

Hon. Mr Sullivan

TENANCY

ANALYSIS

Title.	15. Part IV not to apply to certain leases of properties for five years or more.
1. Short Title.	16. Part IV not to apply to property required for street widening.
Division into Parts.	17. Part IV not to apply to property required for public work of importance and urgency.
2. Interpretation.	
PART I	
ADMINISTRATION	
3. Act to be administered by Labour Department.	
4. Rents Officers.	
PART II	
APPLICATION OF ACT	
5. Act to bind the Crown.	
<i>Total Exemptions</i>	
6. New dwellinghouses and properties.	20. Magistrate's Court may fix fair rent.
7. New tenancies of dwellinghouses not let during three months before commencement of Act.	21. Method of fixing fair rent.
8. Dwellinghouses or camp sites let for six weeks or less.	22. Duration of order fixing fair rent.
9. Properties let for four years or more.	23. Rent in excess of fair rent to be irrecoverable.
<i>Partial Exemptions</i>	
10. Part IV not to apply to approved tenancies.	24. Rents Officer may fix fair rent of dwellinghouse.
11. Part IV not to apply to dwellinghouse let to a worker by his employer.	25. Fair rent fixed by agreement with approval of Rents Officer.
12. Part IV not to apply to dwellinghouse or property let on behalf of mental patient.	
13. Part IV not to apply when tenant has sublet whole of dwellinghouse.	<i>Procedure</i>
14. Part IV not to apply after transfer of tenancy of property, unless landlord consents or Court so orders.	26. Procedure on applications to Court to fix fair rent.
	27. Appeal to Supreme Court where rent exceeds £525.
	28. Court fees and costs.
	29. Decisions to be final.
	<i>Miscellaneous</i>
	30. Tenancy registers to be kept by landlords.
	31. Restrictions on right of landlord to distrain for rent of dwellinghouse.

32. Premiums, payments for furniture, etc., and payments for obtaining tenancies.
 33. Recovery by tenant of excess rent and other unlawful payments.
 34. Offences.

PART IV

RECOVERY OF POSSESSION

35. Notice to be given by landlord before commencing proceedings for recovery of possession.
 36. Limiting grounds for recovery of possession.
 37. Considerations to be taken into account on hearing of applications for possession.
 38. Alternative accommodation to be provided in certain cases.
 39. Recovery of excess land for business or building purposes.
 40. Landlord's right to subdivide dwellinghouse.
 41. Power to suspend proceedings for recovery of possession.
 42. Restrictions on letting or sale of premises when possession recovered for landlord's own occupation.
 43. Wrongful eviction.

PART V

MISCELLANEOUS

44. Protection of subtenants.
 45. Protection of wife or husband or family in case of death of tenant, or separation or desertion.
 46. Tenancies binding on mortgagees.
 47. Conditions implied in tenancies.
 48. Receipts for rent.
 49. Rents Officers may act on behalf of tenants of dwellinghouses.
 50. Service of notices.
 51. Restrictions on contracting out of benefits provided by Act.
 52. Prohibiting refusal to let dwellinghouse to applicant with children.
 53. Unauthorized occupation of buildings.
 54. Recovery of possession from unauthorized occupier.
 55. Offences and penalties.
 56. Proceedings to be taken by Rents Officer and heard before Magistrate alone.
 57. Procedure in proceedings by Rents Officers.
 58. Regulations.
 59. Repeals and savings.
 Schedule.

A BILL INTITULED

Title. AN ACT to consolidate and amend certain enactments relating to tenancies of dwellinghouses and other properties.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: 5

Short Title.
 Division into
 Parts.

1. (1) This Act may be cited as the Tenancy Act 1955.

(2) This Act is divided into parts, as follows:

Part I—Administration. (Sections 3 and 4.) 10

Part II—Application of Act. (Sections 5 to 17.)

Part III—Rent Restriction. (Sections 18 to 34.)

Part IV—Recovery of Possession. (Sections 35 to 43.)

Part V—Miscellaneous. (Sections 44 to 59.) 15

Interpretation.
 1948, No. 76,
 s. 2
 1950, No. 28,
 ss. 14, 18, 19
 (1) (a)
 1950, No. 91,
 s. 35

2. (1) In this Act, unless the context otherwise requires,—

“Agricultural purposes” has a meaning corresponding to the term “agriculture”, which for the purposes of this definition means the cultivation of the soil for the production of food products or other useful products of the soil, and includes 20

the use of land for horticultural or pastoral purposes, or for the keeping of pigs, bees, or poultry:

5 “Capital value”, in relation to any premises, means the capital value thereof as defined in the Valuation of Land Act 1951:

1951, No. 19

“The Court” means a Magistrate’s Court:

10 “Dwellinghouse” means any building or part of a building let as a separate dwelling; and includes any furniture or other chattels that may be let therewith; and also includes any land, outbuildings, or parts of buildings included in the tenancy; but does not include—

(a) Any licensed premises; or

15 (b) Any premises that include more than three acres of land where the tenant’s income or a substantial part thereof is derived from the use of that land for agricultural purposes:

20 “Licensed premises” has the same meaning as in the Licensing Act 1908:

Reprinted
1951, p. 946

“Local authority” has the same meaning as in the Public Works Act 1928:

See Reprint of
Statutes,
Vol. VII,
p. 622

25 “Outgoings”, in relation to any premises, means rates, insurance premiums, cost of repairs, and depreciation and other outgoings in respect of the premises, and such other expenditure as is met by the landlord for the benefit of the tenant:

30 “Property” means any land or interest in land or any building or part of a building let for any purposes under a separate tenancy; and includes any chattels that may be let therewith; but does not include—

(a) Any dwellinghouse; or

35 (b) Any property that is used exclusively or principally for agricultural purposes; or

(c) 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; or

Reprinted
1951, p. 946

40 (d) Any premises let under a separate tenancy as a garage for use exclusively for parking a motor vehicle or vehicles:

45 “Public work” has the same meaning as in the Public Works Act 1928:

See Reprint
of Statutes,
Vol. VII, p. 622

“Rent” includes any valuable consideration in money or money’s worth that is part of or in substitution for any rent:

“Rents Officer” means a Rents Officer appointed under this Act: 5

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

(2) Where two or more properties are for the time being let under the same tenancy they shall for the purposes of this Act be deemed to be one property. 10

(3) The application of this Act to any dwellinghouse shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade, or professional purposes. 15

(4) The application of this Act to any property shall not be excluded by reason only that the property and a dwellinghouse are let under the same tenancy.

(5) Where any person is granted or two or more persons are jointly or severally granted the right to occupy for residential purposes any part of a building, whether or not any services are provided for that person or those persons, and whether or not that person has or those persons have a right to the use, in common with any other person, of any other part of the building, then for the purposes of this Act the premises shall be deemed to be let to that person or those persons as a separate dwelling, and where several amounts are payable by two or more persons the total of those amounts shall be deemed to be the rent of the premises. 20 25 30

(6) No person who occupies any premises by virtue of a contract of service with the person from whom he holds the premises, and no person claiming through or under any such employed person, shall be deemed by virtue of subsection five of this section to be a tenant of the premises. 35

(7) Where any premises that form part of any building are let to a tenant as a separate dwelling or are deemed by virtue of subsection five of this section to be so let, and the landlord provides for the tenant any meals or food, the application of this Act to the premises as a dwellinghouse shall be excluded if the value of the 40

meals or food or the cost thereof to the landlord (which-
 ever is the less) forms a substantial proportion of the total
 amount payable by the tenant to the landlord as rent
 or otherwise in respect of the tenancy, but shall not in
 5 any other case be excluded by reason of the provision
 of the meals or food.

PART I

ADMINISTRATION

3. (1) This Act shall be administered by the Depart-
 10 ment of Labour.

Act to be
 administered
 by Labour
 Department.
 1948, No. 76,
 s. 4
 1954, No. 71

(2) The First Schedule to the Labour Department
 Act 1954 is hereby accordingly amended by omitting the
 reference to the Tenancy Act 1948, and substituting a
 reference to this Act.

15 4. (1) There may from time to time be appointed
 under the Public Service Act 1912 such Rents Officers
 as may be required for the purposes of this Act.

Rents Officers.
 1948, No. 76,
 s. 5

(2) Every Inspector of Factories appointed under the
 20 Factories Act 1946 shall be deemed to have been
 appointed to be a Rents Officer under this Act.

See Reprint of
 Statutes, Vol.
 VII, p. 522
 1946, No. 43

PART II

APPLICATION OF ACT

5. This Act shall bind the Crown.

Act to bind the
 Crown.
 1948, No. 76,
 s. 3

Total Exemptions

25 6. (1) Where a building is erected after the date of the
 commencement of this Act, this Act shall not apply to
 the building or to any dwellinghouse or property com-
 prised in it in respect of any tenancy for which an agree-
 ment is entered into after that date.

New dwelling-
 houses and
 properties.
 1948, No. 76,
 s. 48F
 1953, No. 47,
 s. 11

30 (2) Where a building comprising two or more self-
 contained flats has been erected before the commence-
 ment of this Act but after the twelfth day of November,
 nineteen hundred and fifty-three, this Act shall not apply
 35 to the building or to any of the flats comprised in it in
 respect of any tenancy for which an agreement has been
 entered into after that date (whether before or after the
 commencement of this Act).

(3) Where a building has been converted into two or more self-contained flats after the twelfth day of November, nineteen hundred and fifty-three (whether before or after the commencement of this Act), this Act shall not apply to the building or to any of the flats comprised in it in respect of any tenancy for which an agreement has been entered into after the date of the conversion (whether before or after the commencement of this Act):

Provided that nothing in this subsection shall be construed to restrict or take away any rights of any tenant under section forty of this Act:

Provided also that where the last tenant of a dwelling-house comprising the building or any part of the building before the conversion has (whether before or after the commencement of this Act) been granted the first tenancy of any of the flats, this Act shall apply to the flat in respect of that tenancy to the same extent, if any, as it would have applied to the first-mentioned dwellinghouse if the building had not been converted and the original tenancy had continued.

(4) For the purposes of this section—

(a) A building shall be deemed to be erected or converted when the erection or conversion is completed:

(b) A flat shall be deemed to be self-contained notwithstanding that the tenant may have a right to the use, in common with any other person, of any other part of the building for the purposes of access or rubbish disposal or for laundry purposes.

7. Where a dwellinghouse was not let as such at any time during the period of three months ending with the date of the commencement of this Act, this Act shall not apply to the dwellinghouse or to any part thereof in respect of any tenancy for which an agreement is entered into after the date of the commencement of this Act.

8. (1) Where an agreement has been entered into at any time after the date of the commencement of this Act for the letting of any dwellinghouse 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.

New tenancies of dwelling-houses not let during three months before commencement of Act.

Dwellinghouses or camp sites let for six weeks or less.

1948, No. 76, s. 3A
1950, No. 28, s. 17

(2) Where any agreement has been entered into, whether before or after the commencement of this Act, 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.

(3) Nothing in this section shall be construed as preventing the application of this Act in any case where the tenant continues with the express consent of the landlord to occupy the premises after the expiration of six weeks from the commencement of any such tenancy.

(4) 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.

9. Where an agreement has been entered into at any time after the date of the commencement of this Act for the letting of any property for a term of not less than four years, this Act shall not apply to the premises or to any part thereof in respect of that tenancy.

S.R. 1936/89
Properties let for four years or more.

20 *Partial Exemptions*

10. (1) Where, in the case of the letting of any dwellinghouse or property, the landlord and the tenant, by agreement in writing dated before or after the commencement of this Act (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 IV and sections forty-five, forty-six, and forty-seven of this Act (or Part III and sections forty-one, forty-two, and forty-three of the Tenancy Act 1948) shall not apply to 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 Rents Officer, Part IV and sections forty-five, forty-six, and forty-seven of this Act shall not apply to the premises or to any part thereof in respect of that tenancy, or, unless the parties otherwise agree, at any time while the tenant continues after the expiration of the tenancy to occupy the premises on the same terms and conditions and at the same rent or at any other rent lawfully payable for the premises.

Part IV not to apply to approved tenancies.
1948, No. 76, s. 48
1950, No. 28, s. 2 (1)
1948, No. 76

(2) The copy of any such agreement deposited with a Rents Officer, whether before or after the commencement of this Act, shall be exempt from stamp 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 Act, shall be conclusive evidence that this section applies to the agreement and that the agreement has been duly made and deposited under this section. 5

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

1948, No. 76, s. 48A

1950, No. 28, s. 3

11. Where an agreement has been entered into before or after the commencement of this Act (but not before the eighteenth day of September, nineteen hundred and fifty), 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 IV and sections forty-five, forty-six, and forty-seven 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. 10 15 20

Part IV not to apply to dwellinghouse or property let on behalf of mental patient.

1948, No. 76, s. 48B

1950, No. 28, s. 4

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

12. Where an agreement has been entered into before or after the commencement of this Act (but not before the eighteenth day of September, nineteen hundred and fifty), for the letting of any dwellinghouse or property forming part of the estate of any person who was at the time of the agreement a patient under the Mental Health Act 1911 and who at the time when he became a patient or became mentally defective was occupying the premises, Part IV and sections forty-five, forty-six, and forty-seven of this Act shall not apply to the premises or to any part thereof in respect of that tenancy when— 25 30

(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. 35

Part IV not to apply when tenant has sublet whole of dwellinghouse.

1948, No. 76, s. 48C

1950, No. 28, s. 5

13. (1) Where a tenancy of any dwellinghouse has before or after the commencement of this Act 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 IV and sections forty-five, forty-six, and forty-seven of this Act shall not apply to the premises or to any part thereof in respect of that tenancy: 40

5 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.

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

10 14. (1) Where, before or after the commencement of this Act (but not before the eighteenth day of September, nineteen hundred and fifty), a tenancy of any property has been transferred by the tenant (whether directly or by means of the creation of a subtenancy or subtenancies), Part IV and sections forty-five, forty-six, and forty-seven of this Act shall not apply to the premises or to any part thereof in respect of that tenancy after the expiration of six months from the date of the transfer of the tenancy unless, before the date of the transfer,—

20 (a) The landlord has consented in writing to the continued application of those provisions; or

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

25 (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.

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

35 15. Where an agreement has been entered into before the commencement of this Act but after the eleventh day of November, nineteen hundred and fifty-three, for the letting of any property for a term of not less than five years, Part IV and sections forty-five, forty-six, and forty-seven of this Act shall not apply to the premises or to any part thereof in respect of that tenancy.

40 16. (1) Where the landlord of any property is a local authority that requires possession of the premises for the purpose of street widening and has at any time after the commencement of this Act served on the tenant not less than one year's notice that the premises are required for

Part IV not to apply after transfer of tenancy of property, unless landlord consents or Court so orders. 1948, No. 76, s. 48D 1950, No. 28, s. 6

Part IV not to apply to certain leases of properties for five years or more. 1948, No. 76, s. 48E 1953, No. 47, s. 10

Part IV not to apply to property required for street widening.

that purpose, Part IV and sections forty-five, forty-six, and forty-seven of this Act shall not apply to the premises or to any part thereof after the expiration of the notice unless, before the expiration of the notice, the Court has ordered that those provisions shall continue to apply. 5

(2) The Court may make an order that those provisions shall continue to apply for a term expiring not later than one year after the expiration of the notice in any case where the Court is satisfied that in the circumstances it is fair and equitable to make the order. 10

Part IV not to apply to property required for public work of importance and urgency.

17. (1) Where the landlord of any property is the Crown or any person holding on behalf of the Crown or is a local authority, and the landlord requires possession of the premises for a public work that has been declared by the Governor-General by Order in Council to be a work of importance and urgency, and the landlord has at any time after the commencement of this Act served on the tenant not less than one year's notice that the premises are required for that purpose, Part IV and sections forty-five, forty-six, and forty-seven of this Act shall not apply to the premises or to any part thereof after the expiration of the notice unless, before the expiration of the notice, the Court has ordered that those provisions shall continue to apply. 15 20

(2) The Court may make an order that those provisions shall continue to apply for a term expiring not later than one year after the expiration of the notice in any case where the Court is satisfied that in the circumstances it is fair and equitable to make the order. 25

(3) The Governor-General may from time to time, by Order in Council, declare any public work to be a work of importance and urgency for the purposes of this section. 30

(4) For the purposes of this section the Crown or a local authority shall be deemed to be the landlord of any property in respect of any tenancy or subtenancy of the property or of any part thereof if the Crown or the local authority, as the case may be, is the legal or equitable owner of the property. 35

PART III

RENT RESTRICTION

Basic Rent

18. (1) For the purposes of this Act the expression **Basic rent.**
 5 "basic rent" means,— 1948, No. 76,
 s. 6

(a) In relation to a dwellinghouse let as such or to a property let on the first day of September, nineteen hundred and forty-two, the rent payable as on that date:

10 (b) In relation to a dwellinghouse that was not let as such on that date or to a property that was not let on that date, the rent that was last payable before that date or, in the case of a dwellinghouse first let as such after that date or a
 15 property first let after that date, the rent first payable in respect thereof:

Provided that where pursuant to any agreement made before the first day of September, nineteen hundred and forty-two, a greater or less rent is payable in respect of
 20 any property for any period after that date, the basic rent for any such period shall be the rent so payable for that period.

(2) For the purpose of defining the basic rent a dwellinghouse or property shall be deemed to be and to have
 25 always been the same dwellinghouse or property, whether or not any furniture or chattels are let therewith, and whether or not the tenant has the right to the use in common with any other person of any other premises or, as the case may be, of any other part of the premises of
 30 which the dwellinghouse or property forms part.

(3) Where immediately before the twenty-seventh day of November, nineteen hundred and forty-seven, any dwellinghouse had a basic rent that was different from its first basic rent determined in accordance with section
 35 four of the Fair Rents Amendment Act 1942, that first basic rent shall be deemed to have been restored on that date, and the basic rent in force immediately before that date shall be deemed to have ceased to be the basic rent, but shall be deemed to have been duly fixed as the fair
 40 rent of the dwellinghouse by order of a Magistrate under section six of the Fair Rents Act 1936, and if that fair rent is in force at the commencement of this Act it shall
 1942, No. 19
 1936, No. 14
 continue in force in accordance with section twenty-two of this Act.

S.R. 1944/36
(Reprint)

1936, No. 14

Restriction on
raising rent.
1948, No. 76,
s. 7

(4) Where immediately before the third day of December, nineteen hundred and forty-eight, any property had a basic rent that was different from its first basic rent determined in accordance with regulation fourteen of the Economic Stabilization Emergency Regulations 1942, that first basic rent shall be deemed to have been restored on that date, and the basic rent in force immediately before that date shall be deemed to have ceased to be the basic rent, but shall be deemed to have been duly fixed as the fair rent of the property by order of a Magistrate under section six of the Fair Rents Act 1936, and if that fair rent is in force at the commencement of this Act it shall continue in force in accordance with section twenty-two of this Act. 5 10

(5) The basic rent of any dwellinghouse or property as determined in accordance with this section shall be the basic rent for the purposes of every subletting of the dwellinghouse or property. 15

(6) Where on the twenty-seventh day of November, nineteen hundred and forty-seven, any dwellinghouse was sublet at a rent in excess of the basic rent, that rent shall be deemed to have been duly fixed as the fair rent of the dwellinghouse by order of a Magistrate under section six of the Fair Rents Act 1936, and if that fair rent is in force at the commencement of this Act it shall continue in force in accordance with section twenty-two of this Act. 20 25

(7) Where immediately before the third day of December, nineteen hundred and forty-eight, any property was sublet at a rent in excess of the basic rent, that rent shall be deemed to have been duly fixed as the fair rent of the property by order of a Magistrate under section six of the Fair Rents Act 1936, and if that fair rent is in force at the commencement of this Act it shall continue in force in accordance with section twenty-two of this Act. 30

19. (1) Notwithstanding anything to the contrary in any agreement, no rent in excess of the basic rent of any dwellinghouse or property shall be recoverable or lawfully payable. 35

(2) Nothing in this section shall be deemed to render irrecoverable or unlawful any rent payable in respect of any dwellinghouse or property for any period if a fair rent has been fixed in accordance with this Part of this Act in respect of the premises for that period, and the rent charged does not exceed the fair rent so fixed. 40

Fair Rent

Magistrate's
Court may fix
fair rent.
1948, No. 76,
s. 8

20. (1) On application in that behalf made by or on behalf of either the landlord or the tenant of any dwelling-house or property, the Court may at any time and from
5 time to time make an order fixing the fair rent of the premises.

(2) Where the landlord of the premises in respect of which any such application is made holds the premises as tenant the Court may on the same application make an
10 order fixing the fair rent payable by him to the head landlord, for which purpose the head landlord shall first be made a party to the proceedings.

(3) Every order made under this section shall take effect on a date to be specified therein in that behalf,
15 being not earlier in any case than the date of the application.

(4) If the fair rent so fixed exceeds the rent for the time being payable under the tenancy, the rent payable
20 in respect of any period during which the order is in force may be increased by the landlord to an amount not exceeding the fair rent.

(5) If the fair rent so fixed is less than the rent for the time being payable under the tenancy, the landlord shall,
25 as from the date on which the order takes effect, reduce the rent to an amount not exceeding the fair rent.

(6) Notwithstanding anything in the foregoing provisions of this section, the Court, if it thinks it fair and equitable to do so, may make an order for the refund or remission by the landlord to the tenant of the whole or
30 any part of the rent in excess of the fair rent that may have been paid or that may be payable by the tenant in respect of any period within six months immediately preceding the date on which the order fixing the fair rent takes effect:

35 Provided that nothing in the foregoing provisions of this subsection shall apply to any rent paid or payable in respect of any period for which a fair rent has been fixed under this Part of this Act.

(7) An order may be made under this section on the
40 application of the prospective landlord of any dwelling-house or property, notwithstanding that the premises are not for the time being let.

(8) A Rents Officer may appear and be heard, adduce evidence, and examine and cross-examine witnesses on any application under this section.

Method of fixing fair rent. 1948, No. 76, s. 9
1950, No. 28, s. 16 (b), (c)
1953, No. 8, s. 2
1953, No. 47, ss. 2, 3

21. (1) On the hearing of any application to fix the fair rent of any dwellinghouse or property, the Court, after taking into consideration all relevant matters, shall, subject to the provisions of any regulations made under this Act, fix as the fair rent such rent as in its opinion it would be fair and equitable for a tenant to pay for the premises. 5

(2) Subject to the following provisions of this section, the fair rent fixed as aforesaid in the case of a dwellinghouse shall not exceed the greatest of the following rents: 10

(a) A rent based on a value which exceeds the 1953 fair rent value by twenty per cent and by the 15

cost of any improvements made to the dwellinghouse after the first day of September, nineteen hundred and forty-two, or the date when it was built (whichever date is the later) and including an allowance to cover outgoings: 20

(b) In the case of a dwellinghouse built after the first day of September, nineteen hundred and forty-two, a rent based on the capital cost of the dwellinghouse when built, increased by the cost of any improvements made to the dwellinghouse after it was built, and including an allowance to cover outgoings: 25

(c) In the case of a dwellinghouse purchased after the twenty-second day of February, nineteen hundred and fifty, and let to a new tenant on or after the tenth day of December, nineteen hundred and fifty-one, and after that purchase, a rent based on the capital cost of the dwellinghouse to the landlord, increased by the cost of any improvements made to the dwellinghouse after that purchase, and including an allowance to cover outgoings. 30 35

(3) For the purposes of this section the expression "1953 fair rent value" means—

(a) In the case of a dwellinghouse built on or before the first day of September, nineteen hundred and forty-two, its capital value as at that date, increased by fifteen per cent: 40

(b) In the case of a dwellinghouse built after that date, the capital value that it would have had on that date if then built, increased by fifteen per cent.

5 (4) Subject to the following provisions of this section, the fair rent fixed as aforesaid in the case of a property shall not exceed a rent based on the capital value of the property, and including an allowance to cover outgoings.

10 (5) On the hearing of any application to fix the fair rent of any property under this section, the amount of any premium paid or payable in consideration of the grant or renewal of the tenancy may be taken into account to the extent that the Court deems fair and equitable, having regard to the conditions of the tenancy:

15 Provided that this subsection shall not apply where the premium was paid before the twelfth day of November, nineteen hundred and fifty-three.

20 (6) Where two or more dwellinghouses form part of the same building the fair rent of each dwellinghouse shall be determined as follows:

(a) The fair rent of the whole building shall be apportioned among all the dwellinghouses in proportion to the respective areas of the floor spaces of the dwellinghouses:

25 (b) The amount so apportioned to each dwellinghouse shall, if necessary, be increased or decreased according to the situation thereof and the amenities and appurtenances forming part thereof and the services attached thereto, so that the total of the increased or decreased amounts does not
30 exceed the fair rent for the whole building, and the resulting amounts shall be the fair rents of the respective dwellinghouses.

35 (7) Where a property and a dwellinghouse are for the time being let under the same tenancy, the fair rent of the property and the fair rent of the dwellinghouse shall be determined separately, and the total of the separate rents shall be deemed to be the fair rent of the premises let under the tenancy.

40 (8) This section shall apply to every application heard after the commencement of this Act, notwithstanding that the proceedings may have been commenced before the commencement of this Act.

Duration of
order fixing
fair rent.
1948, No. 76,
s. 10

22. Every order made under this Part of this Act fixing the fair rent of any dwellinghouse or property shall continue in force until a subsequent order fixing the fair rent of the premises takes effect, and shall apply with respect to every separate tenancy of the premises:

5

Provided that the Court may if it thinks fit provide in any such order that it shall expire on a date specified in that behalf in the order, unless a subsequent order fixing the fair rent of the premises sooner takes effect.

Rent in excess
of fair rent to
be irrecover-
able.

1948, No. 76,
s. 11

Rents Officer
may fix fair
rent of
dwellinghouse.

23. Where an order has been made under this Part of this Act fixing the fair rent of any dwellinghouse or property, no rent in excess of the fair rent shall be recoverable or lawfully payable for any period during which the order is in force.

10

24. (1) On application in that behalf made by or on behalf of either the landlord or the tenant of any dwellinghouse, a Rents Officer may at any time and from time to time, if in his discretion he thinks fit, make an assessment fixing the fair rent of the premises.

15

(2) Every assessment made under this section shall be in writing signed by the Rents Officer, and shall specify a date, being not less than twenty-one days after the date of the assessment, on which the assessment will take effect unless before that date an application to the Court to fix the fair rent of the dwellinghouse is made by or on behalf of the landlord or the tenant.

20

(3) A copy of every assessment made under this section shall be served on the landlord and the tenant forthwith after it is made.

25

(4) If an application to the Court to fix the fair rent of the dwellinghouse is not made by or on behalf of the landlord or the tenant before the date specified in that behalf in any assessment under this section, or if any such application made before that date is withdrawn or dismissed, the assessment shall take effect on that date as if it were an order made by the Court under this Part of this Act fixing the fair rent of the dwellinghouse, and shall be deemed for the purposes of this Act to be such an order.

30

35

(5) An assessment may be made under this section on the application of the prospective landlord of any dwellinghouse, notwithstanding that the premises are not for the time being let.

40

25. (1) The landlord and the tenant of any dwelling-house or property may agree in writing upon a rent to be the fair rent of the premises and, if the agreement is approved for the purposes of this Act by a Rents Officer, the rent so agreed upon shall be deemed for the purposes of this Act to be the fair rent of the premises as if it had been fixed by order made by the Court under this Part of this Act.

Fair rent fixed by agreement with approval of Rents Officer.
1948, No. 76, s. 16
1950, No. 28, s. 16 (d)
1953, No. 47, s. 4

(2) Any such agreement shall be exempt from stamp duty.

(3) A Rents Officer may, if in his discretion he thinks fit, approve any such agreement for the purposes of this Act:

Provided that he shall not approve any agreement if in his opinion the rent agreed upon exceeds a fair rent for the premises determined in accordance with section twenty-one of this Act.

Procedure

26. (1) Every application to fix the fair rent of any dwellinghouse or property made to the Court under this Part of this Act by or on behalf of the landlord or the tenant shall be made and dealt with by way of originating application under the rules of procedure for the time being in force under the Magistrates' Courts Act 1947, with notice to the tenant or the landlord of the premises, as the case may be, and to such other persons as the Court considers entitled thereto.

Procedure on applications to Court to fix fair rent.
1948, No. 76, s. 12
1947, No. 16

(2) Notice of every such application shall, at least seven clear days before the day fixed for the hearing, be posted or delivered by or on behalf of the applicant to the office of the Rents Officer nearest to the Court in which the application is made.

(3) Unless the parties otherwise agree, every such application shall be made and heard in the Court nearest to the place where the premises to which the application relates are situated:

Provided that during the absence of a Magistrate, or during the inability of a Magistrate to act from any cause whatsoever, the Registrar of the Court shall have authority and jurisdiction to order that any such application shall be heard in some other Court.

(4) Any application to a Court under this Part of this Act may be disposed of in Chambers.

Appeal to
Supreme
Court where
rent exceeds
£525.

1948, No. 76,
s. 14

1950, No. 28,
s. 15 (1)

1947, No. 16

27. 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 premises 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 Magistrates' Courts Act 1947 (except section seventy-one), and those provisions shall apply accordingly: 5

Provided that the determination of the Supreme Court on any such appeal shall be final. 10

Court fees and
costs.

1948, No. 76,
ss. 13, 15A

1949, No. 51,
s. 57

1950, No. 28,
s. 15 (2), (3)

28. (1) No Court fees shall be payable in respect of any application made to the Court to fix the fair rent of any dwellinghouse or property, or in respect of any appeal under section twenty-seven of this Act, or in respect of any document filed for the purposes of any such application or appeal. 15

(2) No party to any proceedings on an application made to the Court under this Part of this Act (including an appeal under section twenty-seven of this Act) shall be liable to pay the costs of any other party to the proceedings unless the Court makes an order for the payment by any party of any such costs on the ground that in its opinion the conduct of that party has been for the purpose of causing delay or has in any other respect been vexatious, or on the ground that it is desirable for any other special reason to make such an order. 20 25

Decisions to be
final.

1948, No. 76,
s. 15

29. Except as expressly provided in this Part of this Act, no appeal shall lie from any decision, determination, or order made by the Court under this Part of this Act, and no such decision, determination, or order shall be liable to be challenged, reviewed, quashed, or called in question in any Court on any ground except lack of jurisdiction. 30

Miscellaneous

Tenancy
registers to be
kept by
landlords.

1948, No. 76,
s. 17

30. (1) Where any dwellinghouse or property was let on the first day of September, nineteen hundred and forty-two, or at any time between that date and the commencement of this Act, or is let at any time after the commencement of this Act, the landlord shall keep or cause to be kept in accordance with this section a register 35 40

(hereinafter referred to as a tenancy register) showing in respect of each tenancy of the premises the following particulars:

- 5 (a) The description of the premises:
- (b) The name of each tenant, with the date of the commencement of his tenancy and (where the tenancy has ended) the date of the termination thereof:
- 10 (c) The rent payable by each tenant and the date and particulars of any alteration thereof:
- (d) The basic rent of the premises:
- (e) Any fair rent deemed to be the fair rent of the premises under section eighteen of this Act:
- 15 (f) Every fair rent fixed for the premises in respect of any period wholly or partly after the first day of September, nineteen hundred and forty-two, and the dates on which it takes effect and ceases to have effect.

20 (2) Every tenancy register shall be completed as far as possible forthwith after the commencement of this Act or the commencement of the tenancy, whichever is the later, and any further entry required by this section to be made therein shall be made as soon as possible after the occurrence to which it relates.

25 (3) Every entry in a tenancy register shall be admissible in evidence.

(4) Every landlord shall, upon demand, produce every tenancy register required to be kept by him to a Magistrate's Court or to the Supreme Court or to a Rents
30 Officer, or allow it to be inspected by any tenant or former tenant of the premises or his solicitor.

(5) Where any person purchases or acquires or otherwise becomes entitled to the estate or interest of the landlord of any dwellinghouse or property that has been let
35 as mentioned in subsection one of this section, it shall be the duty of the old landlord or his personal representatives, or the person transferring the estate or interest, to transfer the tenancy register to the new landlord, and it shall be the duty of the new landlord to acquire the
40 register accordingly and to comply with the provisions of this section in respect thereof as from the date from which he becomes entitled to that estate or interest.

(6) When any dwellinghouse or property that has been let as mentioned in subsection one of this section ceases to be let, the provisions of this section shall continue to apply to the landlord or his successor in title for the time being as if he were still a landlord. 5

(7) Every person who fails to comply in any respect with the provisions of this section, or knowingly makes or causes to be made in any tenancy register any false entry, commits an offence against this Act.

(8) It shall not be necessary for a tenancy register to be kept in respect of any dwellinghouse or property let by or on behalf of the Crown, but in every such case a memorandum showing the particulars specified in subsection one of this section shall be prepared on application by the tenant, and subsections three and four of this section shall apply to every such memorandum as if it were a tenancy register. 10 15

Restrictions on right of landlord to distrain for rent of dwellinghouse. 1948, No. 76, s. 18

31. (1) Except with the leave of the Court, no person shall be entitled to distrain for any rent due in respect of any dwellinghouse. 20

(2) An application under this section for leave to distrain may be made *ex parte* by the landlord, but before hearing any such application the Court may direct that notice be served by the landlord on the tenant.

Premiums, payments for furniture, etc., and payments for obtaining tenancies. 1948, No. 76, s. 19
1950, No. 28, s. 7

32. (1) Every person being the landlord of any dwellinghouse or acting on behalf of the landlord, commits an offence against this Act who, in consideration of or on the occasion of the grant, renewal, termination, or continuance of a tenancy of the dwellinghouse, stipulates for or demands or accepts, whether from the tenant or from any outgoing tenant or incoming tenant, any consideration other than the rent. 25 30

(2) Every person commits an offence against this Act who stipulates for or demands or accepts, for himself or for any other person, as a condition of the tenancy or the transfer of the tenancy of any dwellinghouse or property, payment for the furniture or fixtures, or other effects of the premises, or for any other chattels, of any sum in excess of the fair selling value thereof. 35

(3) Every person commits an offence against this Act who stipulates for or demands or accepts, for himself or for any other person, any payment or other consideration (not being commission lawfully payable to a land 40

agent) for obtaining or offering to obtain or doing anything for the purpose of obtaining any dwellinghouse or property for the occupation of any other person.

5 33. Where any sum that by virtue of this Part of this Act is irrecoverable has at any time been paid on account of the rent of any dwellinghouse or property, or any sum has at any time been paid in contravention of section thirty-two of this Act, the sum so paid may at any time within twelve months after the date of payment be
10 recovered by or on behalf of the person by whom it was paid as a debt due to him by the person who received the payment; and, without prejudice to any other mode of recovery, where the person who made the payment is the tenant of the person who received it, the sum so paid may
15 be deducted by the tenant from any rent payable by him to the landlord within that period of twelve months.

Recovery by tenant of excess rent and other unlawful payments. 1948, No. 76, s. 21

34. Every person commits an offence against this Act who—

- 20 (a) By any threat endeavours to dissuade or prevent a tenant from making or prosecuting any application or proceedings under this Part of this Act:
- (b) Stipulates for or demands or accepts, for himself or for any other person, on account of any dwellinghouse or property any sum that is
25 irrecoverable by virtue of this Part of this Act.

Offences. 1948, No. 76, s. 22

PART IV

RECOVERY OF POSSESSION

30 35. (1) No proceedings for the recovery by the landlord of possession of any dwellinghouse or property, or for the ejectment of the tenant therefrom, on any ground other than the ground that the tenant has failed to pay the rent lawfully payable in respect of the premises and the grounds specified in paragraphs (b) and (c) of section thirty-six of this Act, shall be commenced in the
35 Supreme Court or any Magistrate's Court unless notice in writing of his intention to commence the proceedings has been given by the landlord to the tenant at least fourteen days before the commencement of the proceedings:

Notice to be given by landlord before commencing proceedings for recovery of possession. 1948, No. 76, s. 23

40 Provided that where the tenancy has been duly determined by notice in writing given not less than fourteen days before that determination the foregoing provisions of this section shall not apply.

(2) Every notice under this section shall contain an address for service, and shall be signed by the landlord or by some duly authorized attorney or agent of the landlord, and shall be given in accordance with section fifty of this Act. 5

Limiting grounds for recovery of possession.

1948, No. 76, s. 24 (1)

1950, No. 28, s. 8 (1)

1953, No. 47, ss. 5 (1), 6 (1), 7

36. An order for the recovery of possession of any dwellinghouse or property, or for the ejection of the tenant therefrom, may, subject to the provisions of this Part of this Act, be made on one or more of the grounds following, but shall not be made on any other ground: 10

- (a) That the tenant has failed to pay the rent lawfully payable in respect of the premises, or has failed to perform or comply with any other conditions of the tenancy: 15
- (b) That the tenant has failed to take reasonable care of the premises or has committed waste:
- (c) That the tenant has been guilty of conduct that is a nuisance or annoyance to adjoining or neighbouring occupiers: 20
- (d) In the case of a dwellinghouse, that the premises are reasonably required by the landlord or by one or more of several joint landlords for his or their own occupation as a dwellinghouse:
- (e) In the case of a property, that the premises 25 are reasonably required by the landlord or by one or more of several joint landlords for his or their own occupation:
- (f) In the case of a dwellinghouse, that the landlord is a trustee, and that the premises are reasonably 30 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:
- (g) In the case of a property, that the landlord is a trustee, and that the premises are reasonably 35 required by a beneficiary under the trust or by two or more beneficiaries under the trust for his or their own occupation:
- (h) In the case of a dwellinghouse, that an agreement for the sale of the premises has been duly 40 entered into, and that the premises are reasonably required by the purchaser or by one or more of several joint purchasers for his or their own occupation as a dwellinghouse:

- 5 (i) In the case of a property, that an agreement for the sale of the premises has been duly entered into, and that the premises are reasonably required by the purchaser or by one or more of several joint purchasers for his or their own occupation:
- 10 (j) In the case of a dwellinghouse that forms part of the same building as a dwellinghouse occupied by the landlord, that the premises are reasonably required by the landlord to enable the aged parents or parent of the landlord or of the wife or husband of the landlord to live with the landlord or (where the landlord is an aged parent) to enable a son or daughter or son in law or daughter in law of the landlord to live with the landlord:
- 15 (k) In the case of a dwellinghouse, that the premises are reasonably required for occupation as a dwellinghouse by any person in the regular employment of the landlord; or, where the premises are occupied by a tenant who was employed by the landlord but the contract of service has been terminated, that the premises are reasonably required for occupation as a dwellinghouse by any person in the regular employment of the landlord or intended to be regularly employed by the landlord:
- 20 (l) That the tenant by subletting the premises or any part thereof is making a profit which, having regard to the rent paid by the tenant, is unreasonable:
- 25 (m) In the case of a property, that possession is required only of a part of the premises in excess of the reasonable requirements of the tenant:
- 30 (n) In the case of a dwellinghouse, that the premises are not reasonably required for occupation as a dwellinghouse by the tenant:
- 35 (o) That the estate or interest of the landlord in the premises will have expired or been determined not later than three months after the date of the application for the order:
- 40 (p) That the premises are reasonably required by the landlord for demolition or reconstruction or for removal to another site:
- 45

1952, No. 56

(q) That the landlord is the administrator within the meaning of the Administration Act 1952 of the estate of the deceased former landlord, and that the premises are reasonably required by the landlord for sale for the purpose of distributing the estate: 5

(r) That suitable alternative accommodation is available for the tenant or will be available for him when the order takes effect.

Considerations to be taken into account on hearing of applications for possession.
1948, No. 76, s. 24 (2)-(6)
1950, No. 28, ss. 9, 10
1953, No. 47, s. 6 (2)

37. (1) Subject to the following provisions of this section, on the hearing by any Court of any application for an order to which section thirty-six of this Act relates, the Court shall take into consideration the hardship that would be caused to the tenant or any other person by the grant of the application and the hardship that would be caused to the landlord or any other person by the refusal of the application, and all other relevant matters, and may in its discretion refuse the application, notwithstanding that any one or more of the grounds mentioned in section thirty-six of this Act may have been established. 10 15 20

(2) On the hearing by any Court of an application for an order to which section thirty-six of this Act relates in respect of a dwellinghouse where the tenant was employed by the landlord but the contract of service has been terminated, the Court shall in assessing the relative degrees of hardship under subsection one of this section or under subsection one of section thirty-eight of this Act have regard to the circumstances in which the tenant became the tenant of the dwellinghouse and the circumstances in which the contract of service was terminated. 25 30

(3) In any proceedings for the recovery of possession of a dwellinghouse or property by the landlord on the ground that the tenant has failed to pay the rent lawfully payable in respect of the premises, the Court may on the application of the landlord, if it is satisfied the circumstances are such that it is just and equitable to do so, order that subsection three of section thirty-two of the Magistrates Courts Act 1947 shall not apply to the proceedings, and every such order shall have effect according to its tenor: 35 40

1947, No. 16

Provided that nothing in this subsection shall be construed to limit the operation of section forty-one of this Act.

(4) On the hearing by any Court of any application by the landlord of any dwellinghouse or property for an order to which section thirty-six of this Act relates, on the ground specified in paragraph (c) of that section, if the
5 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-five,
10 forty-six, and forty-seven 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:

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

Provided also that the Court may revoke any such order, upon application made by the tenant not later
20 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.

25 (5) Subsection one of this section and section thirty-eight of this Act shall not apply to any application for an order in respect of any dwellinghouse on the ground specified in paragraph (d) of section thirty-six of this Act where—

30 (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); and

35 (b) The landlord has, or, as the case may be, the landlords have, after the seventeenth day of September, nineteen hundred and fifty (whether before or after the commencement of this Act), served on the tenant not less than six months' notice
40 of the landlord's 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 period of three years immediately preceding the date of service of the notice; and
- (d) The landlord was or, as the case may be, the landlords were or any one of them was, at any time during the period commencing on the first day of August, nineteen hundred and fifty, and ending with the date of service of the notice, without adequate and suitable living accommodation in premises owned by the landlord or, as the case may be, by the landlords or any of them or by the wife or husband of the landlord or of any of the landlords:

Provided that, where during the period referred to in paragraph (c) of this subsection any person has become entitled to the interest in the premises of his or her wife or husband who had been a landlord thereof since the beginning of that period, that person shall be deemed for the purposes of that paragraph to have been a landlord of the premises throughout that period.

(6) Subsection one of this section shall not apply to any application for an order on the ground specified in paragraph (q) of section thirty-six of this Act.

Alternative accommodation to be provided in certain cases. 1948, No. 76, s. 25
1950, No. 28, ss. 8 (2), 11, 12, 13
1953, No. 47, s. 6 (3)

38. (1) An order to which section thirty-six of this Act relates shall not be made by any Court on any of the grounds specified in paragraphs (d), (e), (f), (g), (k), or (o) of that section unless the Court is satisfied either—
- (a) That suitable alternative accommodation is available for the tenant or will be available for him when the order takes effect; or
- (b) That the hardship caused to the landlord or any other person by the refusal of the Court to make an order for possession or ejection would exceed the hardship caused to the tenant or any other person by the making of such an order:

Provided that this subsection shall not apply to any application for an order in respect of any dwellinghouse on the ground specified in paragraph (d) of section thirty-six of this Act made by a landlord who has been the landlord or one of the landlords of the premises throughout the period of three years immediately preceding the date of the application or who, being in receipt of an age

benefit out of the Social Security Fund, has been the landlord or one of the landlords of the premises throughout the period of two years immediately preceding the date of the application; but nothing in this proviso shall
5 be construed to limit the operation of subsection one of section thirty-seven of this Act:

Provided also that, where during the period of three years or two years, as the case may be, referred to in the last preceding proviso any person has become entitled to
10 the interest in the premises of his or her wife or husband who had been a landlord thereof since the beginning of that period, that person shall be deemed for the purposes of that paragraph to have been a landlord of the premises throughout that period:

15 Provided further that this subsection shall not apply to any application for an order in respect of any property on the ground specified in paragraph (e) of section thirty-six of this Act made by a landlord who has after the eighteenth day of September, nineteen hundred and fifty
20 (whether before or after the commencement of this Act) 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
25 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
30 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 one of section thirty-seven of this Act.

(2) An order to which section thirty-six of this Act relates shall not be made by any Court on any of the
35 grounds specified in paragraphs (h), (i), (p), or (q) of that section unless the Court is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order takes effect.

(3) In any proceedings to which this section or paragraph (r) of section thirty-six of this Act applies, the
40 burden of proving that suitable alternative accommodation is or will be available for the tenant shall be on the applicant for the order; but the Court may accept as sufficient evidence that such accommodation is or will be

available a certificate to that effect signed by a Rents Officer, or a certificate signed by or on behalf of the owner of any dwellinghouse or property that that dwellinghouse or property will be available for the tenant in the event of an order being made. 5

(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: 10

Provided that this subsection shall not apply to any application for an order on the ground specified in paragraph (r) of section thirty-six of this Act; but in any such case the burden of proving that any alternative accommodation that is or will be available for the tenant is suitable shall be on the applicant for the order. 15

Recovery of
excess land for
business or
building
purposes.
1948, No. 76,
s. 26
1953, No. 47,
s. 8

39. (1) The landlord of any dwellinghouse or property may apply to the Court for an order authorizing the landlord to re-occupy any land comprised in the premises at any time after the tenancy of that land has been duly determined by notice in writing given not less than fourteen days before that determination. 20

(2) The Court may in its discretion make an order authorizing the landlord to re-occupy any such land if the landlord proves to the satisfaction of the Court— 25

- (a) That the land that the landlord seeks to re-occupy is in excess of the reasonable requirements of the tenant; and 30
- (b) That the landlord requires the land for the purposes of his business, or for building purposes, or for sale for building purposes; and
- (c) That there will not as the result of making any such order be any contravention of any by-law of a local authority; and 35
- (d) That the rent payable by the tenant will be reduced to such amount as the Court considers reasonable in the circumstances, not exceeding the fair rent for the premises left in his occupation. 40

(3) Section forty-one of this Act shall apply to any proceedings under this section.

Landlord's right
to subdivide
dwellinghouse.
1948, No. 76,
s. 27

40. (1) The landlord of any dwellinghouse may, at any time after the tenancy has been duly determined by notice in writing given not less than fourteen days before that determination, apply to a Magistrate's Court for an order
5 authorizing the landlord to convert the dwellinghouse into two or more separate flats.

(2) The Court may in its discretion make an order accordingly in any such case if the landlord proves to the satisfaction of the Court—

10 (a) That the tenant will be reasonably able to use a defined portion of the building, being reasonably sufficient for his requirements, during the course of the work of conversion as a residence for himself and the members of his household; and

15 (b) That the rent payable by the tenant during the course of the work will be reduced by an amount that will adequately compensate him for loss of space and for any inconvenience that he may suffer; and

20 (c) That on the completion of the work the landlord will grant to the tenant a new tenancy of one of the flats into which the premises are converted, being reasonably sufficient for his requirements, at a rent not exceeding the fair
25 rent thereof.

(3) An order made under this section may contain such provisions or conditions as the Court thinks fit, and shall contain such provisions or conditions as the Court deems
30 necessary to ensure that the order shall not take effect until the landlord has obtained all Government and local authority permits and consents necessary to enable him to carry out the work.

(4) Every such order shall operate as a licence to the landlord until a Rents Officer has certified in writing that
35 the work has been duly completed. Upon the issue of such a certificate the original tenancy shall be deemed to be ended and the new tenancy of the tenant shall commence:

40 Provided that this Act shall apply to the flat in respect of the new tenancy to the same extent, if any, as it would have applied to the dwellinghouse if it had not been converted and the original tenancy had continued.

(5) Section forty-one of this Act shall apply to any proceedings under this section.

Power to suspend proceedings for recovery of possession.
1948, No. 76, s. 29

41. (1) In any proceedings in any Court for the recovery by the landlord of possession of any dwellinghouse or property or for the ejection of the tenant therefrom, the Court may from time to time, subject to such conditions (if any) as it thinks fit, adjourn the proceedings, or stay or suspend execution of any order or judgment that may have been made or given in the proceedings (whether before or after the commencement of this Act), or postpone the date of possession specified in any such order or judgment, for such period as it thinks fit, or may, subject to such conditions (if any) as it thinks fit, discharge or rescind any such order or judgment. 5

(2) The Court may, subject to such conditions (if any) as it thinks fit, from time to time vary or at any time discharge or rescind any order made by it under this section. 15

Restrictions on letting or sale of premises when possession recovered for landlord's own occupation.
1948, No. 76, s. 30
1950, No. 28, ss. 8 (3) (a), 19 (2) (a)
1953, No. 47, ss. 5 (2), 9

42. (1) Where an order for possession of any dwellinghouse or property or for the ejection of the tenant therefrom is made upon any of the grounds specified in paragraphs (d), (e), (f), (g), (h), (i), (j), and (k) of section thirty-six of this Act, or where possession of any dwellinghouse or property is obtained by a representation to the effect that possession is required on any such ground, neither the landlord nor, as the case may be, the other person represented as requiring possession shall let the premises or permit any person other than the landlord or other person represented as requiring possession, as the case may be, and his or her wife or husband, family, and domestic servants to occupy the premises or any part thereof, or shall sell or make any agreement for the sale of the premises or any part thereof, at any time during the period of two years after the date when possession is obtained, unless he has first obtained an authorizing order under subsection four of this section: 20

Provided that in the case of a dwellinghouse that contains more rooms than are reasonably required for the occupation of the landlord or other person represented as requiring possession, as the case may be, and his or her wife or husband, family, and domestic servants, the letting of any rooms that are not so required shall not be deemed to be in contravention of this subsection. 25

(2) If any document purporting to be an agreement is produced for the purpose of obtaining possession of any dwellinghouse or property on the ground specified in paragraph (h) or paragraph (i) of section thirty-six of this 30 45

Act (whether by means of an order of any Court or otherwise) and is in any respect not a genuine agreement binding upon both vendor and purchaser and intended to be carried into full effect according to the tenor thereof,

5 every person who is a signatory or party to the document or who, knowing that the document is not a genuine agreement, is concerned in the production or use thereof, shall be deemed to have committed an offence against this Act.

10 (3) Every person who does any act in contravention of subsection one of this section commits an offence against this Act.

(4) An authorizing order for the purposes of subsection one of this section may be granted to a person applying 15 therefor—

(a) By a Magistrate's Court, if it is proved to the satisfaction of the Court that by reason of circumstances that have arisen since possession was obtained it is just that the applicant should be relieved from the restrictions imposed upon him by this section; or

20 (b) In the case of a property, by a Magistrate's Court in any case, or (in the case of an order for possession or ejection) by the Court making the order for possession or ejection, if the authorizing order is required to relate only to a part of the property in excess of the reasonable requirements of the applicant.

25 (5) A copy of every application for an authorizing order under subsection four of this section shall, at least seven clear days before the day fixed for the hearing, be posted or delivered by or on behalf of the applicant to the office of the Rents Officer nearest to the Court in which the application is made. A Rents Officer may 30 appear and be heard, adduce evidence, and examine and cross-examine witnesses on any such application.

43. (1) Every person commits an offence against this Act who obtains possession of any dwellinghouse or property or any part of a dwellinghouse or property except—

40 (a) Pursuant to an order of a Court of competent jurisdiction; or

(b) With the express or implied consent of the tenant.

(2) Nothing in this section shall be construed to affect any right of action by way of civil proceedings on the 45 part of any tenant for wrongful eviction.

Wrongful
eviction.
1948, No. 76,
s. 31
1949, No. 51,
s. 58

PART V

MISCELLANEOUS

Protection of
subtenants.
1948, No. 76,
s. 40

44. (1) Where any person (hereinafter referred to as the subtenant) is in possession of any dwellinghouse or property as a result of the subletting of it to him by a tenant with the express or implied consent of the landlord, and the tenancy of the tenant is determined, whether as the result of an order for possession or ejection or by expiry or surrender or otherwise, the subtenant shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord in respect of the dwellinghouse or property on the terms on which he would have held it from the tenant if the tenancy had continued. 5 10

(2) For the purposes of this section the subletting of any dwellinghouse or property (whether before or after the commencement of this Act) shall be deemed to have been consented to by the landlord— 15

(a) Where the dwellinghouse or property forms part of premises held by the tenant at the commencement of the subtenancy, and those premises were originally designed and constructed for the purpose of being let as two or more separate flats or apartments or in two or more separate parts, as the case may be; or 20

(b) Where the dwellinghouse or property forms part of premises held by the tenant at the commencement of the subtenancy, and those premises at the commencement of his tenancy were let as two or more separate flats or apartments or in two or more separate parts, as the case may be, or had been adapted for the purpose of being so let; or 25 30

(c) Where the dwellinghouse or property forms part of premises held by the tenant at the commencement of the subtenancy, and those premises had during his tenancy been adapted by the landlord or with his consent for the purpose of being let as two or more separate flats or apartments or in separate parts, as the case may be; or 35 40

(d) In any other case, in the absence of proof to the contrary.

(3) For the purposes of subsection two of this section, where the tenant at the commencement of the sub-tenancy holds two or more parts of any premises under separate tenancies he shall be deemed to hold them under one tenancy commencing on the date on which the earliest of those tenancies commenced.

(4) Nothing in this section shall be construed to restrict or take away any rights of any subtenant of a tenant in any case where, whether before or after the commencement of this Act, the tenant has surrendered his tenancy.

45. (1) Where the tenant of any dwellinghouse or property has died (whether before or after the commencement of this Act), leaving in possession of the premises his wife or her husband or any other member of his or her family who was permanently residing with the tenant, and the tenancy would, if this subsection had not been passed, be determined by reason of the death of the tenant, the tenant's wife or husband, or the member of the tenant's family, as the case may be, shall be deemed for the purposes of this Act to have become the tenant of the premises upon the death of the first-mentioned tenant.

Protection of wife or husband or family in case of death of tenant, or separation or desertion.
1948, No. 76, s. 41

(2) Notwithstanding any enactment or rule of law to the contrary, where the tenant of any dwellinghouse or property separates from or deserts his or her wife or husband, leaving the wife or husband in possession in the premises, and the tenancy is determined by the landlord, whether before or after the separation or desertion, the provisions of this Act shall apply as if the wife or husband were the tenant of the premises.

46. Notwithstanding anything to the contrary in any Act or rule of law, every tenancy of a dwellinghouse or property shall, subject to the provisions of this Act, be binding on every mortgagee of the dwellinghouse or property (whether alone or together with any other premises) and on every person claiming under or through any such mortgagee, whether the tenancy has commenced or is deemed to have commenced before or after the commencement of this Act or before or after the creation of the mortgage, and whether or not the mortgagee has consented to the tenancy.

Tenancies binding on mortgagees.
1948, No. 76, s. 42

47. (1) In every tenancy of any dwellinghouse the following conditions shall be implied except in so far as they are expressly negatived by agreement in writing, namely:

Conditions implied in tenancies.
1948, No. 76, s. 43

- (a) The rent shall be payable weekly in advance as from the commencement of the tenancy:
- (b) The landlord or his duly authorized agent shall be entitled to enter the premises at any time between the hours of eight o'clock in the morning and five o'clock in the afternoon of any day except Saturday and Sunday for the purpose of inspecting the premises or effecting repairs or renovations thereto or valuing them for the purposes of any proceedings under this Act, on giving to the tenant not less than twenty-four hours' notice of his intention so to do: 5
- (c) The landlord shall effect all repairs and renovations to the premises that are required to abate any nuisance within the meaning of section twenty-six of the Health Act 1920: 10 15
- Provided that the landlord shall not be deemed to commit a breach of this condition until he has made default in complying with an order made under paragraph (d) of this subsection: 20
- (d) The tenant may at any time by notice in writing require the landlord to effect any specified repairs or renovations to the premises that are reasonably necessary as aforesaid. If the landlord does not comply with any such notice within thirty days after the date of service of the notice, the tenant may apply to the Court for an order requiring the landlord to effect the repairs or renovations, and the Court shall have jurisdiction to make such order as in its discretion it thinks fit, including jurisdiction to suspend or reduce the rent of the premises for any period during which the landlord makes default in complying with the order: 25 30 35
- (e) The tenant shall at all times do all things necessary to keep the premises neat, tidy, and clean, and shall not, without the consent of the landlord, remove any tree or shrub:
- (f) The tenant shall not assign his tenancy of the premises or any part thereof. 40
- (2) Where the tenancy of the tenant of any dwelling-house or property has expired or been lawfully terminated, the tenant shall, so long as he has lawful possession

See Reprint
of Statutes,
Vol. VI, p. 1072

of the premises, be deemed to continue to be the tenant thereof upon and subject to the same conditions as under the first-mentioned tenancy, subject to any conditions that may be imposed by the Court under section forty-one of this Act.

(3) Subject to the provisions of subsection two of this section, where notice to quit any dwellinghouse or property has been given, whether before or after the commencement of this Act, none of the following matters shall of itself constitute evidence of a new tenancy or operate as a waiver of the notice, namely:

- (a) Any demand by the landlord for payment of any rent in respect of any period within six months after the date of the giving of the notice:
- (b) The commencement of proceedings by the landlord to recover any rent in respect of any such period:
- (c) The acceptance of any rent by the landlord in respect of any such period.

48. (1) The landlord or other person receiving any payment on account of the rent of any dwellinghouse or property shall thereupon give or cause to be given a receipt for the payment, specifying the date of the payment, the amount paid, and the date up to which the rent is paid.

Receipts for rent. 1948, No. 76, s. 44

(2) Every receipt so given shall be and remain the property of the tenant.

49. With the authority in writing of the tenant of any dwellinghouse, any Rents Officer may, on behalf of the tenant, make or oppose any application under this Act or institute or appear in any proceedings for the recovery of any money claimed by the tenant under this Act, or defend or appear in any proceedings brought by the landlord in any Court in relation to the dwellinghouse; and in any such proceedings the Rents Officer shall be entitled to be represented by a barrister or solicitor.

Rents Officers may act on behalf of tenants of dwellinghouses. 1948, No. 76, s. 45

50. (1) Any notice required to be served on any person for the purposes of this Act may be served by delivering it to that person, and may be delivered to him either personally or by posting it by registered letter addressed to that person at his last known place of abode or business in New Zealand. A notice so posted shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered.

Service of notices. 1948, No. 76, s. 46

(2) If the person is absent from New Zealand, the notice may be delivered as aforesaid to his agent in New Zealand. If he is deceased, the notice or document may be delivered as aforesaid to his personal representatives.

(3) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, or if for any other reason it is not practicable to deliver the notice personally the notice shall be delivered in such manner as may be directed by the Court.

Restrictions on contracting out of benefits provided by Act. 1948, No. 76, s. 47

51. Except as otherwise expressly provided in this Act, no covenant or agreement entered into before or after the commencement of this Act shall have any force or effect to deprive any tenant of any right, power, privilege, or other benefit provided for by this Act.

Prohibiting refusal to let dwellinghouse to applicant with children. 1948, No. 76, s. 49

52. (1) Every person commits an offence against this Act who—

- (a) Refuses, or procures another person to refuse, to let a dwellinghouse to any person on the ground that it is intended that a child will live in the dwellinghouse; or
- (b) Instructs any other person not to let, or states his intention (whether by advertisement or otherwise) not to let, a dwellinghouse to any person if it is intended that a child will live in the dwellinghouse.

(2) In any prosecution for an offence against this section, where it is proved that a person has refused, or procured another person to refuse, to let a dwellinghouse to any person, the burden of proving that the refusal was for some reason other than that it was intended that a child would live in the dwellinghouse shall be on the defendant.

Unauthorized occupation of buildings. 1948, No. 76, s. 50

53. (1) Every person commits an offence against this Act who occupies any building or part of a building for residential purposes without the authority of the owner.

(2) For the purposes of this section the occupation of any building or part of a building by any person shall be deemed to be without the authority of the owner unless that person proves that he is in occupation by virtue of a tenancy duly created or by virtue of authority expressly granted by the owner or his duly authorized agent.

54. (1) Where any person is in occupation of any premises in contravention of section fifty-three of this Act the owner or his duly authorized agent may enter a plaint in the Magistrate's Court nearest to the place where the premises are situated to recover possession thereof; and the jurisdiction of the Court shall not be ousted on the plea that the value of the premises is above the jurisdiction of the Court, or that the Court in which the action is brought is not the Court nearest to the premises.

Recovery of possession from unauthorized occupier.
1948, No. 76,
s. 51

(2) If on the hearing of the plaint the defendant does not appear, or appears but fails to establish in himself an absolute right and title to the possession of the premises by virtue of a tenancy duly created or by virtue of authority expressly granted by the owner or his duly authorized agent, the Court shall order that possession of the premises be given by the defendant to the plaintiff forthwith, and that the defendant do pay the costs and such damages as the Court deems just; and in every such case the provisions of the Magistrates' Courts Act 1947 as to the enforcement of judgments and orders shall apply accordingly.

1947, No. 16

55. (1) Every person commits an offence against this Act who—

Offences and penalties.
1948, No. 76,
s. 52

(a) Without lawful justification or excuse acts in contravention of or fails to comply in any respect with any provision of this Act or of any regulations made under this Act; or

(b) Wilfully deceives or attempts to deceive any Rents Officer exercising or attempting to exercise any powers or functions under this Act or under any regulations made under this Act; or

(c) With intent to deceive, makes any false or misleading statement or any material omission in any communication with or application to any person (whether in writing or otherwise) for the purposes of this Act or any regulations made under this Act; or

(d) Offers any bribe or other unlawful or improper inducement to any person with intent to influence him in the exercise of any powers, duties, or functions under or for the purposes of this Act or any regulations made under this Act; or

(e) Being the landlord of any dwellinghouse or acting on behalf of the landlord, directly or indirectly deprives the tenant of any right or amenity for the time being enjoyed by the tenant in respect of the tenancy. 5

(2) Nothing in this section shall be construed to affect any right of action by way of civil proceedings.

(3) Every person who commits an offence against this Act or against any regulations made under this Act in relation to any dwellinghouse shall be liable on summary conviction to a fine not exceeding one hundred pounds and (in the case of a continuing offence) to a further fine not exceeding two pounds for every day during which the offence continues. 10

(4) Every person who commits an offence against this Act or against any regulations made under this Act in relation to any property shall be liable on summary conviction,— 15

(a) In the case of an individual, to a fine not exceeding two hundred pounds and (in the case of a continuing offence) to a further fine not exceeding five pounds for every day during which the offence continues: 20

(b) In the case of a company or other corporation, to a fine not exceeding five hundred pounds and (in the case of a continuing offence) to a further fine not exceeding twenty pounds for every day during which the offence continues. 25

Proceedings to be taken by Rents Officer and heard before Magistrate alone.

56. All proceedings in respect of offences against this Act shall be taken in a summary way on the information of a Rents Officer, and shall be heard before a Magistrate alone. 30

Procedure in proceedings by Rents Officers.

57. A rents Officer who lays an information or makes or opposes an application or institutes or defends or appears in any proceedings under this Act shall not be called on to prove that he is a Rents Officer. Any such information, application, or proceedings may be proceeded with or conducted by the same or any other Rents Officer or by any person permitted by the Court to conduct the same. 35 40

58. (1) The Governor-General may from time to time, by Order in Council, make regulations for giving full effect to the provisions of this Act, and for the due administration thereof.

Regulations.
1948, No. 76,
s. 53

5 (2) Without limiting the general power hereinbefore conferred it is hereby declared that regulations may be made under this section for all or any of the following purposes:

10 (a) Prescribing methods of fixing fair rents by reference to such proportion as may be prescribed of the capital value of the premises, together with the average annual outgoings of the landlord for rates and insurances, allowances for depreciation and maintenance and for any furniture or other chattels included in the tenancy, and such other considerations as may be prescribed:

15 (b) Regulating charges in respect of residential accommodation in any premises with attendance or services.

20 (3) Regulations made under this section may be of general application, or may relate to any specified part or parts of New Zealand, or to any specified class or classes of premises, and different regulations may be made in respect of different parts of New Zealand or in respect of different classes of premises.

25 59. (1) The enactments specified in the Schedule to this Act are hereby repealed.

Repeals and savings.
1948, No. 76,
s. 54
1950, No. 28,
s. 2 (2)
See Reprint of Statutes, Vol. VIII, p. 568

30 (2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act, and as if that provision had been in force when the document was made or the thing was done.

40 (3) Every agreement approved in writing before the eighteenth day of September, nineteen hundred and fifty, under section forty-eight of the Tenancy Act 1948 as originally enacted, and in force at the commencement of this Act, shall have effect and be exempt from stamp duty as if that section had not been repealed.

1948, No. 76

Schedule

Section 59

SCHEDULE**ENACTMENTS REPEALED**

- 1948, No. 76—
The Tenancy Act 1948.
- 1949, No. 51—
The Statutes Amendment Act 1949: Sections 56 to 58.
- 1949, No. 52—
The Finance Act (No. 2) 1949: Section 10.
- 1950, No. 28—
The Tenancy Amendment Act 1950.
- 1950, No. 91—
The Statutes Amendment Act 1950: Section 35.
- 1953, No. 8—
The Tenancy Amendment Act 1953.
- 1953, No. 47—
The Tenancy Amendment Act (No. 2) 1953.
- 1953 No. 115—
The Finance Act (No. 2) 1953: Section 24.