

Supplementary Order Paper

HOUSE OF REPRESENTATIVES

Thursday, the 18th Day of September 1969

LAND AMENDMENT (NO. 2) BILL

Proposed Amendments

HON. MR MACINTYRE, in Committee, to move the following amendments:

Clause 4, subclause (2): To omit from subparagraph (i) of paragraph (a) of the proposed subsection (7A) of section 122 of the principal Act the words "based on the same proportion as the yearly rent payable under the lease bears to the rental value of the land at the commencement of the lease", in lines 5 to 8 on page 4, and substitute the words "calculated at a percentage of that purchase price, which percentage shall be determined in accordance with subsection (7B) of this section".

To omit from paragraph (b) of the said subsection (7A) the words "the proportion that the annual rent payable under the lease bears to the rental value of the land at the commencement of the lease, percent per annum", in lines 24 to 27 on page 4, and substitute the words "equal to the percentage of the purchase price adopted in order to ascertain the amount of the yearly rent for the purposes of subparagraph (i) of paragraph (a) of this subsection".

To insert, after the said subsection (7A), the following subsections:

"(7B) For the purposes of paragraph (a) of subsection (7A) of this section, the yearly rent shall be calculated—

"(a) At the percentage or proportion of the rental value prescribed by or under any Act by which the yearly rent was determined for the current term of the lease:

"(b) At four and a half percent of the rental value, in any case where the yearly rent for the current term of the lease was determined in any other manner or where no specific percentage or proportion was so prescribed.

“(7c) For the purposes of subsection (7A) of this section, and notwithstanding anything in that subsection or in subsection (7B) of this section,—

“(a) Where the lessee is a serviceman or discharged serviceman and the yearly rent has been determined pursuant to section 29 of the Statutes Amendment Act 1943 or subsection (5) of section 63 of this Act or the lessee is in receipt of a concession allowed by the Board under section 153 of this Act, then, notwithstanding the provisions of the lease, the percentage or proportion of the rental value of the land and the rental value of the land shall be the percentage or proportion of the rental value of the land and the rental value of the land, respectively, which would become applicable on the transfer, sublease, or other disposition of the lease to any person not being a serviceman or discharged serviceman:

“(b) Where the lessee has been granted any other concession by the Board, no account shall be taken of that concession:

“(c) Where land has been incorporated in a lease pursuant to section 113 of this Act and the current yearly rent payable under the lease has been determined in more than one manner or by more than one percentage or proportion of the rental value of the land, then, subject to paragraphs (a) and (b) of this subsection, the yearly rent shall be calculated at four and a half percent of the rental value of the land.”

EXPLANATORY NOTE

Clause 4 of the Bill amends section 122 of the principal Act (permitting the lessee to acquire the fee simple of the land in his lease) by limiting the Crown's interest in the improvements to their value at the commencement of the lease, and also confers on lessees the right to set off against the purchase price the benefit they may have under the lease of a favourable rental.

Subclause (2) inserts in section 122 a new subsection (7A) defining the manner in which the value of the lessee's goodwill in the lease is to be determined. The subsection includes provisions requiring the Land Settlement Board first to ascertain the amount of the yearly rent on the purchase price of the land "based on the same proportion as the yearly rent payable under the lease bears to the rental value of the land at the commencement of the lease". The Board is then required to calculate the value of the lessee's goodwill on an actuarial basis, and for this purpose the rate of interest shall be "the proportion that the yearly rent payable under the lease bears to the rental value of the land at the commencement of the lease".

It has now been found that the words quoted do not aptly fit the circumstances of every case, due to the many types of leases and the varied methods of fixing the rent and the rental value. In some cases rents have been fixed by arbitration without any reference to percentage or rental value. In other cases leases are subject to concessions to servicemen or discharged servicemen and a current lease may also be subject to concessions under section 138 of the principal Act. Also, some leases have not followed the statutory provisions and have been drafted to meet the policy at the time of issue of the leases. Again, under section 113 of the principal Act land may have been included or excluded from a lease, and, where land has been included, the rental adjustment has in some cases been on a different basis from the fixation of rental at the commencement of the lease, e.g. the original percentage may have been $4\frac{1}{2}$ percent and the additional rent calculated at 5 percent of the rental value of the additional land. It may be also that the rent under the original lease was determined by arbitration or by a discretion vested in the Board under which the Board could determine a percentage within a maximum range.

To meet these various circumstances, the following amendments in this Supplementary Order Paper are proposed:

- (a) The amendments to subsection (7A) are formal only, and are consequential on the proposed new subsections (7A) and (7B).
 - (b) A new subsection (7B) is inserted providing that the yearly rent under the lease is to be calculated at the percentage or proportion of the rental value prescribed by or under any Act by which the yearly rent was determined for the current term of the lease. Where that percentage or proportion was not so prescribed, it is to be calculated at $4\frac{1}{2}$ percent of the rental value.
 - (c) A new subsection (7C) is inserted providing that the concessions to servicemen, discharged servicemen, and others mentioned above are to be disregarded. Where land has been included in the lease pursuant to section 113 of the principal Act and the current rent has been determined in more than one manner or at different percentages or proportions, it is to be calculated at $4\frac{1}{2}$ percent of the rental value.
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