

Hon. Mr. Duncan,

FAIR RENT.

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A BILL INTITULED

AN ACT to provide Means for fixing a Fair Rent for Land.

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

5 follows:—

1. The Short Title of this Act is "The Fair Rent Act, 1901."

Short Title.

2. In this Act, if not inconsistent with the context,—

Interpretation.

"Fair rent" means,—

10 (1.) In the case of agricultural or pastoral land, such a rent as a tenant, using or cultivating in a husbandlike manner, can fairly be expected to produce from the land, over and above,—

(a.) The necessary cost of cultivation and production; and also

15 (b.) Reasonable interest on necessary capital invested in stock and working-plant; and also

(c.) The reasonable maintenance of himself and his family, or of such of them as are living and being maintained on the land :

(2.) In the case of town, suburban, or village land, such a rent as a tenant can fairly be expected to pay, having regard to its site, buildings, and business advantages if let for business purposes for which it is best adapted, and its site, buildings, and residential advantages if let for purposes of residence :

“Land” means land of every description, and includes Crown lands, public reserves, and Native lands :

“Public authority” includes,—

(1.) The Governor or other authority acting on behalf of the Crown, in respect of lands of the Crown ;

(2.) A County Council, Borough or City Council, Road Board, Town Board, Harbour Board, or River Board, having the control or management of land, in respect of such land ;

(3.) Any body or persons, whether incorporate or unincorporate, having the control or management of land for educational, charitable, or other public purposes, or for any university, college, or public school, in respect of such land ;

(4.) The Public Trustee, in respect of land vested in him for any public purpose, or under “The West Coast Settlement Reserves Act, 1892,” or under any other Act (whether of a general or special nature) for the time being in force relating to Native reserves.

CONSTITUTION OF DISTRICTS AND BOARDS.

Constitution of districts and names thereof.

3. (1.) For the purposes of this Act the Governor, by Order in Council, may divide the colony into such districts, with such boundaries and names, as he thinks fit.

(2.) Notice of the constitution and name of every such district shall be gazetted, and the name of every district shall be “The Fair Rent District of . . .”

(3.) If any such district is constituted by reference to the boundaries of any other portion of the colony defined under any Act, then any alteration of such boundaries shall take effect in respect of the district constituted under this Act without any further proceeding, unless the Governor in Council otherwise determines.

Board.

4. For the purposes of this Act there is hereby constituted in and for each district a Board, called “The Fair Rent Board for the District of . . .”

To consist of three members.

5. The Board shall consist of *three* members, who shall be appointed by the Governor in Council.

Tenure of office.

6. Every member of the Board shall hold office during pleasure, and in case of the death, resignation, or removal of a member the Governor in Council may from time to time appoint a successor.

A Magistrate to be President.

7. A Stipendiary Magistrate shall be a member and the President of the Board.

8. The Governor may also from time to time appoint a Clerk to the Board, and such other officers as are necessary for the purposes of this Act.

Appointment of Clerk.

9. Every office under this Act may be held either separately from or in conjunction with any other office in the public service.

Offices may be held with others.

10. The members of the Board, the Clerk, and all other officers shall be paid such salaries or other remuneration as the Governor from time to time determines.

Salaries.

11. All such salaries and remuneration, and all other charges and expenses incidental to the administration of this Act, shall be paid out of moneys from time to time appropriated for that purpose by Parliament.

Payable out of moneys appropriated.

12. (1.) At all meetings of the Board the quorum shall be two, of whom the President must be one.

Quorum.

15 (2.) If by reason of sickness or other cause the President cannot attend any meeting of the Board, the Governor shall appoint a Judge of the Supreme Court or the District Court to sit and act in the stead and with all the powers of the President.

Provision if President ill.

20 13. (1.) Subject to prescribed regulations, the Board shall meet half-yearly in the months of June and December, at such time and place in the district as the President determines.

When Board to meet.

(2.) The Board shall also sit on such other and additional occasions as the Governor from time to time directs.

25 14. The Clerk shall, by notification in the *Gazette*, give at least fourteen days' notice of the date and place of the meeting of the Board.

Notice of meeting.

FAIR RENT.

30 15. Subject to the provisions of this Act, the Board of each district shall have authority to hear and determine all applications duly made to it to fix a fair rent of any land situate in the district and held under a written instrument of lease for a term of years, whereof at least two years have expired and two remain unexpired at the date when the application is made.

Jurisdiction of Board.

35 16. With respect to every such application, the following provisions shall apply:—

Provisions with respect to applications.

(1.) The application shall be made in the prescribed manner by either landlord or tenant, and shall be deemed to be made on the day on which the same is filed in the prescribed manner in the office of the Clerk.

40 (2.) Where the application is made in respect of land situate in two or more districts, such land shall, for the purposes of this Act, be deemed to be wholly within the district wherein the greater portion of its area is situate.

45 (3.) An application shall not be entertained unless the applicant satisfies the Board that he has applied to the other party to the lease to fix a fair rent by private agreement, and that such other party has failed so to do, or has insisted upon a rent which the applicant considers to be other than a fair rent.

50 17. With respect to the Board's procedure, and the mode of hearing and determining applications under this Act, the following provisions shall apply:—

Procedure and mode of hearing applications.

- (1.) The applicant shall, within the prescribed time and in the prescribed manner, file his application in the office of the Clerk, and give notice thereof to the other party to the lease (hereinafter called "the respondent"), and also to every person who, to the knowledge of the applicant, has any estate or interest in the land. 5
- (2.) The Board may at any time direct notice of the application to be served on any person whom it considers interested in the proceedings or entitled to be heard.
- (3.) Where it appears that any person other than the applicant or respondent has any estate or interest in the land, whether vested or contingent, the Board may permit such person to join in or reply to the application, on such terms and conditions as the Board thinks fit. 10
- (4.) If there are two or more persons who are in the same right, or if the decision in an application is likely to practically decide other applications of a like nature, the Board may order such persons to be made parties to the proceedings, or such applications to be consolidated, on such terms as to costs and otherwise as the Board thinks fit. 15 20
- (5.) The Board may summon witnesses to give evidence, and may administer an oath to any witness, and may also require the production of documents.
- (6.) The Board may receive such evidence as it thinks fit, whether the same is strictly legal evidence or not. 25
- (7.) The Board may view the land affected by the application, and may from time to time enter or authorise any person to enter on such land accordingly.
- (8.) If any witness resides at a distance exceeding twenty miles from the place where the Board sits, any party may apply to have the evidence of such witness taken in manner prescribed by "The Magistrates' Courts Act, 1893," in the case of witnesses resident at a distance, and for such purpose all the provisions of that Act shall, *mutatis mutandis*, apply to proceedings before the Board as if those proceedings were proceedings in a civil action in a Magistrate's Court. 30 35
- (9.) In all proceedings before the Board any of the parties thereto may require the evidence to be taken on oath.
- (10.) Every question before the Board shall be decided by a majority of the members present, and the decision shall be deemed to be the decision of the Board, and shall be given by the President. 40
- (11.) The President shall have a deliberative vote, and also (in case of equality of voting) a casting vote. 45
- (12.) The proceedings of the Board shall be open to the public, unless the Board thinks fit to direct that any application shall, with the consent of the parties, be heard in private.
- (13.) All parties to the proceedings may appear either personally or by counsel or solicitor, or by agent authorised in writing. 50

(14.) Counsel, solicitors, agents, witnesses, and all other persons attending before the Board shall have the same rights and privileges, and be subject to the same obligations, disabilities, and penalties, as in the trial of an action in the Supreme Court.

(15.) If any party or person entitled to be heard fails to appear at the time and place appointed for hearing, the Board may nevertheless proceed to hear and determine the application in his absence.

(16.) The Board may adjourn its sittings from time to time, and, subject to the provisions of this Act, may regulate its own procedure.

18. (1.) After hearing all parties and persons entitled to be heard, and taking such evidence as may be adduced, the Board shall determine what is the fair rent of the land affected by the application, and from what date such fair rent is to commence to accrue, and shall order accordingly.

Board to determine fair rent and make order.

(2.) Such date shall be not later than the date of the filing of the application nor earlier than the date of the periodical payment of rent next preceding the filing of the application.

(3.) Where at the commencement of this Act the rent of land is mortgaged or charged as security for money, nothing in this Act or in any such order shall operate or be construed to in any way affect such security, or the rights thereunder of any person in whose favour such security exists.

19. In fixing the fair rent, the Board shall have regard to the considerations specified in section *two* of this Act, and also to the following considerations as far as applicable:—

Considerations to govern Board in fixing fair rent.

(1.) The quality and situation of the land ;

(2.) Its access to markets ;

(3.) The present and probable future cost of production and price of produce ;

(4.) The state of trade and price of commodities ;

(5.) Generally all such other considerations as the Board deems equitable.

20. The fair rent, as determined by the Board, shall for all purposes be deemed to be the rent payable under the lease, in lieu of the reserved rent ; and all the covenants of the lessee and the rights of the lessor under the lease shall accordingly apply to the fair rent, in lieu of the reserved rent, until the fair rent is altered pursuant to a fresh application to the Board to fix a fair rent.

Fair rent then in lieu of rent under lease.

21. Such fresh application may be made by any party to the lease at any time, being not sooner than two years after the date of the order made by the Board on the previous application, if the lease is so long in force.

Fresh applications.

22. If the fair rent is less than the reserved rent, the tenant shall be entitled to deduct from the first or any subsequent periodical payment of rent whatever sum he may have already paid in excess of the fair rent, for any period subsequent to the date from which the fair rent commenced to accrue.

Deduction where fair rent less than reserved rent.

23. If the fair rent is greater than the reserved rent, the landlord shall be entitled, on the due date of the first periodical payment

Payment where fair rent greater.

of rent, to require payment of whatever sum may be payable by the tenant in excess of the reserved rent, for any period subsequent to the date from which the fair rent commenced to accrue.

After filing of application, proceedings for ejectment of tenant may be stayed.

24. (1.) At any time after the filing of an application to fix a fair rent, the Board or the President thereof may, at the request of the applicant, make an order to stay any proceedings for the ejectment or removal of the tenant, or for breach of covenant in respect of the non-payment of rent, until the said application is finally determined. 5

(2.) Such order may be made upon such terms as to security for rent, payment of rent, or otherwise, as the Board or the President thinks fit, and shall operate in all respects as if duly made by a Judge of the Supreme Court. 10

(3.) A Judge of the Supreme Court shall have all such power and jurisdiction as by this section is given to the Board or the President thereof; and an application to a Judge of the Supreme Court for the purpose herein provided may be made in a summary manner, in accordance with the ordinary practice of such Court, and without the issue of a writ. 15

Orders to be authority to pay or recover fair rent.

25. Where an order is made by the Board fixing the fair rent, such order shall, to the extent and in the manner therein provided, be an authority for the payment and recovery of the fair rent, and shall also be a bar to any action or other proceeding in any Court or by the act of parties, upon or under any deed or instrument, or under any Act, for the payment or recovery of the rent reserved by such deed or instrument, except so far as the same may be payable in accordance with such order. 20 25

Superior landlord's right of distress confined to fair rent.

26. If the Board, in fixing the fair rent payable by an under-tenant, reduces the rent to an amount less than that payable by the superior tenant to the superior landlord, any right of distress which the superior landlord may have in respect of the rent payable under the original lease shall be exercisable against the under-tenant only to the amount of the fair rent. 30

Orders and office copies thereof evidence.

27. An order made by the Board, or any copy of such order certified under the hand of the President to be a true copy thereof, shall respectively in any Court, and for all purposes, be receivable as evidence of the matters set forth in such order, without proof of any signature thereto or to any certificate thereon. 35

Orders as to costs and expenses may be made.

28. Subject to prescribed regulations (if any), the Board may make orders in such manner and form as it thinks fit, and by any such order, or by a separate order, may fix the costs and expenses of any application or any proceedings incidental thereto, and direct by and to whom they shall be paid, and in what shares or proportions (if any). 40

Mode of enforcing orders as to costs and expenses.

29. Any order made by the Board directing payment of costs and expenses, or any part thereof, and whether solely relating thereto or comprising other matters, may, so far as such order relates to such costs and expenses, be enforced by any party in whose favour such order is made, in any Magistrate's Court in or near the place where the sittings of the Board were held; and the like proceedings, whether by distress, commitment, or otherwise, may be had and taken to enforce such order as effectually, and to the same extent 45 50

and in like manner, as if such order were a valid judgment of the Magistrate's Court.

30. In case any application made to the Board is considered frivolous, vexatious, or unreasonable, the Board may dismiss it, or
5 may accede thereto in a modified form, subject to such terms as to costs and expenses as it thinks fit.

Frivolous applications may be dismissed.

31. (1.) An order determining the fair rent may, according to the nature of the title, be registered in the office of the Registrar of Deeds or of the District Land Registrar of the district where the
10 land affected is situated.

Registration of orders.

(2.) It shall be the duty of the District Land Registrar, on the application of either party, to record the terms of such order as far as the same relates to the rent payable, and he may make such entries in any register or any instrument presented to him for that purpose,
15 as may be necessary to give effect to this provision.

32. The decision of the Board shall be final and conclusive in regard to any matter as to which jurisdiction is given to it by this Act.

Decision of Board final.

33. (1.) A public authority and a tenant may, either before or
20 after the filing of an application to fix a fair rent, agree as to a fair rent; but every such agreement shall be subject to the confirmation of the Board; and the rent so agreed to and confirmed shall be deemed to be the fair rent.

Agreements as to fair rent subject to confirmation.

(2.) Every public authority shall have full power to make any
25 such agreement, although the same may not be expressly within the scope of the original powers of such authority.

GENERAL.

34. (1.) The Board shall at least once in every year, and oftener if so required by the Governor, make a report to him as to
30 its several proceedings under this Act.

Annual report to be laid before Parliament.

(2.) Every such report shall, within fourteen days after the making thereof, be laid before Parliament if sitting, and, if not, then within ten days after the commencement of the next ensuing session.

35. 35. All costs, expenses, and other moneys payable under this Act by a public authority shall be paid in manner following, that is to say,—

Costs and expenses of public authorities.

(1.) In the case of the Governor or other authority acting on behalf of the Crown, out of moneys appropriated by
40 Parliament;

(2.) In the case of the Public Trustee, out of the funds derived from the land or reserve in connection with which the moneys are payable;

(3.) In the case of any other public authority, out of the funds
45 derived from the land in connection with which the moneys are payable, or, in so far as such funds are insufficient, then out of any fund applicable to the general purposes of the public authority.

36. All costs, expenses, or other moneys payable under this
50 Act by the Public Trustee (otherwise than as a public authority), or

Costs and expenses of trustees.

by any other trustee, shall be payable out of the moneys belonging or accruing to the estate or property in connection with which the same are payable, and shall be charged thereto accordingly.

Regulations for
administration of
Act.

37. The Governor in Council may from time to time make regulations, not inconsistent with this Act, for any of the purposes following, that is to say,— 5

- (1.) Appointing an office for the Clerk, and directing at what places and times sittings of the Board shall be held;
- (2.) Prescribing the forms of applications to fix the fair rent of land, and of the notice thereof to be given by the applicant to the respondent and all other persons entitled to notice, and the time within which the same shall be served;
- (3.) Prescribing in what manner and upon whom notices shall be served, when the applicant or respondent is a public authority;
- (4.) Prescribing the mode of applying to the Board or the President for an order for stay of proceedings, and the mode of enforcing such order;
- (5.) Fixing a scale of fees to be paid by parties in respect of the several proceedings before a Board, and to and by whom the same shall in the first instance be paid;
- (6.) Prescribing a scale of expenses to be allowed to witnesses;
- (7.) Prescribing the mode of taking evidence at a distance from the place of sitting of a Board, including all such provisions as may be necessary to adapt "The Magistrates' Courts Act, 1893," to the purposes of this Act;
- (8.) Declaring in what manner and on what terms applications before a Board may be consolidated;
- (9.) Prescribing the procedure to be adopted by or before a Board in all matters not herein specially provided for, including the forms of orders and other proceedings to be made or used by the Board, or by any party or person, and also the manner of transmitting orders to a Magistrate's Court for the purpose of being enforced therein, as provided by this Act, and the mode of enforcing the same accordingly; and
- (10.) Generally prescribing such further or other matters as may be necessary to give full effect to this Act. 35

Fees to be paid to
Public Account.

38. All fees received or taken for proceedings under this Act or any regulations in force thereunder shall be paid into the Public Account and form part of the Consolidated Fund. 40