

Zambia

Landlord and Tenant (Business Premises) Act, 1971 Chapter 193

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Zambia

Landlord and Tenant (Business Premises) Act, 1971

Chapter 193

Commenced on 1 January 1972

[This is the version of this document as it was at 31 December 1996 to 25 October 2020.]

An Act to provide security of tenure for tenants occupying property for business, professional and certain other purposes; to enable such tenants to obtain new tenancies in certain cases; and to provide for matters connected therewith and incidental thereto.

1. Short title

This Act may be cited as the Landlord and Tenant (Business Premises) Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**business**" means a trade, an industry, a profession or an employment, and includes any activity carried on by a body of persons, whether corporate or unincorporate, but does not include farming on land;

"**court**" means—

- (a) in relation to any premises the annual rent of which exceeds three thousand six hundred kwacha, the High Court; and
- (b) in relation to any other premises, a subordinate court of the first class presided over by a senior resident magistrate or a resident magistrate;

"**current tenancy**" has the meaning assigned to it by subsection (1) of section six;

"**date of termination**" has the meaning assigned to it by subsection (1) of section five;

"**holding**", in relation to a tenancy, means the property comprised in the tenancy excluding such part thereof as is not occupied by the tenant, his agents or employees for the purposes of a business;

"**landlord**", in relation to a tenancy, means the person who under the tenancy is, as between himself and the tenant, for the time being entitled to the rents and profits of the demised premises payable under the tenancy and, in a case where the reversion immediately expectant on the tenancy is mortgaged and the mortgagee is in possession thereof or has appointed a receiver of the rents and profits thereof, means that mortgagee;

"**lease**" means a lease, under-lease or other tenancy, assignment operating as a lease or under-lease, or an agreement for such lease, under-lease, tenancy or assignment;

"**mortgage**" includes a charge or lien, and "mortgagor" and "mortgagee" shall be construed accordingly;

"**notice to quit**" means a notice to terminate a tenancy (whether a periodical tenancy or a tenancy for a term of years certain) given in accordance with the terms (whether express or implied) of that tenancy;

"**premises**" means premises let under a tenancy for the purposes of carrying on business thereat;

"**rent**" includes any periodical sum payable by the tenant to the landlord in connection with his tenancy (whether under the lease or otherwise) in respect of the lighting, heating, board, furniture or other services; and any reference to the rent payable under a lease shall be construed as including a reference to any such sum as aforesaid;

"**repairs**" includes any work of maintenance, decoration or restoration, and references to repairing, to keeping or yielding up in repair and to state of repair shall be construed accordingly;

"**reversion**", in relation to a tenancy, means the interest which, not being a mortgage term and apart from any such term, is for the time being in reversion immediately expectant upon the termination of the tenancy;

"**service charge**" means a charge for any services provided;

"**services**", in relation to a tenancy, means the use of water, light or power, conservancy, sewerage facilities, sweeper, watchman, telephone, or other amenity or facility available to the tenant, and the right of access to any place or accommodation accorded to the tenant by reason of his occupation of the premises comprised in the tenancy, but shall not include the supply of meals to the tenant;

"**tenancy**" means a tenancy of business premises (whether written or verbal) for a term of years certain not exceeding twenty-one years, created by a lease or under-lease, by an agreement for or assignment of a lease or under-lease, by a tenancy agreement or by operation of law, and includes a sub-tenancy but does not include any relationship between a mortgagor and mortgagee as such, and references to the granting of a tenancy and to demised property shall be construed accordingly;

"**tenant**", in relation to a tenancy, means the person for the time being entitled to the tenancy, whether or not he is in occupation of the holding, and includes a sub-tenant;

"**terms**", in relation to a tenancy, includes conditions.

3. Application

- (1) Subject to the provisions of subsection (2), this Act shall apply to all tenancies in Zambia.
- (2) This Act shall not apply to—
 - (a) agricultural holdings;
 - (b) premises let or used exclusively for residential purposes;
 - (c) premises let by Government or a local authority;
 - (d) premises held by a tenant under a tenancy for a term of years certain exceeding twenty-one years;
 - (e) premises or part of the premises comprised in a tenancy, in which a tenant is carrying on a business in breach of a prohibition (however expressed) of use for business purposes which subsists under the terms of the tenancy and extends to the whole of those premises, unless the immediate landlord or his predecessor in title has consented to the breach or the immediate landlord has acquiesced therein.

In this paragraph the reference to a prohibition of use for business purposes does not include a prohibition of use for the purposes of a specified business, or of use for purposes of any but a specified business;

- (f) premises comprised in a tenancy granted by reason that the tenant was the holder of an office, appointment or employment from the grantor of the tenancy and continuing only so long as the tenant holds such office, appointment or employment, or terminable by the grantor on the tenant's ceasing to hold it, or coming to an end at a time fixed by reference to the time at which the tenant ceases to hold it;
- (g) premises comprised in a tenancy granted for a term certain not exceeding three months, unless—
 - (i) the tenancy contains provisions for renewing the term or for extending it beyond three months from its beginning; or

- (ii) the tenant has been in occupation for a period which, together with any period during which any predecessor in the carrying on of the business carried on by the tenant was in occupation, exceeds six months.

4. Continuation of tenancies to which this Act applies and grant of new tenancies

- (1) A tenancy to which this Act applies shall not come to an end unless terminated in accordance with the provisions of this Act; and, subject to the provisions of section ten, the tenant under such a tenancy may apply to the court for a new tenancy—
 - (a) if the landlord has given notice under section five to terminate the tenancy; or
 - (b) if the tenant has made a request for a new tenancy in accordance with section six.
- (2) The provisions of subsection (1) shall not prevent the coming to an end of a tenancy by notice to quit given by the tenant, by surrender or forfeiture, or by the forfeiture of a superior tenancy.
- (3) Notwithstanding anything in subsection (1)—
 - (a) where a tenancy to which this Act applies ceases to be such a tenancy, it shall not come to an end by reason only of the cesser, but if it was granted for a term of years certain and has been continued by subsection (1), then (without prejudice to the termination thereof in accordance with any terms of the tenancy) it may be terminated by not less than three nor more than six months' notice in writing given by the landlord to the tenant;
 - (b) where, at a time when a tenancy is not one to which this Act applies, the landlord gives notice to quit, the operation of the notice shall not be affected by reason that the tenancy becomes one to which this Act applies after the giving of the notice.

5. Termination of tenancy by landlord

- (1) The landlord may terminate a tenancy to which this Act applies by a notice given to the tenant in the prescribed form specifying the date on which the tenancy is to come to an end (hereinafter referred to as "the date of termination"):

Provided that this subsection shall have effect subject to the provisions of section twenty-three as to the interim continuation of tenancies pending the disposal of applications to the court.
- (2) Subject to the provisions of subsection (3), a notice under subsection (1) shall not have effect unless it is given not less than six months and not more than twelve months before the date of termination specified therein.
- (3) In the case of a tenancy which, apart from this Act, could have been brought to an end by notice to quit given by the landlord—
 - (a) the date of termination specified in the notice under subsection (1) shall not be earlier than the earliest date on which, apart from the provisions of this Act, the tenancy could have been brought to an end by notice to quit given by the landlord on the date of the giving of notice under this section; and
 - (b) where, apart from the provisions of this Act, more than six months' notice to quit would have been required to bring the tenancy to an end, the provisions of subsection (2) shall have effect with the substitution for twelve months of a period six months longer than the length of notice to quit which would have been required as aforesaid.
- (4) In the case of any other tenancy, a notice under this section shall not specify a date of termination earlier than the date on which, apart from the provisions of this Act, the tenancy would have come to an end by effluxion of time.
- (5) A notice under this section shall not have effect unless it requires the tenant, within two months after the giving of the notice, to notify the landlord in writing whether or not, at the date of

termination, the tenant will be willing to give up possession of the property comprised in the tenancy.

- (6) A notice under this section shall not have effect unless it states whether the landlord would oppose an application to the court under this Act for the grant of a new tenancy and, if so, also states on which of the grounds mentioned in section eleven he would do so.

6. Tenant's request for a new tenancy

- (1) A tenant's request for a new tenancy may be made where the tenancy under which he holds for the time being (hereinafter referred to as "the current tenancy") is a tenancy granted for a term of years certain and thereafter from year to year.

- (2) A tenant's request for a new tenancy shall be for a tenancy beginning with such date, not more than twelve nor less than six months after the making of the request, as may be specified therein:

Provided that such date shall not be earlier than the date on which, apart from the provisions of this Act, the current tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the tenant.

- (3) A tenant's request for a new tenancy shall not have effect unless it is made by notice in the prescribed form given to the landlord and sets out the tenant's proposals as to the property to be comprised in the new tenancy (being either the whole or part of the property comprised in the current tenancy), as to the rent to be payable under a new tenancy and as to the other terms of the new tenancy.
- (4) A tenant's request for a new tenancy shall not be made if the landlord has already given notice under section five to terminate the current tenancy, or if the tenant has already given notice to quit or notice under section eight; and no such notice shall be given by the landlord or the tenant after the making by the tenant of a request for a new tenancy.
- (5) Where the tenant makes a request for a new tenancy in accordance with the foregoing provisions of this section the current tenancy shall, subject to the provisions of subsection (2) of section eighteen and section twenty-three as to the interim continuation of tenancies, terminate immediately before the date specified in the request for the beginning of the new tenancy.
- (6) Within two months of the making of a tenant's request for a new tenancy, the landlord may give notice to the tenant that he will oppose an application to the court for the grant of a new tenancy, and any such notice shall state on which of the grounds mentioned in section eleven the landlord will oppose the application.

7. Rent while tenancy continues by virtue of section 4

- (1) The landlord of a tenancy to which this Act applies may—

- (a) if he has given notice under section five to terminate the tenancy; or
- (b) if the tenant has made a request for a new tenancy in accordance with section six;

apply to the court to determine the rent which it would be reasonable for the tenant to pay while the tenancy continues by virtue of section four, and the court may determine a rent accordingly.

- (2) In determining the rent under subsection (1), the court shall have regard to the rent payable under the terms of the current tenancy, but otherwise the provisions of section sixteen shall apply to the determination as they would apply to the determination of rent under that section.
- (3) The rent determined in proceedings under subsection (1) shall be deemed to be the rent payable under the tenancy from the date on which the proceedings were commenced or the date specified in the landlord's notice or the tenant's request, whichever is later.

8. Termination by tenant of tenancy for fixed term

- (1) Where the tenant under a tenancy to which this Act applies, being a tenancy granted for a term of years certain, gives to the immediate landlord, not later than three months from that date on which, apart from this Act, the tenancy would come to an end by effluxion of time, a notice in writing that the tenant does not desire the tenancy to be continued, section four shall not have effect in relation to that tenancy.
- (2) A tenancy granted for a term of years certain which is continuing by virtue of section four may be brought to an end on the first day of the month next following the expiry of not less than three months' notice in writing given by the tenant to the immediate landlord, whether the notice is given before or after the date on which, apart from this Act, the tenancy would have come to an end.

9. Renewal of tenancies by agreement

Where the landlord and tenant agree upon the grant to the tenant of a future tenancy of the holding, or of the holding with other land or premises on terms and from a date specified in the agreement, the current tenancy shall continue until that date but no longer, and shall not be a tenancy to which the provisions of this Act apply.

10. Order by court for grant of a new tenancy

- (1) Subject to the provisions of this Act, on an application under subsection (1) of section four for a new tenancy, the court shall make an order for the grant of a tenancy comprising such property, at such rent and on such other terms as are hereinafter provided.
- (2) Where such an application is made in consequence of a notice given by the landlord under section five, it shall not be entertained unless the tenant has duly notified the landlord that he will not be willing at the date of termination to give up possession of the property comprised in the tenancy.
- (3) Subject to the provisions of subsection (4), no application under subsection (1) of section four shall be entertained unless it is made not less than two nor more than four months after the giving of the landlord's notice under section five or, as the case may be, after the making of the tenant's request for a new tenancy.
- (4) The court may, for sufficient reason and on such terms as it thinks fit, permit a tenant to apply to the court for a new tenancy under subsection (1) of section four, notwithstanding that the application is not made within the period specified in subsection (3).

11. Opposition by landlord to application for new tenancy

- (1) The grounds on which a landlord may oppose an application under subsection (1) of section four are such of the following grounds as may be stated in the landlord's notice under section five or, as the case may be, under subsection (6) of section six, that is to say:
 - (a) where under the current tenancy the tenant has any obligations as respects the repairs and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations;
 - (b) that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due;
 - (c) that the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding;

- (d) that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable, having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding;
 - (e) where the current tenancy was created by the subletting of part only of the property comprised in a superior tenancy and the landlord is the owner on the termination of the superior tenancy, that the aggregate of the rents reasonably obtainable on separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purpose of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy;
 - (f) that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding;
 - (g) save as otherwise provided in subsection (2), that on termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business carried on by him therein, or as his residence.
- (2) The landlord shall not be entitled to oppose an application on the ground specified in paragraph (g) of subsection (1), if the interest of the landlord, or an interest which has merged in that interest and but for the merger would be the interest of the landlord, was purchased or created after the beginning of the period of five years which ends with the termination of the current tenancy, and at all times since the purchase or creation thereof the holding comprised in a tenancy or successive tenancies has been occupied wholly or mainly for the purposes of carrying on business thereon.

12. Dismissal of application for new tenancy where landlord successfully opposes

- (1) If the landlord opposes an application under subsection (1) of section four on grounds on which he is entitled to oppose it in accordance with section eleven and establishes any of those grounds to the satisfaction of the court, the court shall not make an order for the grant of a new tenancy.
- (2) Where, in a case not falling within subsection (1), the landlord opposes an application under subsection (1) of section four on one or more of the grounds specified in paragraphs (d), (e) and (f) of subsection (1) of section eleven but establishes none of those grounds to the satisfaction of the court, then, if the court would have been satisfied of any of those grounds if the date of termination specified in the landlord's notice or, as the case may be, the date specified in the tenant's request for a new tenancy as the date from which the new tenancy is to begin had been such later date as the court may determine, being a date not more than one year later than the date so specified—
 - (a) the court shall make a declaration to that effect, stating on which of the grounds the court would have been satisfied as aforesaid and specifying the date determined by the court as aforesaid, but shall not make an order for the grant of a new tenancy;
 - (b) if, within fourteen days after the making of the declaration, the tenant so requires, the court shall make an order substituting the said date for the date specified in the said landlord's notice or tenant's request, and thereupon that notice or request shall have effect accordingly.

13. Grant of new tenancy in some cases where section 11(1)(f) applies

- (1) Where the landlord opposes an application under subsection (1) of section four on the grounds specified in paragraph (f) of subsection (1) of section eleven, the court shall not hold that the

landlord could not reasonably carry out the demolition, reconstruction or work of construction intended without obtaining possession of the holding if—

- (a) the tenant agrees to the inclusion in the terms of the new tenancy of terms giving the landlord access and other facilities for carrying out the work intended and, given that access and those facilities, the landlord could reasonably carry out the work without obtaining possession of the holding and without interfering to a substantial extent or for a substantial time with the use of the holding for the purposes of the business carried on by the tenant; or
 - (b) the tenant is willing to accept a tenancy of an economically separable part of the holding and either paragraph (a) is satisfied with respect to that part or possession of the remainder of the holding would be reasonably sufficient to enable the landlord to carry out the intended work.
- (2) For the purposes of paragraph (b) of subsection (1), a part of the holding shall be deemed to be an economically separable part if, and only if, the aggregate of the rents which, after the completion of the intended work, would be reasonably obtainable on separate lettings of that part and the remainder of the premises affected by or resulting from the work would not be substantially less than the rent which would then be reasonably obtainable on a letting of those premises as a whole.

14. Property to be comprised in new tenancy

- (1) Subject to the provisions of subsection (2), an order under section ten for the grant of a new tenancy shall be an order for the grant of a new tenancy of the holding; and in the absence of agreement between the landlord and the tenant as to the property which constitutes the holding, the court shall in the order designate that property by reference to the circumstances existing at the date of the order.
- (2) The provisions of subsection (1) shall not apply in a case where the property comprised in the current tenancy includes other property besides the holding and the landlord requires any new tenancy ordered to be granted under section ten to be a tenancy of the whole of the property comprised in the current tenancy; but in any such case—
 - (a) any order under the said section ten for the grant of a new tenancy shall be an order for the grant of a new tenancy of the whole of the property comprised in the current tenancy; and
 - (b) reference in any of the provisions of this Act to the holding shall be construed as reference to the whole of that property.
- (3) Where the current tenancy includes rights enjoyed by the tenant in connection with the holding, those rights shall be included in a tenancy ordered to be granted under section ten.

15. Duration of new tenancy

Where, on an application under the provisions of this Act, the court makes an order for the grant of a new tenancy, the new tenancy shall be such tenancy as may be agreed between the landlord and the tenant or, in default of such an agreement, shall be such a tenancy as may be determined by the court to be reasonable in all the circumstances, being, if it is a tenancy for a term of years certain, a tenancy for a term not exceeding twenty-one years, and shall begin on the coming to an end of the current tenancy.

16. Rent under new tenancy

The rent payable under a tenancy granted by the order of the court under this Act shall be such as may be agreed between the landlord and the tenant or as, in default of such agreement, may be determined by the court to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor, there being disregarded—

- (a) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding;

- (b) any goodwill attached to the holding by reason of the carrying on of business by him or by his predecessor;
- (c) any effect on rent of any improvement carried out by the tenant or a predecessor in title of his otherwise than in pursuance of an obligation to his immediate landlord.

17. Other terms of new tenancy

The terms of a tenancy granted by order of the court under this Act (other than the terms as to the duration thereof and as to the rent payable thereunder) shall be such as may be agreed between the landlord and the tenant or as, in default of such agreement, may be determined by the court; and in determining those terms the court shall have regard to the terms of the current tenancy and to all relevant circumstances.

18. Carrying out of order for new tenancy

- (1) Where under this Act the court makes an order for the grant of a new tenancy, then, unless the order is revoked under subsections (2) and (3), or the landlord and the tenant agree not to act upon the order, the landlord shall be bound to execute or make in favour of the tenant, and the tenant shall be bound to accept, a lease or agreement for a tenancy of the holding embodying the terms agreed between the landlord and the tenant or determined by the court in accordance with the provisions of this Act; and when the landlord executes or makes such a lease or agreement the tenant shall be bound, if so required by the landlord, to execute a counterpart or duplicate thereof.
- (2) If the tenant, within fourteen days after the making of an order under this Act for the grant of a new tenancy, applies to the court for the revocation of the order, the court shall revoke the order; and where the order is so revoked, then, if it is so agreed between the landlord and the tenant or determined by the court, the current tenancy shall continue beyond the date at which it would have come to an end, apart from this subsection, for such period as may be so agreed or determined to be necessary to afford to the landlord a reasonable opportunity for re-letting or otherwise disposing of the premises which would have been comprised in the new tenancy; and while the current tenancy continues by virtue of this subsection it shall not be a tenancy to which this Act applies.
- (3) Where an order is revoked under subsection (2), any provisions thereof as to payment of rent shall not cease to have effect by reason only of the revocation; but the court may, if it thinks fit, revoke or vary such provision, or where no costs have been awarded in the proceedings for the revoked order, award such costs.

19. Compensation where order for new tenancy precluded on certain grounds

- (1) Where, on the making of an application under section four, the court is precluded (whether by subsection (1) or (2) of section twelve) from making an order for the grant of a new tenancy by reason of any of the grounds specified in paragraphs (e), (f) and (g) of subsection (1) of section eleven and not of any grounds specified in any other paragraph of that subsection (or where no other ground is specified in the landlord's notice under section five or, as the case may be, under subsection (6) of section six, than those specified in the said paragraphs (e), (f) and (g), and either no application under the said section four is made or such an application is withdrawn), then, subject to the provisions of this Act, the tenant shall be entitled on quitting the holding to recover from his landlord by way of compensation such amount as may be determined by the court.
- (2) In determining the amount of compensation under subsection (1), the court shall have regard, among other things, to the following matters, that is to say:
 - (a) the actual loss which the tenant has suffered in consequence of the court having been precluded from making the order for the grant of a new tenancy;
 - (b) the loss of goodwill, if any, in respect of the premises for which the court was precluded from making the order for the grant of a new tenancy; and

- (c) the availability or otherwise of premises similar in all material respects to the premises in respect of which the court was precluded from making the order for the grant of a new tenancy;

but, in no case, shall the amount of such compensation exceed a sum equivalent to three times the annual rent payable by the tenant in the last year of his tenancy.

20. Restrictions on agreements excluding provisions of this Act

Any agreement relating to a tenancy to which this Act applies (whether contained in the instrument creating the tenancy or not) shall be void in so far as it purports to preclude the tenant from making an application or request under this Act, or provides for the termination or surrender of the tenancy in the event of his making such an application or request, or for the imposition of any penalty or liability on the tenant in that event.

21. Duty of tenants and landlords of business premises to give information to each other

- (1) Where any person having an interest in any business premises, being an interest in reversion expectant (whether immediate or not) on a tenancy of those premises, serves on the tenant a notice in the prescribed form requiring him to do so, it shall be the duty of the tenant to notify that person in writing within one month of the service of the notice—
 - (a) whether he occupies the premises or any part thereof wholly or partly for the purposes of a business carried on by him; and
 - (b) whether his tenancy has effect subject to any sub-tenancy on which his tenancy is immediately expectant and, if so, what premises are comprised in the sub-tenancy, for what term it has effect (or, if it is terminable by notice, by what notice it can be terminated), what is the rent payable thereunder, who is the sub-tenant, and (to the best of his knowledge and belief) whether the sub-tenant is in occupation of the premises or of part of the premises comprised in the sub-tenancy and, if not, what is the sub-tenant's address.
- (2) Where the tenant of any premises, being a tenant under such tenancy as is mentioned in subsection (1) of section six, serves on any of the persons mentioned in subsection (3) a notice in the prescribed form requiring him to do so, it shall be the duty of that person to notify the tenant in writing within one month after the service of the notice—
 - (a) whether he is the owner of the fee simple in respect of those premises or any part thereof, or the mortgagee in possession of such an owner; and if not
 - (b) (to the best of his knowledge and belief) the name and address of the person who is his or, as the case may be, his mortgagor's, immediate landlord in respect of those premises or of the part in respect of which he or his mortgagor is not the owner in fee simple, for what term his or his mortgagor's tenancy thereof has effect and what is the earliest date (if any) at which that tenancy is terminable by notice to quit given by the landlord.
- (3) The persons referred to in subsection (2) are, in relation to the tenant of any premises—
 - (a) any person having an interest in the premises, being an interest in reversion expectant (whether immediate or not) on the tenant's; and
 - (b) any person being a mortgagee in possession in respect of such an interest in reversion as is mentioned in paragraph (a);and the information which any such person as is mentioned in paragraph (a) is required to give under subsection (2) shall include information whether there is a mortgagee in possession of his interest in the premises and, if so, what is the name and address of the mortgagee.
- (4) The provisions of subsections (1), (2) and (3) shall not apply to a notice served by or on the tenant more than two years before the date on which, apart from this Act, his tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the landlord.

- (5) In this section, the expression "mortgagee in possession" includes a receiver appointed by the mortgagee or by the court who is receipt of the rents and profits, and the expression "his mortgagor" shall be construed accordingly.

22. Compensation for possession obtained by misrepresentation

- (1) Where, under this Act, an order is made for possession of the property comprised in a tenancy, or an order is refused for the grant of a new tenancy, and it is subsequently made to appear to the court that the order was obtained, or the court was induced to refuse the grant, by misrepresentation or concealment of material facts, the court may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the order or refusal.
- (2) In this section, the expression "the landlord" means the person applying for possession or opposing an application for the grant of a new tenancy, and the expression "the tenant" means the person against whom the order for possession was made or to whom the grant of a new tenancy was refused.

23. Interim continuation of tenancies pending determination by court

- (1) In any case where—
- (a) a notice to terminate a tenancy has been given, or a request for a new tenancy has been made, under this Act; and
 - (b) an application to the court has been made under this Act; and
 - (c) apart from this section, the effect of the notice or request would be to terminate the tenancy before the expiration of the period of three months beginning with the date on which the application is finally disposed of;
- the effect of the notice or request shall be to terminate the tenancy at the expiration of the said period of three months and not at any other time.
- (2) The reference in paragraph (c) of subsection (1) to the date on which an application is finally disposed of shall be construed as a reference to the earliest date by which the proceedings on the application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing has expired, except that if the application is withdrawn or an appeal is abandoned, the reference shall be construed as a reference to the date of the withdrawal or abandonment.

24. Provisions as to mortgagees in possession

Anything authorised or required by the provisions of this Act, other than subsection (2) or (3) of section twenty-one, to be done at any time by, to or with the landlord, shall, if at that time the interest of the landlord in question is subject to a mortgage and the mortgagee is in possession or a receiver appointed by the mortgagee or by the court is in receipt of the rents and profits, be deemed to be authorised or required to be done by, to or with the mortgagee instead of that landlord.

25. Appeals

Except as hereinafter provided, where any question is, under the provisions of this Act, to be determined by the court, the determination by the court shall be final and conclusive:

Provided that an appeal from any such determination shall lie on any point of law, or of mixed fact and law, to the Supreme Court.

26. Rules

The Chief Justice may, by statutory instrument, make rules of court—

- (a) providing for matters of procedure under this Act;
- (b) prescribing (where proceedings are commenced in court under this Act) the manner in which a tenant may, notwithstanding any contractual obligation, elect to pay to the court rent due to his landlord; the manner in which the rent so paid may be claimed from the court by the landlord or, if not so claimed, may be disposed of by the court; and the amount of commission which the court may deduct from rent so paid to it; and
- (c) prescribing the fees which shall be payable in respect of any matter or thing to be done under this Act.

27. Regulations

The Minister may, by statutory instrument, make such regulations and give such directions as he may think fit for the purpose of giving effect to the provisions of this Act.

28. Determination of rent in respect of tenancies commencing on or after 1st January, 1972

- (1) Notwithstanding anything to the contrary contained in this Act or any other written law or in any lease, a tenant whose tenancy commences on or after the 1st January, 1972, and to which tenancy this Act applies, may, within three months from the commencement thereof (if he is aggrieved by the rent payable thereunder), apply to the court for determination of rent; and, subject to the provisions of subsection (2), the court shall determine the rent which shall be substituted for the rent agreed to be paid under the tenancy.
- (2) The rent determined by the court under subsection (1) shall be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor to a willing lessee, there being disregarded—
 - (a) any effect on rent of the fact that the landlord's or the tenant's predecessors have been in occupation of the holding;
 - (b) any goodwill attached to the holding by reason of the carrying on of business by the landlord's or tenant's predecessor;
 - (c) any effect on rent of any improvement carried out by the tenant otherwise than in pursuance of an obligation to the tenant's immediate landlord.
- (3) The court shall fix the date (which date shall not in any case be earlier than the date of commencement of the tenancy) from which the rent so determined under subsection (1) shall be payable by the tenant, and any sum paid in excess of the rent so determined shall be recoverable from the landlord who received the payment, or from his legal personal representative, by the tenant who paid such sum; and any such sum, and any other sum which, under the provisions of this Act is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant from any rent payable by him to the landlord.
- (4) After determination of the rent under subsection (1), if any person or landlord makes a demand or accepts rent in excess of the rent so determined, he shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand penalty units to imprisonment for a term not exceeding six months, or to both.

- (5) Any sum paid by a tenant which under subsection (3) is recoverable by him shall be recoverable at any time within six years from the date the court makes the determination under subsection (1).

[As amended by Act [No. 13 of 1994](#)]