made under this section).

64. (1.) The provisions of this Part shall not apply to or in relation to any prescribed premises in respect of which an order under this section is in force (and, subject to this section, any certificate issued under the corresponding provisions of the National Security (Landlord and Tenant) Regulations of the Commonwealth shall be deemed to be an order made under this section).

Exclusion of
certain
subdivided
premises,
&c., from
operation of
this Part.

(2.) Where the owner of any prescribed premises is desirous of making the whole or any part of those premises available for accommodation, he may apply to the court of petty sessions having jurisdiction under this Part for an order that the premises are premises to which this Part does not apply.

(3.) The court may—

(a) Grant the application and make the order either unconditionally or subject to such conditions as it thinks fit and for such period as it thinks fit; or

(b) Refuse the application.

(4.) An order made under this section in respect of premises being any part of a dwelling-house or of a residential unit in any building shall not have any force or effect in respect of any person who immediately prior to the making of the order was the lessee of the dwelling-house or of any part of the dwelling-house or of the residential unit or of any other residential unit in the building.

(5.) The court may revoke or vary any order made under this section.

(6.) This section shall apply only in relation to prescribed premises being—

(a) A dwelling-house which is not in whole or in part leased to any person;

- (b) A dwelling-house which the owner or lessee has converted, or intends to convert, into two or three, but not more, residential units ;
- (c) A dwelling-house or part of a dwelling-house which is leased to any person and which is about to become vacant ;
- (d) A part of a dwelling-house which has been leased by the owner but is not for the time being leased to any person ; or
- (e) A residential unit in a building which the owner of the building proposes to lease or to permit to be leased for residential purposes separately from the remainder of the building and which has not previously been so separately leased,

but shall not apply in relation to any building containing more than three residential units or in relation to any residential unit in any such building.

(7.) In this section “ residential unit ” means any part of a building which is or has been designed, whether originally or otherwise, for occupation as a residence independently of any other part of the building.

PART IV.—MISCELLANEOUS.

65. Any contract or arrangement, whether oral or in writing, the purpose or effect of which is either directly or indirectly to defeat, evade, or prevent the operation of any of the provisions of this Act, shall be absolutely void and of no legal effect whatsoever.

66. A notice to quit may expire at any time notwithstanding that the date indicated in such notice as the date upon which possession is to be given does not coincide with the last day of a period of the tenancy, if—

- (a) In any case where prescribed premises are the subject of such notice, all of the applicable provisions of Part III. of this Act have been complied with as respects such notice ; or
- (b) In any case where premises other than prescribed premises are the subject of such notice—
 - (i.) (Where the lessor and the lessee of the premises, other than prescribed premises,

1948.

*Landlord and Tenant Act.*PART IV.—
MIS-
CELLANEOUS.

the subject of such notice, have agreed upon the period for which such notice may be given, and the period so agreed upon may lawfully be given) such notice has been given for the period so agreed upon ; or

- (ii.) (Where there is no such agreement as aforesaid or where the period agreed upon by any such agreement as aforesaid cannot lawfully be given) such notice has been given for a period not less than that required by law.

In any such case in respect of the last period of the tenancy the rent payable shall, where appropriate, be apportionable.

67. (1.) Any notice (other than a notice to quit) required by this Act to be given to or served upon any person may be given or served—

Service of
notices.

- (a) By delivering it to such person ; or
- (b) By leaving it at his usual or lastknown place of abode or business with some person thereat who is apparently over the age of sixteen years ; or
- (c) By sending it by prepaid registered post to such person at his usual or lastknown place of abode or business.

(2.) Any notice (other than a notice to quit) required by this Act to be given to or served upon any person may, if the person is a company or body corporate or a registrar, be given or served—

- (a) By delivering it to the manager or secretary of the company or body corporate ; or
- (b) By leaving it at the office or place of business of the company, body corporate, or registrar with some person thereat who is apparently over the age of sixteen years ; or
- (c) By sending it by prepaid registered post to the company or body corporate or the registrar at its or his office or place of business.

(3.) Where any notice by the registrar of any Fair Rents Court is required by this Act to be given to or served upon a person whose address is unknown to the registrar, it may be given or served by publishing it or a notice substantially to the same effect once in the *Gazette* and once in a daily newspaper circulating in the petty sessions district in question.

Notice to
agents, &c.

68. (1.) Any notice required by this Act to be given to or served upon a lessor under the lease of any dwelling-house or prescribed premises shall be deemed to have been duly given or served if it is given to or served upon the person to whom the rent payable under the lease is customarily paid by or on behalf of the lessee.

(2.) Any notice required by this Act to be given to or served upon a lessee under the lease of any dwelling-house or prescribed premises shall be deemed to have been duly given or served if it is given to or served upon the person by whom the rent payable under the lease is customarily paid on behalf of the lessee.

(3.) If two or more persons are lessors under any lease of any dwelling-house or prescribed premises it shall be a sufficient compliance with any provision of this Act requiring any notice to be given to or served upon such lessors if such notice is given to or served upon any one of such lessors.

(4.) If two or more persons are lessees under any lease of any dwelling-house or prescribed premises it shall be a sufficient compliance with any provision of this Act requiring any notice to be given to or served upon such lessees if such notice is given to or served upon any one of such lessees.

Continued
operation of
notice.

69. Any notice required by this Act to be given to or served upon any lessor or lessee shall, if it has once been duly given to or served upon such lessor or lessee, be binding on all persons claiming by, from, or under such lessor or lessee and all subsequent lessors or lessees to the same extent as if given to or served upon such person claiming as aforesaid or subsequent lessors or lessees respectively.

Offences and
penalties.

70. (1.) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act.

1948.

Landlord and Tenant Act.

(2.) Any person who is guilty of an offence against this Act shall be liable, unless some specific penalty is prescribed by this Act for that offence, to a penalty of not more than one hundred pounds or to imprisonment for a term of not more than six months.

(3.) Any offence against this Act may be prosecuted in a summary way under **The Justices Acts, 1886 to 1948*," upon the complaint of any member of the Police Force, or of a registrar, or of any person aggrieved thereby, or, if so prescribed, of an authorised officer appointed under section seventy-two of this Act.

(4.) A conviction, order, or other proceeding of a court of petty sessions in relation to a complaint of an offence under this Act shall not be invalid merely by reason of the fact that the court purported to sit as a Fair Rents Court for the purpose of hearing and determining that complaint.

71. (1.) A court of petty sessions may, upon convicting any person of any offence against Part II. of this Act, in addition to any penalty, order that any amount which has been received by or paid to that person in contravention of the said Part II. be refunded to the person by whom the payment was made.

Court may order refund of amounts overpaid.

(2.) Where a court of petty sessions has made an order under subsection one of this section, a certificate under the hand of the clerk of that petty sessions specifying the amount ordered to be refunded and the person to whom the amount is payable may be filed in any court having civil jurisdiction to the extent of that amount, and shall thereupon be enforceable in all respects as a final judgment of that court.

72. (1.) The Governor in Council may, from time to time, appoint persons to be authorised officers under and for the purposes of this section.

Authorised officers.

Such appointments may be made generally or as respects any Petty Sessions District or group of two or more Petty Sessions Districts.

Every appointment of an authorised officer shall be notified in the *Gazette* and every authorised officer shall upon appointment be given a certificate in writing of his appointment signed by the Under Secretary of the Minister's Department.

(2.) Subject as directed by the Minister or by an officer of his Department thereunto appointed by the Minister, applications for determinations made to Courts within any Petty Sessions District in respect of which any authorised officer or officers has or have been appointed shall be referred to such an authorised officer for investigation and report.

Such investigation and report shall relate to all facts and circumstances which, in the opinion of the authorised officer, are necessary to enable the Court to make a proper determination of the fair rent of the dwelling-house (or dwelling-house and goods leased therewith) in question.

(3.) The authorised officer shall file his report with the registrar of the Court concerned, and the registrar shall produce the report to the Court at the hearing of the application.

Upon production as aforesaid the report shall be evidence in the proceedings but without prejudice to the right of any party to adduce evidence.

The Court may, if it thinks fit, and shall upon the application of any party, require the authorised officer who made the report to appear and to be examined upon the report.

(4.) An authorised officer may, in the course of making any investigation—

- (i.) Enter and inspect the dwelling-house (or dwelling-house and goods) the subject of that investigation ; and
- (ii.) Require any person to furnish to him verbally or in writing any information which in the opinion of that authorised officer is relevant to that investigation ; and
- (iii.) Require any person to produce for his inspection, and take copies of or extracts from, any documents, books, or papers in the custody or possession of that person relating to any fact or circumstance which in the opinion of that authorised officer is relevant to that investigation.

(5.) A person—

- (i.) Who obstructs or attempts to obstruct the lawful entry by an authorised officer upon any dwelling-house ; or

1948.

Landlord and Tenant Act.

PART IV.—
MIS-
CELLANEOUS.

- (ii.) Who obstructs the lawful inspection by an authorised officer of any dwelling-house or goods ; or
- (iii.) Who fails to furnish any information lawfully required by an authorised officer, or who furnishes any such information which is false or misleading in any particular ; or
- (iv.) Who fails to produce for inspection by an authorised officer any document, book, or paper which that officer may lawfully inspect, or who prevents or attempts to prevent an authorised officer from taking a copy of or extract from any such document, book, or paper,

shall be guilty of an offence.

(6.) In addition to the powers, functions, and duties specified in this section, an authorised officer shall have and exercise all such other powers, functions, and duties under and for the purposes of this Act as may be prescribed from time to time.

(7.) The clerk or other officer having custody of the books or other records relating to the valuations, rates, and other charges of a Local Authority shall allow an authorised officer to inspect and take copies of or extracts from such books and records, and shall not be entitled to charge any fee in respect of such inspection, copies, or extracts.

73. (1.) The Governor in Council may from time to time make regulations for or with respect to prescribing all matters and things which are by this Act permitted or required to be prescribed (excepting any such matter or thing required by this Act to be otherwise prescribed) or which are necessary or expedient to be prescribed for giving effect to this Act. Regulations.

(2.) Any such regulation may prescribe a penalty of not more than fifty pounds for any breach of the regulations. Penalties.

74. (1.) Every Order in Council or regulation made under this Act shall— Publication of Orders in Council and regulations.

- (a) Be published in the *Gazette* ;
- (b) Shall, upon its publication in the *Gazette*, be judicially noticed and such publication shall be conclusive evidence of the matters contained therein ;

- (c) Take effect from the date of such publication, or in the case of any such regulation, if a later date is specified in the regulations from that later date ; and
- (d) Be laid before Parliament within fourteen sitting days after such publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(2.) If Parliament passes a resolution of which notice has been given at any time within fourteen sitting days after any such Order in Council or regulation has been laid before Parliament disallowing such Order in Council or regulation or part thereof, that Order in Council or regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime.

For the purposes of this subsection the term " sitting days " shall mean days on which Parliament actually sits for the despatch of business.

12 GEO. VI.
No. 46.
THE
LANDLORD AND
TENANT ACT
AMENDMENT
ACT OF 1948.

An Act to Amend "The Landlord and Tenant Act of 1948" in certain particulars.

[ASSENTED TO 1ST DECEMBER, 1948.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

Short title
and
construction.

1. This Act may be cited as "*The Landlord and Tenant Act Amendment Act of 1948*," and shall be read as one with *"*The Landlord and Tenant Act of 1948*," herein referred to as the Principal Act.

Collective
title.

The Principal Act and this Act may collectively be cited as "*The Landlord and Tenant Act of 1948*."