

TENANCY AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes various amendments to the Tenancy Act, 1948.

Clause 2 enables a landlord, on complying with certain conditions, to let a dwellinghouse or urban property without being subject to Part III and certain other provisions of the principal Act which restrict the right to recover possession of the premises from the tenant. The conditions are that an agreement in writing which states that those provisions are not to apply, and incorporates the terms and conditions of the tenancy, must be entered into and submitted to a Rents Officer before the tenancy commences, and must be approved by the Rents Officer. The clause validates any such agreement entered into before the passing of the Bill in the case of a tenancy commencing on or after 1st March, 1950.

Clause 3 provides that the restrictions as to recovering possession from the tenant are not to apply where a dwellinghouse is let in the future to a worker by his employer, and the letting is consequent upon or incidental to the contract of service and the tenant has subsequently ceased to be employed by the landlord.

Clause 4 provides that the restrictions as to recovering possession from the tenant are not to apply to any future letting of a dwellinghouse or urban property forming part of the estate of a mental patient who was occupying the premises when he became a mental patient, and who requires the premises for his own occupation.

Clause 5 provides that the restrictions as to recovering possession shall cease to apply where the tenant of a dwellinghouse has transferred or sublet his tenancy and no part of the dwellinghouse is occupied as a dwellinghouse by the tenant or his family, but this provision is not to apply to a subletting during the temporary absence of the tenant for not more than a year.

Clause 6 provides that the restrictions as to recovering possession shall cease to apply six months after any future transfer of a tenancy of an urban property (but not earlier than a year after the passing of this Bill), unless, before the transfer, the continued application of those provisions has been consented to by the landlord or ordered by a Magistrate's Court.

Clause 7 abolishes the restrictions on payments for goodwill on the transfer of a tenancy, and renders it unnecessary to have any such payment approved by the Land Valuation Court. The clause does not affect the prohibition of fines or premiums and of excessive charges for furniture, fixtures, and other chattels.

Clause 8 enables a landlord who is a trustee to recover possession of a dwellinghouse for occupation by a beneficiary under the trust, subject to the same conditions as to alternative accommodation or greater hardship as in the case of a landlord seeking possession for his own occupation.

Clause 9 provides that where a landlord applies to the Court to recover possession of a dwellinghouse or urban property on the ground of a nuisance or annoyance on the part of the tenant, and fails to establish his case to the satisfaction of the Court, the Court may nevertheless in its discretion, if the circumstances warrant it, order that the restrictions on recovering possession shall cease after six months. An order is not to be made if the landlord's conduct has contributed to the circumstances complained of; and any order made may be revoked on application made by the tenant within five months on the ground that the circumstances complained of have been improved.

Clause 10 provides that a landlord who has reached the age of sixty years (or fifty-five years in the case of a woman), and has owned a dwellinghouse for not less than three years, may recover possession of it on giving the tenant six months' notice, without being subject to the provisions of the principal Act as to hardship or alternative accommodation, if the landlord did not on 1st August, 1950, have adequate and suitable living accommodation in premises owned by him.

Clause 11 reduces from five years to three years the period for which a landlord must own a dwellinghouse before he can obtain possession for his own occupation without providing alternative accommodation or proving greater hardship.

Clause 12 provides that a landlord of an urban property who (after he has owned the premises for at least two years) has given one year's notice that he reasonably requires the premises for his own occupation may recover possession without providing alternative accommodation or proving greater hardship. The Court may grant the tenant a further adjournment for not more than six months if it considers that to be just and equitable. In order to prevent an injustice to the tenant, any such case will still be subject to subsection (2) of section 24 of the principal Act, which gives the Court a discretionary power to refuse possession, after considering the relative hardship of the parties and all other relevant matters.

Clause 13 provides that where a landlord offers the tenant alternative accommodation in a case where the principal Act requires him to do so, that accommodation is to be deemed to be suitable unless the Court is satisfied that it is inadequate for the needs of the tenant, or is of an unreasonably low standard, or is for any special reason unsuitable for the tenant.

Clause 14 provides that the Court for fixing the fair rent is to be a Magistrate's Court in all cases, subject to the right of appeal to the Supreme Court given by *clause 15* where the rent exceeds £525 a year.

Clause 16 exempts licensed hotels (including Trust hotels) from the principal Act.

Clause 17 exempts from the principal Act all future tenancies of camp sites for terms not exceeding six weeks.

Clause 18 is a drafting amendment, to provide that references in the principal Act to tenancies include subtenancies.

Clause 19 repeals the special provisions of the principal Act as to servicemen. These provisions expired on 31st March, 1949, or at the end of one year from the end of the serviceman's full-time service, whichever was the later.

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,

8th August, 1950.

[AS AMENDED BY THE LEGISLATIVE COUNCIL]

25th August, 1950.

Words struck out by the Legislative Council are shown in roman enclosed in panel; words inserted are shown in black or in roman with rule down side.

Hon. Mr. Sullivan

TENANCY AMENDMENT

ANALYSIS

Title.	9. Recovery of possession on grounds of nuisance or annoyance.
1. Short Title.	10. Recovery of possession of dwellinghouse for landlord's own occupation.
2. Exemption of approved tenancies from Part III of principal Act.	11. Alternative accommodation need not be provided by landlord who has owned dwellinghouse for three years.
3. Part III not to apply to dwellinghouse let to a worker by his employer.	12. Recovery of possession of urban property for landlord's own occupation.
4. Part III not to apply to dwellinghouse or urban property let on behalf of a mental patient.	13. Suitability of alternative accommodation.
5. Part III not to apply where tenant has sublet whole of dwellinghouse.	14. Fair rent to be fixed by Magistrate's Court.
6. Part III not to apply after transfer of tenancy of urban property, unless landlord consents or Court so orders.	15. Appeal to Supreme Court where rent exceeds £525.
7. Removing restriction on payment of goodwill on transfer of tenancy.	16. Principal Act not to apply to licensed hotels.
8. Recovery of possession of dwellinghouse by trustee.	17. Exemption of camp sites from principal Act.
	18. Application of principal Act to subtenancies.
	19. Repeal of spent provisions as to servicemen.

A BILL INTITULED

Title.

AN ACT to Amend the Tenancy Act, 1948.

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

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Short Title.

1. This Act may be cited as the Tenancy Amendment Act, 1950, and shall be read together with and deemed part of the Tenancy Act, 1948 (hereinafter referred to as the principal Act).

1948, No. 76

Exemption of approved tenancies from Part III of principal Act.

2. (1) The principal Act is hereby amended by 10 repealing section forty-eight, and substituting the following section:—

“48. (1) Where, in the case of the letting of any dwellinghouse or urban property, the landlord and the tenant, by agreement in writing dated before or after 15 the commencement of this section (but not before the first day of March, nineteen hundred and fifty), and incorporating the terms and conditions of the tenancy, have agreed that Part III and sections forty-one, forty-two, and forty-three of this Act shall not apply to 20 the premises so let or to any part thereof in respect of that tenancy, and a copy of the agreement has been deposited with a Rents Officer before the date of the commencement of the tenancy, and the agreement has been approved in writing before or after that date by a 25 Rents Officer, the agreement shall have effect according to its tenor.

“(2) The copy of any such agreement deposited with a Rents Officer, whether before or after the commencement of this section, shall be exempt from stamp 30 duty.

“(3) The fact that any such agreement has been approved in writing by a Rents Officer, whether before or after the commencement of this section, shall be conclusive evidence that this section applies to the agree- 35 ment and that the agreement has been duly made and deposited under this section.”

(2) Every agreement approved in writing before the passing of this Act under section forty-eight of the principal Act as originally enacted shall have effect and 40 be exempt from stamp duty as if that section had not been repealed.

3. The principal Act is hereby amended by inserting after section forty-eight, as inserted by the *last preceding* section, the following section:—

Part III not to apply to dwellinghouse let to a worker by his employer.

5 “48A. Where an agreement is entered into at any time after the commencement of this section for the letting of a dwellinghouse to a tenant who has entered into or works under a contract of service with the landlord and the letting of the dwellinghouse is consequent upon or incidental to the contract of service, Part III and sections forty-one, forty-two, and forty-three of this Act shall not apply to the premises or to any part thereof in respect of that tenancy after the tenant has ceased to be employed by the landlord.”

15 4. The principal Act is hereby amended by inserting, after section forty-eight^A, as inserted by the *last preceding* section, the following section:—

Part III not to apply to dwellinghouse or urban property let on behalf of a mental patient.

Struck out

20 “48B. Where an agreement is entered into at any time after the commencement of this section for the letting of any dwellinghouse or urban property forming part of the estate of any person who is a patient under the Mental Defectives Act, 1911, and who at the time when he became a mental patient was occupying the premises, and who requires the premises for his own occupation, Part III and sections forty-one, forty-two, and forty-three of this Act shall not apply to the premises or to any part thereof in respect of that tenancy.”

See Reprint of Statutes, Vol. V, p. 743

New

30 “48B. Where an agreement has been entered into at any time before or after the commencement of this section for the letting of any dwellinghouse or urban property forming part of the estate of any person who was at the time of the agreement a patient under the Mental Defectives Act, 1911, and who at the time when he became a patient or became mentally defective was occupying the premises, Part III and sections forty-one, forty-two, and forty-three of this Act shall cease to apply to the premises or to any part thereof in respect of that tenancy when—

See Reprint of Statutes, Vol. V, p. 743

40 “(a) The premises are required by the patient for his own occupation; and

“(b) The landlord has served on the tenant notice that the premises are so required.”

Part III not to apply where tenant has sublet whole of dwelling-house.

5. The principal Act is hereby amended by inserting, after section forty-eight B, as inserted by the *last preceding* section, the following section:—

“48c. (1) Where a tenancy of any dwellinghouse to which Part III of this Act applies has been transferred by the tenant (whether directly or by means of the creation of a subtenancy or subtenancies) and no part of the dwellinghouse is occupied as a dwellinghouse by the tenant or by the wife or husband or family of the tenant, Part III and sections forty-one, forty-two, and forty-three of this Act shall cease to apply to the premises or to any part thereof in respect of that tenancy from the commencement of this section or from the date on which the dwellinghouse or the last part thereof ceased to be so occupied, whichever is the later: 5
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“Provided that this subsection shall not apply in any case where the tenant, being in occupation of the dwellinghouse or any part thereof as his permanent home, has agreed to sublet it for a term not exceeding one year and intends to resume his occupancy as aforesaid at the end of that term. 20

“(2) Nothing in this section shall be construed to restrict or take away any rights of any subtenant under section forty of this Act.”

Part III not to apply after transfer of tenancy of urban property, unless landlord consents or Court so orders.

6. The principal Act is hereby amended by inserting, after section forty-eight c, as inserted by the *last preceding* section, the following section:— 25

“48d. (1) Where at any time after the commencement of this section a tenancy of any urban property to which Part III of this Act applies is transferred by the tenant (whether directly or by means of the creation of a subtenancy or subtenancies), Part III and sections forty-one, forty-two, and forty-three of this Act shall cease to apply to the premises or to any part thereof in respect of that tenancy at the expiration of six months from the date of the transfer of the tenancy or twelve months from the commencement of this section (whichever period is the later to expire), unless, before the date of the transfer,— 30
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“(a) The landlord has consented in writing to the continued application of those provisions; 40
or

“(b) The Court has ordered that those provisions shall continue to apply.

“(2) The Court may make an order that the said provisions shall continue to apply in any case where the Court is satisfied that it is fair and equitable to make the order, having regard to the circumstances leading to the proposed transfer.

“ (3) Nothing in this section shall be construed to restrict or take away any rights of any subtenant under section forty of this Act.”

7. Section nineteen of the principal Act is hereby amended by repealing paragraph (b) of subsection two, and subsections three and four, **and by omitting from paragraph (a) of subsection two the words “or on the occasion of”**.

Removing restriction on payment of goodwill on transfer of tenancy.

8. (1) Section twenty-four of the principal Act is hereby amended by inserting in subsection one, after paragraph (g), the following paragraph:—

Recovery of possession of dwellinghouse by trustee.

“(gg) In the case of a dwellinghouse, that the landlord is a trustee, and that the premises are reasonably required by a beneficiary under the trust or by two or more beneficiaries under the trust for his or their own occupation as a dwellinghouse:”.

(2) Section twenty-five of the principal Act is hereby amended by inserting in subsection one, after the words “paragraph (g)”, the words “or in paragraph (gg)”.

(3) Section thirty of the principal Act is hereby amended as follows:—

(a) By inserting in subsection one, after the words “in paragraphs (g)”, the expression “(gg)”:

(b) By inserting in subsection one, before the word “employee” wherever it occurs in the subsection or in the proviso thereto, the word “beneficiary”.

9. Section twenty-four of the principal Act is hereby amended by adding the following subsection:—

Recovery of possession on grounds of nuisance or annoyance.

“(4) On the hearing by any Court of any application by the landlord of any dwellinghouse or urban property for an order to which subsection one of this section applies, on the ground specified in paragraph (c) of that subsection, if the Court is not satisfied that that ground has been established but is satisfied that the circumstances are such that it is just and equitable to

do so, the Court may in its discretion order that, at the expiration of six months from the date of the order, this Part and sections forty-one, forty-two, and forty-three of this Act shall cease to apply to the premises or to any part thereof in respect of the tenancy, and every such order shall have effect according to its tenor: 5

“ Provided that the Court shall not make any such order if the Court is satisfied that the conduct of the landlord has been a factor contributing to the circumstances complained of: 10

“ Provided also that the Court may revoke any such order, upon application made by the tenant not later than one month before the expiration of the said period of six months, if the Court is satisfied that since the making of the order the circumstances complained of have so changed that it is just and equitable to revoke the order.” 15

Recovery of possession of dwellinghouse for landlord's own occupation.

10. Section twenty-four of the principal Act, as amended by the *last preceding* section, is hereby further amended by adding the following subsection:— 20

“(5) Subsection two of this section and section twenty-five of this Act shall not apply to any application for an order in respect of any dwellinghouse on the ground specified in paragraph (g) of subsection one of this section where— 25

“(a) The landlord or any one of the landlords for whose occupation the premises are required, or his or her wife or husband, has attained the age of sixty years (in the case of a man) or fifty-five years (in the case of a woman); 30 and

“(b) The landlord has, or, as the case may be, the landlords have, after the commencement of this subsection, served on the tenant not less than six months' notice of the landlord's 35 intention to make the application on that ground; and

“(c) The landlord has been the landlord or, as the case may be, the landlords have been the landlords of the premises throughout the 40 period of three years immediately preceding the date of service of the notice; and

“(d) The landlord or, as the case may be, the landlords or any one of them did not on the first day of August, nineteen hundred and fifty, have adequate and suitable living accommodation in premises owned by the landlord or, as the case may be, by the landlords or any of them.”

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11. Section twenty-five of the principal Act is hereby amended by omitting from the proviso to subsection one the words “ five years ”, and substituting the words “ three years ”, and also by omitting the word “ owned ” wherever it occurs in that proviso, and substituting in each case the words “ been the landlord or one of the landlords of ”.

Alternative accommodation need not be provided by landlord who has owned dwellinghouse for three years.

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12. Section twenty-five of the principal Act is hereby amended by adding to subsection one the following additional proviso:—

Recovery of possession of urban property for landlord's own occupation.

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“ Provided also that this subsection shall not apply to any application for an order in respect of any urban property on the ground specified in paragraph (h) of subsection one of the last preceding section made by a landlord who has after the commencement of this proviso served on the tenant not less than one year's notice of the landlord's intention to make the application on that ground, and has been the landlord or one of the landlords of the premises throughout the period of two years immediately preceding the date of service of the notice; but in any such case the Court, in addition to its other powers, shall have power, upon application made by the tenant, to adjourn the proceedings for any period not exceeding six months if the Court considers that in the circumstances of the case it is just and equitable to do so; but nothing in this proviso shall be construed to limit the operation of subsection two of the last preceding section.”

13. Section twenty-five of the principal Act is hereby amended by adding the following subsection:—

Suitability of alternative accommodation.

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“(4) In any proceedings to which this section applies, where the Court is satisfied that any alternative accommodation is or will be available for the tenant as aforesaid, that accommodation shall be deemed to be suitable unless the Court is satisfied that it is inadequate for the needs of the tenant, or is of an unreasonably low standard, or is for any special reason unsuitable for the tenant.”

Fair rent to be fixed by Magistrate's Court.

14. (1) Section two of the principal Act is hereby amended by repealing the definition of the term "the Court" in subsection one, and substituting the following definition:—

" "The Court" means a Magistrate's Court: " **5**

(2) This section shall not apply in respect of any proceedings commenced before the passing of this Act.

Appeal to Supreme Court where rent exceeds £525.

15. (1) The principal Act is hereby amended by repealing section fourteen, and substituting the following section:— **10**

" 14. Where a Magistrate's Court has made an order fixing the fair rent of any dwellinghouse or property, and the fair rent so fixed or the basic rent of the dwellinghouse or property exceeds an annual rent of five hundred and twenty-five pounds, any party to the proceedings may appeal to the Supreme Court in accordance with the provisions of Part V of the Magistrate's Courts Act, 1947 (except section seventy-one), and those provisions shall apply accordingly: **15**

1947, No. 16

" Provided that the determination of the Supreme Court on any such appeal shall be final." **20**

(2) Section thirteen of the principal Act is hereby amended by omitting the words "to the Court of Appeal".

1949, No. 51

(3) Section fifteen ^A of the principal Act, as inserted by section fifty-seven of the Statutes Amendment Act, 1949, is hereby amended by omitting the words "to the Court of Appeal against an order of the Supreme Court", and substituting the words "to the Supreme Court against an order of a Magistrate's Court". **25**

(4) This section shall not apply in respect of any proceedings commenced in a Magistrate's Court or in the Supreme Court before the passing of this Act. **30**

Principal Act not to apply to licensed hotels.

16. The principal Act is hereby amended as follows:— **35**

(a) By adding to the definition of the term "property" in subsection one of section two the words "and does not include any premises in respect of which a publican's licence, an accommodation licence, or a tourist house licence is in force under the Licensing Act, 1908, or any hotel maintained by a Licensing Trust constituted under any Act": **40**

See Reprint of Statutes, Vol. IV, p. 234

- (b) By omitting from subsection two of section nine the words “(not being licensed premises)”:
- (c) By repealing subsection three of section nine:
- (d) By repealing the proviso to subsection one of section sixteen.

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17. The principal Act is hereby amended by inserting, after section three, the following section:—

Exemption of camp sites from principal Act.

10 “3A. (1) Where an agreement has been entered into at any time after the commencement of this section for the letting of a camp site for a term not exceeding six weeks, this Act shall not apply to the premises so let or to any part thereof in respect of that tenancy.

15 “(2) For the purposes of this section the term ‘camp site’ means a camp site within the meaning of the Camping Ground Regulations 1936, whether or not a living place has been erected or placed thereon.”

Serial number 89/1936

20 18. Section two of the principal Act is hereby amended by inserting in subsection one, before the definition of the term “urban property”, the following definition:—

Application of principal Act to subtenancies.

“ ‘Tenancy’ includes a subtenancy; and ‘to let’, ‘letting’, ‘landlord’, and ‘tenant’ have corresponding meanings:”

25 19. (1) The following provisions of the principal Act are hereby repealed, namely:—

Repeal of spent provisions as to servicemen.

(a) The definitions of the terms “dependant” and “serviceman” in subsection one of section two:

30 (b) Paragraph (n) of subsection one of section twenty-four:

(c) Section twenty-eight.

(2) Section thirty of the principal Act is hereby amended as follows:—

35 (a) By omitting from subsection one the words “(l), and (n)”, and substituting the words “and (l)”:

40 (b) By omitting from subsection one the words “purchaser or serviceman” wherever they occur in the subsection or in the proviso thereto, and substituting in each case the words “or purchaser”.