



BELIZE

**LANDLORD AND TENANT ACT
CHAPTER 189**

REVISED EDITION 2000
SHOWING THE LAW AS AT 31ST DECEMBER, 2000

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Chapter 3 of the Laws of Belize, Revised Edition 1980 - 1990.

This edition contains a consolidation of the following laws-	Page
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LANDLORD AND TENANT ACT	9
Amendments in force as at 31st December, 2000.	



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CHAPTER 189

LANDLORD AND TENANT

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CHAPTER 189

LANDLORD AND TENANT

[31st December, 1953]

Ch. 201,
R.L., 1958.
CAP. 153,
R.E. 1980-1990.
40 of 1963.
26 of 1985.
22 of 1987.

PART I

Preliminary

- 1. This Act may be cited as the Landlord and Tenant Act. Short title.
- 2. In this Act, unless the context otherwise requires:- Interpretation.

“agent” means a person authorised by a landlord to let any land or buildings, or to collect rent, or to levy distress, or to do any other act in relation to a tenancy;

“buildings” includes houses, rooms, flats, apartments and parts thereof;

“deed” means a writing or instrument written on paper or parchment, signed, sealed and delivered, to prove and testify the agreement of the parties whose deed it is, to the things contained in the deed;

“land” includes buildings, houses and other structures and erections thereon;

“landlord” means any person who under any tenancy is, as between himself and the tenant for the time being, entitled to the rents and profits of the land or building;

“lease” includes under-lease and assignment operating as a lease or under-lease;

“lessee”, in relation to lease, has the same meaning as “tenant”;

“lessor”, in relation to a lease, has the same meaning as “landlord”;

“premises” means lands, houses or other corporeal hereditaments;

“rent” means the sum of money or other ascertainable consideration payable by the tenant for the possession of the land or building under a tenancy;

“tenant” means any person entitled in possession to the land or building under any contract of tenancy, whether the interest of such tenant was acquired by original contract, assignment, operation of law or otherwise;

“tenement” means any land or buildings in possession of a tenant under a tenancy.

PART II

Tenancies

Kinds of Tenancies And The Contract Therefor

Nature of tenancies and the law applicable thereto.

3.-(1) A tenancy for years is a holding of land under a contract for the exclusive possession thereof for some certain number of years or other determinable period.

(2) A tenancy from year to year is a holding of land under a contract, express or implied, for the exclusive possession thereof for a term which may be determined at the end of the first year or any subsequent year of the tenancy either by the landlord or the tenant by a regular notice to quit.

(3) A tenancy for less than a year is a holding of land under a contract for the exclusive possession thereof for an indefinite period less than a year, the hiring in the absence of stipulation to the contrary being monthly or weekly according to the circumstances of each case.

(4) A tenancy at will is a holding of land under contract for the exclusive possession thereof at the will of the landlord.

(5) A tenancy on sufferance is a holding of land in exclusive possession by a person who, without the assent or dissent of the person entitled to possession, wrongfully continued in possession of it after his right to the possession thereof expired.

4. It is hereby declared that the tenancies defined in section 3 comprise the relationships between landlord and tenant in Belize and, subject to this Act, have the same qualities and incidents as they would have under the common law of England.

Tenancies in Belize and the law applicable thereto.

5.-(1) Capacity to enter into any of the tenancies defined in this Act is regulated by the general law concerning capacity to contract and to acquire or to dispose of property.

General contract law to govern capacity to enter into tenancies.

(2) All persons not under legal disability may grant leases for such terms as are consistent with their right, title or interest in the land or buildings, and all persons under no legal incapacity may hold leases.

Landlord's Duty To Repair Certain Tenements

Conditions
implied in the
letting of houses.

6.-(1) Subject to subsection (2), in any contract for letting any house for human habitation there shall, notwithstanding any stipulation to the contrary, be implied a condition that the house is at the commencement of the tenancy, and an undertaking that the house will be kept by the landlord during the tenancy, in repair and in all respects reasonably fit for human habitation.

(2) The condition and undertaking shall not be implied where a house is let for a term of not less than three years upon the terms that it be put by the lessee into a condition reasonably fit for human habitation, and the lease is not determinable at the option of either party before the expiration of three years.

(3) The landlord, or any person authorised by him in writing, may at reasonable times of the day, on giving twenty-four hours' notice in writing to the tenant or occupier, enter any premises to which this section applies for the purpose of viewing the state and condition thereof.

(4) Where the property or the person or the health of an inmate of any house to which this section applies is, by reason of a breach by the landlord of the condition or the undertaking mentioned in this section, injuriously affected, such inmate shall be entitled to recover damages from the landlord of the house in respect of such injurious affection, notwithstanding that the inmate is not a party to the tenancy.

(5) This section applies to a contract made either before or after the commencement of this Act.

PART III

*Leases and Other Tenancies**Mode of Entering Into, And Form of, Leases*

7.-(1) Every lease for a term exceeding three years but not amounting to ten years shall be created by deed signed by the parties, and every lease not made in such manner shall have the force and effect of an agreement for a lease only.

Leases for more than three years to be by deed and other leases to be in writing.

(2) Every agreement for a lease made in writing or orally under which the person to become lessee entered into possession of the land shall take effect and be construed as a tenancy from year to year commencing from the date of the entry into possession until the lease is actually executed.

8. Every lease shall contain-

Form of lease.

- (a) a statement of the date, the names, the addresses and occupations of the parties;
- (b) the recitals (if any), the operative words, the description of the parcels demised;
- (c) the duration of the lease;
- (d) the reservation of the rent or other consideration;
- (e) the further covenants (if any);
- (f) any provisions for re-entry for non-payment of the rent or other non-observance of covenants;

- (g) the provision for determination of the lease by notice before the expiration thereof (if so intended).

Miscellaneous Provisions Relating To Leases

Vesting of land in possession.

9. The doctrine of *interesse termini* in the common law of England shall have no application in Belize, and every tenant shall be deemed to have entered into possession of the land intended to be let from the date fixed for the commencement of the tenancy, if the land is in the possession of the landlord at the time of his entering into the contract for the tenancy.

General words implied leases.

10.-(1) A lease of land shall be deemed to include and shall by virtue of this Act operate to grant with the land all easements, rights, privileges and advantages whatever appertaining or reputed to appertain to the land, or any part thereof, or at the time of the lease occupied or enjoyed with or reputed or known as part of or appurtenant to the land or any part thereof.

(2) This section shall not be construed as giving to any person a better title to any property, right or thing in this section mentioned than the title which the grant gives to him to the land expressed to be granted, or as granting to him any property, right or thing in this section mentioned, further or otherwise than as it could have been granted to him by the lessor.

(3) This section applies only if and so far as a contrary intention is not expressed in the lease, and has effect subject to the terms of the lease and to the provisions therein contained.

Voluntary waste and accidental fires.

11.-(1) A lessee shall not make voluntary waste of the land held under the tenancy without the permission of the lessor, and if he does so the lessee shall be liable to pay damages to the lessor.

(2) No action shall be brought by any landlord against any tenant on or in whose land any fire accidentally begins in respect of any

damage suffered by him in consequence thereof:

Provided that this subsection shall take effect in so far only as a contrary intention is not expressed in any contract or agreement made between landlord and tenant.

12. In case any tenant for years or from year to year wilfully holds over any land after the termination or determination of the tenancy, and after demand made and notice in writing given for delivering the possession thereof to the person entitled to possession of the land, the person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to the person so kept out of possession double the yearly rent which was payable under the tenancy, and the same shall be recoverable in a competent court.

Person holding over after expiration of tenancy.

13. The doctrine of the common law, "*quicquid solo plantatur, solo cedit*", shall have no application in Belize to tenant's fixtures of any kind, and all such fixtures affixed to a tenement by a tenant and any building erected by him thereon for which he is not under any law or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, shall be the property of and be removable by the tenant before or after the termination of the tenancy:

Fixtures, etc., of tenant.

Provided that-

- (a) before the removal of any fixture or building, the tenant shall pay all rent owing by him and shall perform or satisfy all other obligations to the landlord in respect of the tenement;
- (b) in the removal of any fixture or building, the tenant shall not do any avoidable damage to any other

building or to any part of the tenement;

- (c) immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or to any part of the tenement by the removal;
- (d) the tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of his intention to remove it;
- (e) at any time before the expiration of the notice of removal, the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay to the tenant the fair value thereof to an incoming tenant of the tenement, and any difference as to the value shall be settled by the magistrate of the judicial district in which the tenement lies on application made by either the landlord or the tenant.

Attornment.

14.-(1) Where land is subject to a lease, the transfer or assignment of a reversion in the land expectant on the determination of the lease shall be valid without any attornment of the lessee.

(2) Nothing in subsection (1)-

- (a) shall affect the validity of any payment of rent by the lessee to the person making the transfer or assignment before notice of such transfer or assignment is given to him by the person entitled thereunder; or

(b) shall render the lessee liable for any breach of covenant to pay rent, on account of his failure to pay rent to the person entitled under the transfer or assignment before such notice is given to the lessee.

(3) Subject to subsection (4), an attornment by the lessee in respect of any land to a person claiming to be entitled to the interest in the land of the lessor, if made without the consent of the lessor, shall be void.

(4) Subsection (3) shall not apply to any attornment-

(a) made pursuant to a judgment of a court of competent jurisdiction; or

(b) to any person rightfully deriving title under the lessor.

15.-(1) A right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease for a breach of any covenant or condition in a lease shall not be enforceable by action or otherwise, unless and until the lessor serves on the lessee a notice-

Forfeiture of lease for breach of covenant other than for non-payment of rent.

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and

(c) in any case, requiring the lessee to make compensation in money for the breach,

and the lessee fails, within reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2) Where a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the court for relief, and the court may grant or refuse relief, as the court, having regard to the proceedings and conduct of the parties under subsection (1), and to all the other circumstances, thinks fit, and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court in the circumstances of each case thinks fit.

(3) A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any) all reasonable costs and expenses properly incurred by the lessor in the employment of an attorney, surveyor or valuer or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved under this Act.

(4) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, or for non-payment of rent, the court may, on application by any person claiming as under-lessee any interest in the tenement or part thereof, either in the lessor's action (if any) or in any action brought by such person for that purpose, make any order vesting, for the whole term of the lease or any less term, the land comprised in the lease or part thereof in any person entitled as under-lessee to any interest in such land upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, as the court in the circumstances of each case may think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sublease.

(5) For the purposes of this section-

“lease” includes an original or derivative under-lease, also an agreement for a lease where the lessee has become entitled to have his lease granted;

“lessee” includes an original or derivative under-lessee, and the persons deriving title under a lessee;

“lessor” includes an original or derivative under-lessor, and the persons deriving title under a lessor;

“under-lease” includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

“under-lessee” includes any person deriving title under an under-lessee.

(6) This section applies although the covenant, proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any law.

(7) For the purposes of this section, a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(8) This section does not extend-

- (a) to a covenant or condition against assigning, underletting, parting with the possession, or disposing of the land leased where the breach occurred before the commencement of this Act; or
- (b) in the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or

other things, or to enter or inspect the mine or the workings thereof.

(9) This section does not apply to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest if contained in a lease of-

- (a) agricultural or pastoral land;
- (b) mines or minerals;
- (c) a house used or intended to be used as a public-house or beer-shop;
- (d) a house let as dwelling-house, with the use of any furniture, books, works of art or other chattels not being in the nature of fixtures;
- (e) any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding under him.

(10) Where a condition of forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest is contained in any lease, other than a lease of any of the classes mentioned in subsection (9), then-

- (a) if the lessee's interest is sold within one year from the bankruptcy or taking in execution, this section applies to the forfeiture condition;
- (b) if the lessee's interest is not sold before the expiration

of that year, this section only applies to the forfeiture condition during the first year from the date of the bankruptcy or taking in execution.

(11) This section does not, except as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(12) This section has effect notwithstanding any stipulation to the contrary.

16. Nothing in section 169 of the Supreme Court of Judicature Act shall affect the principles of equity applicable to re-entry or forfeiture or relief in the case of non-payment of rent.

Saving of equitable principles. CAP. 91.

17. Where any actual waiver by a lessor or the persons deriving title under him of the benefit of any covenant or condition in any lease is proved to have taken place in any particular instance, such waiver shall not be deemed to extend to any instance, or to any breach of covenant or condition except that to which such waiver especially relates, nor operate as a general waiver of the benefit of any such covenant or conditions.

Waiver of covenant in a lease.

18. Where a reversion expectant on a lease of land is surrendered or merged, the estate or interest which as against the lessee for the time being confers the next vested right to the land, shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there been no surrender or merger thereof.

Effect of extinguishment of reversion.

19. All assignees of the reversion shall have and enjoy all the advantages, benefits and remedies by entry for non-payment of rent, or for doing waste or other forfeiture or by action only for non-performance of condition, covenants or agreements, contained or expressed in leases which

Rights and duties of assignees of reversions.

the lessors had, and conversely, all lessees and their assigns shall have, the same remedies against assignees of the reversion as they, the lessees, had against the lessor.

Rent and benefit of lessee's covenants to run with the reversion.

20.-(1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and without prejudice to any liability affecting a covenantor or his estate.

(2) Any such rent, covenant or provision shall be capable of being recovered, received, enforced and taken advantage of, by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(3) Where that person becomes entitled by transfer or otherwise, such rent, covenant or provision may be recovered, received, enforced or taken advantage of by him, notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition waived or released before such person becomes entitled as aforesaid.

(4) This section applies to leases made before or after the commencement of this Act, but does not affect the operation of-

- (a) any severance of the reversionary estate; or
- (b) any requisition by transfer or otherwise of the right to receive or enforce any rent, covenant or provision,

effected before the commencement of this Act.

21.-(1) The obligation under a condition or a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law or otherwise and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation may be taken advantage of and enforced against any person so entitled.

Obligation of lessor's covenants to run with reversion.

(2) This section applies to leases made before or after the commencement of this Act, whether the severance of the reversionary estate was effected before or after such commencement.

(3) This section shall take effect without prejudice to liability affecting a covenantor or his estate.

22.-(1) Where a licence is granted to a lessee to do any act, the licence, unless otherwise expressed, extends only-

Effect of licences granted to lessees.

- (a) to the permission actually given; or
- (b) to the specific breach of any provision or covenant referred to; or
- (c) to any other matter thereby specifically authorised to be done,

and the licence does not prevent any proceeding for any subsequent breach, unless otherwise specified in the licence.

- (2) Notwithstanding any such licence-
- (a) all rights under covenants and powers of re-entry contained in the lease shall remain in full force and be available as against any subsequent breach of covenant, condition or other matter not specifically authorised or waived, in the same manner as if no licence had been granted; and
 - (b) the condition or right of entry remains in force in all respects as if the licence had not been granted, except in respect of the particular matter authorised to be done.

(3) Where in any lease there is a power or condition of re-entry on the lessee assigning, subletting or doing any other specified act without a licence, and a licence is granted-

- (a) to any one of two or more lessees to do any act, or to deal with his equitable share or interest; or
- (b) to any lessee, or to any one of two or more lessees to assign or underlet part only of the property, or to do any act in respect of part only of the property,

the licence does not operate to extinguish the right of entry in case of any breach of covenant or condition by the co-lessees of the other shares or interests in the property, or by the lessee or lessees of the rest of the property, as the case may be, in respect of such shares or interests or remaining property, but the right of entry remains in force in respect of the shares, interests or property not the subject of the licence.

(4) Subsection (3) does not authorise the grant, after the commencement of this Act, of a licence to create an undivided share in a

legal estate.

23. In all leases containing a covenant, condition or agreement against assigning, underletting or parting with the possession or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent, but this provision shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent.

No fine to be exacted for licence to assign.

24. Every lessee to whom there is delivered any writ for the recovery of premises demised to or held by him, or to whose knowledge any such writ comes, shall forthwith give notice thereof to his lessor or his bailiff or receiver and, if he fails to do so, he shall be liable to forfeit to the person of whom he holds the premises an amount equal to the value of three years' improved or rack-rent of the premises, to be recovered by action in any court having jurisdiction in respect of claims for such an amount.

Lessee to give notice of ejectment to lessor.

25.-(1) A term at a rent or granted in consideration of a fine, limited after the commencement of this Act to take effect more than twenty-one years from the date of the instrument purporting to create it, shall be void, and any contract made after such commencement to create such a term shall likewise be void, but this subsection does not apply to any term taking effect in equity under a settlement, or created out of an equitable interest under a settlement.

Legal term to take effect after 21 years void.

(2) Nothing in this Act shall affect the rule of law that a legal term may be created to take effect in reversion expectant on a longer term, which rule is hereby confirmed.

Application of Part III to existing lessees.

26. This Part, except where otherwise expressly provided, applies to leases created before or after the commencement of this Act, and “lease” includes an under-lease or other tenancy.

PART IV

Distress for Rent

Procedure For Recovering Rent Not Exceeding Three Thousand Six Hundred Dollars Per Annum

Summary recovery of rent under \$3,600 per annum.

27. All rents not exceeding the sum of three thousand six hundred dollars per annum, accruing to a landlord for the hire of any land situate in any part of Belize, may be recovered and are hereby declared to be recoverable, in the manner set forth in sections 29 to 33.

Rent payable in advance.

28. Where it has been agreed between the tenant and his landlord or agent that the rent is to be payable in advance, the rent shall be deemed to be due and payable on the day on which it so becomes payable in advance and in default of payment by the tenant on that day, proceedings may be taken against him for the default.

Claim by landlord before magistrate for rent due and issue of distress warrant.
26 of 1985.

29.-(1) If, when any rent not exceeding the sum of three thousand six hundred dollars per annum becomes due the tenant remains in default of payment thereof for seven days after it has become due, the landlord or his agent may lay his claim, with the particulars thereof in writing properly substantiated and sworn before a magistrate or a clerk of the court, who is hereby authorised to administer the oath in connection therewith.

(2) The magistrate shall thereupon issue a warrant authorising any police officer or bailiff in the daytime to enter, and if necessary to break open, the tenement in respect of which the rent is due between the hours of eight in the morning and four in the afternoon, and, in the presence of the

landlord or his agent and under his direction, to distrain the goods and chattels therein sufficient to satisfy the amount due, subject, however, to any privilege from distress at common law or under this Act.

(3) The police officer or bailiff, in the presence and at the desire or under the direction of the landlord or his agent, if sufficient property is not found on the tenement, may distrain any of the goods and chattels of the tenant fraudulently or clandestinely carried off the tenement to prevent the landlord from distraining the same for rent in arrear, wherever they are found within the space of thirty days next ensuing such carrying off, unless they have been sold for a valuable consideration before such distraint to any person not privy to such fraud.

(4) The person executing the warrant of distress shall make out and leave with the tenant an inventory of the goods distrained.

30. The police officer or bailiff, under warrant and in the presence of the landlord or his agent, may break open in the daytime any place where the goods are locked up or whether they have been fraudulently removed, but if that place is a dwelling house, the landlord or his agent shall first satisfy the magistrate by sworn testimony that there is reasonable ground to suspect that the goods are concealed in it.

Breaking open place for goods removed.

31. All persons privy to or assisting in any fraudulent conveyance of the goods and chattels from the tenement upon which any rent is due shall forfeit to the landlord double the value of the rent, to be recovered in any court of competent jurisdiction.

Liability of persons assisting.

32.-(1) Any police officer, in the presence and at the request, or under the direction, of a landlord or his agent, may stop and detain, until due inquiry can be made, all vehicles which he finds employed in removing furniture from any buildings belonging to that landlord, and in consequence of that request or direction he may take to the nearest police station all furniture being removed in any manner whenever the landlord or his agent alleges that rent is

Detention of furniture being clandestinely removed.

in arrear and that the removal is being made for the purpose of evading the payment thereof.

(2) Every landlord or agent who causes any furniture to be detained or taken to a police station under subsection (1) for any rent pretended to be in arrear and due in respect of the hiring of the building from which the said furniture is being removed where in truth no rent is in arrear shall be liable to pay as damages double the amount of the rent claimed.

Sale of goods
distrained and not
replevied.

33.-(1) Where any goods or chattels are distrained for any rent reserved and due they shall be set up for sale by public auction at the expiration of five days after the distress, unless the tenant or owner of the goods distrained replevy them as provided in section 34.

(2) The magistrate may extend the time for setting up the goods and chattels for sale.

Replevin

Replevin.

34.-(1) The remedy of replevin under the common law of England shall be available to the owner of goods which have been wrongfully taken under a distress for rent.

(2) Where the tenant or owner of the goods distrained desires to replevy them, he shall serve the bailiff with a notice to that effect before sale and at the same time deposit the amount of rent due and twenty-five dollars as security for costs, which shall include the cost of appraisal of the goods if the replevisor desires an appraisal, and shall sign an act of deposit or, *in lieu* of deposit, enter into a recognisance with at least one sufficient surety to the satisfaction of the magistrate conditioned for the due and effective prosecution of the action, including the payment of the costs, and on concluding the deposit and act of deposit, or recognisance, the bailiff shall restore those of the goods distrained in respect

of which a replevin has been made.

(3) If the replevisor succeeds in his action, the sum deposited for the amount of rent shall be paid over to him, and the defendant shall pay to the replevisor any costs to which he has been put or which have been awarded to him by judgment of the court.

(4) If the defendant succeeds in the action, the court shall find the value of the goods so distrained and judgment shall be given for the amount of that value if it does not exceed the amount of rent for which the distress was made.

(5) Where the amount of the value so found exceeds the amount of the rent, judgment shall be given for the amount of the rent, and the replevisor shall, in either case, pay all costs to which the defendant has been put, or such costs as are awarded by the judgment of the court, and the judgment with the costs shall be satisfied out of the sums so deposited, or in case of a recognisance, by estreating it.

(6) If any other cause of action shall be joined with an action for replevin, the court may order a separate trial of any other claim which cannot be conveniently tried with the action for replevin.

Things Privileged From Distress

35. Without prejudice to any rule of the common law relating to things privileged from distress for rent, the following goods and chattels shall be exempt from distress for rent-

Things
privileged from
distress.

- (a) the wearing apparel and bedding of the tenant or his family and, to the value of fifty dollars, the tools and implements of his trade:

Provided that, in respect of such exemption from distress, the privilege shall not extend to any case where the lease, term or interest of the tenant has expired, and possession of the tenement in respect of which the rent is claimed has been demanded and the distress is made not earlier than seven days after such demand; and

- (b) in the case of a tenancy relating to land used for agricultural or grazing purposes-
- (i) agricultural or other machinery which is the property of a person other than the tenant, and is on the tenement under an agreement with the tenant for the hire or use thereof in the conduct of his business;
 - (ii) livestock which is the property of a person other than the tenant, and is on the tenement solely for breeding purposes; and
 - (iii) if there be other sufficient distress on the tenement, livestock on the tenement which is the property of a person other than the tenant, and has been taken in by the tenant to be fed at a fair price:

Provided that, in respect of the exemption from distress referred to in this subparagraph, if such livestock is so distrained by reason of other sufficient distress not being found, there shall not be recovered by the distress a sum exceeding the amount of the sum agreed to be paid for the feeding, or any

part thereof which remains unpaid.

Miscellaneous Provisions Relating To Distress

36. If any distress aforesaid is made by virtue or under colour of this Act for rent pretended to be in arrear and due where in truth no rent is in arrear or due to the person distraining or to him in whose name or right the distress is taken as aforesaid, then the owner of the goods or chattels distrained, his executors, administrators and assigns, shall and may, by action to be brought within three months after the date of the distress against the person so distraining, his executors or administrators, recover double the value of the rent claimed and distrained for, together with full costs of the suit.

Liability of person distraining where no rent due.

37.-(1) Where an execution issued out of the Supreme Court is levied upon any goods or chattels whatever, lying or being in or upon any lands or in any buildings held under any tenancy, those goods and chattels shall be sold by virtue of the execution, subject to the right of the landlord of the premises to payment out of the net proceeds of the sale, of the sum of money due for rent for the premises at the time of the taking the goods and chattels by virtue of the execution:

Preference of landlord over execution creditors for rent due to certain amount.

Provided that-

- (a) the landlord, within five days from the date of the levy, shall claim the sum by delivering to the marshal making the levy a statutory declaration made and signed by himself or his agent, stating the amount of rent claimed to be in arrear and the time for and in respect of which that rent is due; and
- (b) not more than six months' rent, or more than one thousand eight hundred dollars, whichever sum may be the lower, shall be paid to the landlord for or in respect of the arrears.

26 of 1985.

26 of 1985.

(2) In that case, the proper officer of the court shall, without further authority or warrant than is hereby granted, pay out to the landlord, after deduction of the costs of execution only, all and every sum and sums not exceeding six months' rent or one thousand eight hundred dollars.

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(3) The landlord of any house or other building, in which any movable property is seized and taken by virtue of a writ of execution issued under the District Courts (Procedure) Act, may claim the rent thereof at any time within five days from the date of the seizure and taking, or before the removal of the property, by delivering to the bailiff making the levy a statutory declaration made and signed by himself or his agent, stating the amount of rent claimed to be in arrear, and the time for and in respect of which it is due.

(4) If the claim is made, the bailiff making the levy shall, in addition thereto, distrain for the rent so claimed and the costs of the distress, and shall not within five days next after the distress sell any part of the property taken unless it is of a perishable nature, or with the consent in writing of the party against whom the writ has been issued, and the bailiff shall afterwards sell such of the property taken, as may satisfy-

- (a) the costs of and incidental to the sale;
- (b) the claim of the landlord, not exceeding the rent of four weeks where the house or other building is let for any other term less than a year, and the rent of one year in any other case; and
- (c) the amount for which the writ of execution was issued,

and the surplus proceeds of the sale, if any, and the residue of the property so seized and taken, shall be returned to the party against whom the writ has been issued.

(5) The fees and costs of the bailiff in respect of the distress shall be the same as would have been payable if the distress had been an execution of the court, and no other fees shall be demanded or taken in respect thereof.

38.-(1) Where any distress is made for any rent justly due, and any irregularity or unlawful act is afterwards done by the party distraining or his agent, the distress itself shall not therefore be deemed to be unlawful, nor the party making it be deemed a trespasser *ab initio*, but the party aggrieved by the irregularity or unlawful act may recover, by action in any court of competent jurisdiction, full satisfaction for any special damage he has sustained thereby, and no more.

Effect of
irregularity in
making distress.

(2) Where the plaintiff recovers in the action, he shall be paid his full costs of suit and have all the like remedies for them as in other cases.

(3) No tenant or lessee shall recover in an action for any irregularity or unlawful act mentioned in subsection (1), if tender of sufficient amends has been made by the party distraining or his agent before action brought.

39. Every agent or other person who makes and levies a distress shall give a copy (signed by him) of his charges, and of all the costs and charges of any distress, to the person or persons on whose goods and chattels the distress is levied.

Delivery of copy
of costs and
charges of
distress.

40. It shall be lawful for any person having any rent in arrear or due upon any tenancy for years or from year to year or at will ended or determined to distrain for such arrears notwithstanding the determination of the respective tenancies in the same manner as they might have done if such tenancy had not been ended or determined:

Distress within
six months after
lease determined.

Provided that such distress be made within the space of six calendar months after the termination or determination of such tenancies and during the continuance of such landlord's title or interest and during the possession of the tenant from whom such arrears became due.

Distress for rent exceeding \$3,600 per annum. 26 of 1985.

41.-(1) The remedy of distress for rent in the common law of England shall be available to every landlord in relation to tenancies in respect of which the rent reserved exceeds three thousand six hundred dollars per annum.

(2) If the landlord does not himself distrain in person, the distress shall be levied by a certified bailiff.

(3) No person shall act as a bailiff to levy any distress for rent under this section unless he is authorised to act as a bailiff by a certificate in writing under the hand of a magistrate and such certificate may be general or apply to a particular distress or distresses and may be granted in such manner and for such duration as may be prescribed by rules under the Inferior Courts Act.

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(4) A certificate granted to a bailiff by a magistrate may at any time be cancelled.

(5) If any person not holding a certificate under this section levies a distress, he and any person who has authorised him so to levy shall be deemed to have committed a trespass, and, without prejudice to that civil liability, such person commits an offence and on conviction thereof under the Summary Jurisdiction Acts shall be liable to a fine not exceeding one hundred dollars.

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Power of sale of distress taken for rent not exceeding \$3,600 per annum. 26 of 1985.

42. Where any goods and chattels are distrained for any rent exceeding three thousand six hundred dollars per annum reserved and due upon any tenancy whatever, and the tenant or owner of the goods so distrained does not within five days after distress taken, or such extended period of not

more than fifteen days as the landlord or other person levying the distress may at the request in writing of the tenant or owner grant, and after notice thereof given by the landlord to the tenant, replevy the same with sufficient security to be given to the clerk of the court according to law, then the person distraining shall with the clerk of the court cause the goods and chattels so distrained to be appraised and thereafter shall sell the goods and chattels at public auction and apply the proceeds to the satisfaction of the rent and charges of such distress, appraisal and sale, leaving the surplus proceeds (if any), in the hands of the clerk of the court for the owners' use.

43.-(1) Section 29 (3) and sections 30 to 40 and 57 to 61 shall, *mutatis mutandis*, apply to a distress for rent exceeding three thousand six hundred dollars per annum.

Application of certain provisions to distress for rent exceeding \$3,600 per annum. 26 of 1985.

(2) All things being upon any tenement at the time of a distress taken in respect of rent which exceeds three thousand six hundred dollars per annum shall be subject to the privileges and exemptions from distress existing at common law or under this Act.

Special Provisions Relating To Distress For Rent

44. If any superior landlord levies or authorises to be levied a distress on any furniture, goods or chattels of-

Power of under-tenant, lodger or other person, where distress levied, to make declaration that immediate tenant has no property in goods distrained.

- (a) any under-tenant liable to pay by equal instalments not less often than every month of a year rent in respect of the whole or part of the tenement let by the superior landlord to his immediate tenant; or
- (b) any lodger; or
- (c) any other person not being a tenant of the tenement or of any part thereof, and not having any beneficial interest in any tenancy of the tenement or of any part thereof,

for arrears of rent due to such superior landlord by his immediate tenant, such under-tenant, lodger or other person may serve such superior landlord, or his agent, with a declaration in writing made by such under-tenant, lodger or other person, setting forth that such immediate tenant has no right of property or beneficial interest in the furniture, goods or chattels so distrained or threatened to be distrained upon, and the furniture, goods or chattels are the property or in the lawful possession of such under-tenant, lodger or other person, and are not goods or livestock to which this Act is expressed not to apply, and also, in the case of an under-tenant or lodger, setting forth the amount of rent (if any) then due to his immediate landlord, and the times at which future instalments of rent will become due, and the amount thereof, and containing an undertaking to pay to the superior landlord any rent so due or to become due to his immediate landlord, until the arrears of rent in respect of which the distress was levied or authorised to be levied have been paid off, and to such declaration shall be annexed a correct inventory, subscribed by the under-tenant, lodger or other person, of the furniture, goods and chattels referred to in the declaration.

Penalty on the superior landlord for illegal distress after declaration.

45.-(1) If any superior landlord or any agent employed by him, after being served with the declaration and inventory mentioned in section 44, and in the case of an under-tenant or lodger, after such undertaking as aforesaid has been given, and the amount of rent (if any) then due has been paid or tendered in accordance with that undertaking, levies or proceeds with a distress on the furniture, goods or chattels of the under-tenant, lodger or other person aforesaid, such superior landlord or agent commits an illegal distress, and the under-tenant, lodger or other person, may apply to a magistrate for an order for the restoration to him of such goods.

(2) Every application under subsection (1) shall be heard before a magistrate who shall inquire into the truth of such declaration and inventory, and shall make such order for the recovery of the goods or otherwise as to him may seem just, and the superior landlord shall also be liable to an action at law at the suit of the under-tenant, lodger or other person, in which action the truth of the declaration and inventory may

likewise be inquired into.

(3) The application and action may be joined in the same proceeding.

46. For the purpose of the recovery of any sums payable by an under-tenant or lodger to a superior landlord under such an undertaking as mentioned in section 44, or under a notice served in accordance with section 49, the under-tenant or lodger shall be deemed to be the immediate tenant of the superior landlord, and the sums payable shall be deemed to be rent, but, where the under-tenant or lodger has, in pursuance of any such undertaking or notice, paid any sums to the superior landlord, he may deduct the amount thereof from any rent due or which may become due from him to his immediate landlord, and any person (other than the tenant for whose rent the distress is levied or authorised) from whose rent a deduction has been made in respect of such a payment may make the like deductions from any rent due or which may become due from him to his immediate landlord.

Payments by under-tenant or lodger to superior landlord.

47.-(1) Sections 44 to 50 shall not apply to-

Exclusion of certain goods.

- (a) goods belonging to the husband or wife of the tenant whose rent is in arrear; or
- (b) goods comprised in any bill of sale, hire-purchase agreement or settlement made by such tenant; or
- (c) goods in the possession, order or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof; or
- (d) any livestock to which section 35 (b) applies; or

- (e) goods of a partner of the immediate tenant; or
- (f) goods (not being goods of a lodger) upon premises where any trade or business is carried on in which both the immediate tenant and the under-tenant have an interest; or
- (g) goods (not being goods of a lodger) upon premises used as offices or warehouses where the owner of the goods neglects for one calendar month after notice (which shall be given in like manner as a notice to quit) to remove the goods and vacate the premises; or
- (h) goods belonging to and in the offices of any company or corporation on premises the immediate tenant whereof is a director or officer or in the employment of such company or corporation.

(2) It shall be competent for a magistrate, upon application by the superior landlord or any under-tenant or other such person as aforesaid, after hearing the parties, to determine whether any goods are in fact goods covered by paragraphs (e) to (h) of this section.

Exclusion of certain under-tenants.

48. Sections 44 to 50 shall not apply to any under-tenant where the under-tenancy has been created in breach of any covenant or agreement in writing between the landlord and his immediate tenant, or where the under-tenancy has been created under a lease existing at the date of the commencement of this Act, contrary to the wish of the landlord in that behalf, expressed in writing and delivered at the tenement within a reasonable time after the circumstances have come, or with due diligence would have come, to his knowledge.

49. In cases where the rent of the immediate tenant of the superior landlord is in arrear, it shall be lawful for the superior landlord to serve upon any under-tenant or lodger a notice addressed to such under-tenant or lodger upon the tenement stating the amount of such arrears of rent, and requiring all future payments of rent, whether it has already accrued due or not, by such under-tenant or lodger to be made direct to the superior landlord giving the notice until such arrears have been duly paid, and such notice shall operate to transfer to the superior landlord the right to recover, receive and give a discharge for such a rent.

Notice by superior landlord to under-tenant to pay him rent due to immediate tenant.

50. In sections 44 to 49, the words “superior landlord” shall be deemed to include a landlord in cases where the goods seized are not those of an under-tenant or lodger, and the words “tenant” and “under-tenant” do not include a lodger.

Definitions.

51.-(1) All goods and chattels which were formerly comprised in any bill of sale given in security for the payment of money or in any hire-purchase agreement and remaining upon the tenement shall be liable to be seized and taken as a distress for rent reserved and in arrear, notwithstanding that the goods have been seized by the assignee under the bill of sale or the hire-purchase agreement has been terminated by the hire-owner, subject to the following conditions-

Distress levied on goods and chattels in bill of sale, etc.

- (a) that the value of the interest of the assignor in the goods and chattels prior to the seizure thereof, or the amount paid by the hire-purchaser under the hire-purchase agreement prior to the seizure thereof, or the amount paid by the hire-purchaser under the hire-purchase agreement prior to the termination thereof was at least double the amount of the rent for which the distraint is made, or
- (b) that the landlord pays the balance of money due to the assignee under the bill of sale before the seizure of the

goods and chattels, or the amount due to the hire-owner under the hire-purchase agreement before the termination thereof.

(2) Where a distress has been levied on any such goods and chattels subject to subsection (1) (a) and the goods and chattels have afterwards been sold pursuant thereto, the assignee or the hire-owner, as the case may be, shall be entitled to receive any surplus proceeds from the sale thereof.

(3) Where a distress has been levied on such goods and chattels subject to subsection (1) (b) and the goods and chattels have afterwards been sold pursuant thereto, the hire-purchaser or the assignor, as the case may be, shall be entitled to receive any surplus proceeds from the sale after the landlord has recovered all rents due and expenses and the balance of money paid to the assignee or the hire-owner under subsection (1) (b).

(4) Every assignee under a bill of sale or hire-owner under a hire-purchase agreement shall, in relation to all goods and chattels formerly comprised in such bill of sale or hire-purchase agreement and distrained on upon a tenement, serve on the landlord who takes any such goods and chattels as a distress a statement showing the details of the account between the assignor and the assignee or the hire-purchaser and the hire-owner, and if any assignee or hire-owner makes any such statement knowing it to be untrue in any material particular, he commits an offence and upon conviction thereof under the Summary Jurisdiction Acts shall be liable to a fine not exceeding one hundred and twenty dollars or to imprisonment for a term not exceeding three months.

(5) If, in relation to any goods and chattels which were formerly comprised in a bill of sale or hire-purchase agreement and distrained on whilst upon the tenement for rent reserved and due, none of the conditions of subsections (1) (a) and (b) has been fulfilled, the assignee or the hire-

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owner, as the case may be, may apply to a magistrate for an order that the goods be delivered up to him.

PART V

Recovery of Possession

The Procedure On Application For Possession

52. Where the tenant of any building held by him as a tenant from month to month or weekly at a rent which does not exceed the rate of ten dollars per month or two dollars and fifty cents per week, as the case may be, fails to pay the rent due within seven days after the day on which it becomes due and payable, the failure shall for the purpose of enabling the landlord to recover possession be deemed a determination of the tenancy, and the landlord may proceed to recover possession of that building under this Act.

Neglect to pay rent a determination of tenancy in certain cases.

53.-(1) Whenever the term or interest of any tenant of a tenement held by him at will or for a term, either without being liable to the payment of rent, or at a rent not exceeding the rate of three thousand six hundred dollars per annum, has expired or has been determined by a legal notice to quit, or otherwise, if the tenant (or, when he does not himself occupy the premises or occupies only a part thereof, if the person by whom they or any part thereof are or is occupied) refuses or neglects to deliver up possession of them, the following provisions shall apply-

Recovery of possession after termination or determination of tenancy where tenancy is at a rate not exceeding \$3,600 per annum. 26 of 1985.

- (a) the former landlord or his agent may file against the former tenant or occupier in the district court an application for recovery of possession of the land formerly held under the tenancy, which application shall be treated as if it were a plaint filed in the said court;
- (b) if the former tenant or occupier does not appear in

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accordance with the summons, or appears but does not show to the satisfaction of the magistrate reasonable cause why possession should not be delivered up, and still refuses or neglects to deliver up possession of the premises to the former landlord or his agent, the magistrate, on proof of the holding and of the expiration or determination of the tenancy and the time and manner thereof, and, where the title of the landlord has accrued since the letting of the premises, on proof of the right by which he claims possession, may, subject to the Rent Restriction Act, order that possession of the land be delivered up by the former tenant or occupier as well as by all persons who were on the land through or under the former tenant;

- (c) at the hearing of an application for possession of any land, the former landlord may adduce evidence of the *mesne* profits thereof which shall or might have accrued from the day of the expiration or determination of the former tenant's interest in the land down to the time of the making of the order, or to some preceding day to be mentioned therein, and if the court finds that *mesne* profits are due, judgment may be given for the recovery of the whole or part of the land as well as for the amount of the damages to be paid for such *mesne* profits:

Provided that nothing herein contained shall be construed to bar any former landlord from bringing any action for the *mesne* profits which accrue from the judgment, or the day specified therein, down to the day of the delivery of possession of the land recovered in the ejectment;

- (d) if the former tenant or occupier or any person lawfully on the land or in the buildings through or under him fails to deliver up possession of the land as directed by the order within the period fixed thereby, the magistrate may issue a warrant of ejectment to any police officer or bailiff requiring and authorising him forthwith or within a period to be named therein to give possession of the land to the former landlord or his agent, and that warrant shall be a sufficient authority to any police officer or bailiff executing it to enter upon the land with any assistance he thinks necessary, and to give possession accordingly, but the entry shall not be made on a Sunday, Good Friday, Christmas Day or public holiday, or at any time except between the hours of eight in the morning and four in the afternoon;
- (e) at the time of the making of any order for the recovery of possession of any land or buildings, or of any application for the ejectment of a former tenant or occupier or other person thereon or therein through or under the former tenant or occupier, the court may adjourn the hearing of the application, or stay or suspend the date of possession for any period subject to such conditions (if any) in regard to payment by the former tenant or occupier of arrears of rent, *mesne* profit and otherwise, as the court thinks fit;
- (f) the law, practice and procedure under the District Courts (Procedure) Act shall apply to the plaint, the issue of the summons and the hearing and determination of the action for the recovery of possession under this section. CAP. 97.

(2) Where the tenement consisted of cultivated lands, the following provisions shall apply-

- (a) if, at the hearing of the action for possession, there are growing crops thereon which have been planted by the former tenant or by those from whom he derives interest, the magistrate may direct that the former landlord shall, before obtaining an order for possession, deposit with the clerk of court the value of those growing crops, after deducting the amount of what is due and will become due for rent of the land up to the time when the order will be made, and after deducting the costs incurred, if the value of the crops exceeds that sum;
- (b) the magistrate shall have full power to inquire into and determine the value of the crops, and, on the warrant being returned executed, may direct that the amount be paid over to the former tenant;
- (c) the magistrate may authorise any person or persons to enter on the lands the possession of which is claimed, and direct him or them to appraise the value of the growing crops;
- (d) every person so appointed may enter on the lands and examine the crops, and every person who obstructs any person so appointed commits an offence and on conviction thereof shall be liable under the Summary Jurisdiction Acts to a penalty not exceeding twenty dollars.

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(3) If any person who was a tenant previously to the execution of the warrant, or was on the land or in the buildings under or through the

former tenant, re-enters on the land or the buildings after the execution of the warrant, he shall, unless he has acquired title to the land or buildings after the warrant was issued, be deemed a wilful trespasser, and on conviction thereof under the Summary Jurisdiction Acts shall be liable to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months:

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Provided that nothing herein contained shall be deemed to protect any person at whose instance a warrant to deliver possession of land or buildings is issued as aforesaid from any action brought against him by the former tenant or occupier for or in respect of the entry and taking possession where he had not, at the time of issue of the warrant, lawful right to the possession of the premises.

(4) The plaintiff may join in an action for the recovery of land or buildings under this Act claims in respect of *mesne* profits, arrear of rent, double value in respect of the land or buildings claimed or any part thereof, damages for breach of any contract under which the same or any part thereof was held or for wrong or injury to the land or buildings.

(5) The plaintiff or the defendant may appeal from the decision of the magistrate given in any action for possession of land or buildings brought under this Act to the court under Part X of the Supreme Court of Judicature Act, in the manner and in accordance with the provisions prescribed in that Act.

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General Provisions Relating To Ejectment

54.-(1) Wherever the person at whose instance any warrant to give possession as aforesaid is granted had not at the time of granting it lawful right to the possession of the land, the obtaining of the warrant shall be deemed a trespass by him against the tenant or occupier of the land or buildings, although no entry may be made by virtue of the warrant, and if the tenant or occupier becomes bound, with two sureties as provided in subsection (2), to be

Warrant
obtained without
right to
possession.

approved by the magistrate, in a sum to him seeming reasonable, regard being had to the value of the premises and to the probable costs of an action, to sue the person at whose instance the warrant to give possession was granted with effect and without delay, and to pay all the costs of the proceedings in the action in case judgment is given for the defendant, or the plaintiff discontinues or does not prosecute his action or is non-suited therein, execution of the warrant shall be delayed until judgment is given in the action, and if, on the trial of the action, judgment is given for the plaintiff, that judgment shall supersede the warrant so granted and the plaintiff shall be entitled to double costs in the action.

(2) The bond shall be made to and at the cost of the landlord or his agent, and shall be approved and signed by the magistrate, and if the bond so taken is forfeited, or if on the trial of the action for securing the trial of which the bond was given the judge by whom it is tried does not indorse upon the record in court that the condition of the bond has been fulfilled, the party in whose favour the bond has been so made may bring an action, and recover thereon:

Provided that the court where the action mentioned in subsection (1) is brought may by order give any relief to the parties upon the bond agreeable to justice, and that order shall have the nature and effect of a defeasance to the bond.

Protection of
magistrate, bailiff
and police officer.

55. No action or prosecution may be brought against the magistrate by whom the warrant aforesaid has been issued or against any police officer or bailiff by whom it is executed, for that issue or execution respectively, by reason that the person on whose application it was granted had no lawful right to the possession of the premises.

Irregularity in
proceeding but
landlord has
lawful right to
possession.

56. Where the landlord, at the time of applying for the warrant aforesaid, had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither he nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason

merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act but the party aggrieved, if he thinks fit, may bring an action for the irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for that special damage, with costs of suit:

Provided that, if the special damage so laid is not proved, the defendant shall be entitled to judgment, and if proved but assessed by the court at any sum not exceeding two dollars, the plaintiff shall recover no more costs than damages, unless the court or judge before whom the trial has been held certifies upon the record that full cost ought to be allowed.

PART VI

Miscellaneous

57. No person making, or employed in any manner whatever in making, any distress for rent, or in ejecting any tenant, or in doing any act whatever in the course of the distress, or for carrying it into effect, shall take or receive out of the produce of the goods and chattels distrained upon and sold, or from the tenant distrained on or ejected, or from the landlord, or from any other person, other or more costs and charges for and in respect of that distress or ejectment or any other matter or thing done therein, than those fixed and allowed by law and appropriated to each act done in the cause of the distress or ejectment, and no person shall make any charge whatever for any act, matter or thing in respect of which the costs and charges are so fixed, allowed and appropriated, unless that act has been actually done.

Regulation of costs of distress and ejectment.

58.-(1) If any person in any manner levies, takes or receives from any person, or retains or takes from the produce of any goods sold for the payment of the rent, any other or greater costs and charges than are so fixed, allowed and appropriated as aforesaid, or makes any charge whatever for any act, matter or thing aforesaid, which has not been really done, the party

Remedy for taking unauthorised costs and charges.

aggrieved by those practices may apply to a magistrate for the redress of his grievances so occasioned.

(2) The magistrate shall summon the person of whom complaint is made to appear before him at a reasonable time to be fixed in the summons, and examine into the matter of the complaint by all legal ways and means, and also hear in like manner the defence of that person.

(3) If on the hearing, it appears to the magistrate that that person has levied, taken or received, other and greater costs and charges than are so fixed, allowed and appropriated as aforesaid, or made any charge for any act, matter or thing aforesaid which has not been actually done, he shall order and adjudge treble the amount of the moneys so unlawfully taken to be paid by the person who has so acted to the party who has thus preferred his complaint thereof, together with full costs.

(4) In case of non-payment of any moneys or costs so ordered and adjudged to be paid, the magistrate shall forthwith issue his warrant to levy them by distress and sale of the goods and chattels of the party ordered to pay them, rendering the surplus proceeds, if any, to the owner after the payment of the charges of the distress and sale, and if no sufficient distress can be had, the magistrate shall, by warrant under his hand, commit the party to prison, there to remain for any time not exceeding the space of two calendar months, unless the order or judgment is sooner satisfied.

Summoning of witnesses.

59.-(1) The magistrate may, at the request of either of the parties, summon all persons as witnesses and may administer an oath to them touching the matter of the complaint or of the defence to it.

(2) Any person so summoned who fails without any reasonable or lawful excuse to obey the summons, or refuses to be examined upon oath, shall forfeit and pay a sum not exceeding ten dollars, to be ordered, levied and paid in the manner and by the means, and with the power of commitment hereinbefore directed as to the order and judgment to be given

between the parties in the original complaint, excepting so far as regards the form of the order.

60. The magistrate may, if he finds that the complaint of the party complaining is not well founded, order and adjudge costs, not exceeding ten dollars, to be paid to the party against whom complaint is made, which order shall be carried into effect, and the costs shall be levied and paid in the manner, and with like power of commitment, hereinbefore directed as to the order and judgment found on the original complaint:

Power to order costs if complaint not well founded.

Provided that-

- (a) nothing herein contained shall empower the magistrate to make any order or judgment against the landlord for whose benefit any distress or ejection has been made, unless the landlord has personally levied the distress or ejected the tenant; and
- (b) no person aggrieved by any distress, or any process of ejection for rent or by any proceedings had in the course thereof, or by any costs and charges levied upon him in respect thereof, shall be barred from any legal or other suit or remedy which he might have had before the commencement of this Act, excepting so far as any complaint to be preferred under this Act has been determined by the order and judgment of the magistrate before whom it has been heard and determined, and that order and judgment shall and may be given in evidence under the plea of the general issue in all cases where the matter of the complaint may be made the subject of any action.

- Proof of order and judgment. 61. An order and a judgment on any complaint aforesaid may be proved before any court by proof of the signature of the magistrate thereto, and orders regarding persons who have been summoned as witnesses shall be made in the form to the magistrate seeming most fit and convenient.
- Mode of serving notices. 62. A notice in writing given by or on behalf of a landlord or a tenant may be served-
- (a) on the tenant, by delivering it to him personally, or by leaving it for him at the tenement with some person there residing, or by sending it through the post in a registered letter addressed to the tenant there, or in the case of a company, by delivering it or sending it in a registered letter to the secretary or other proper officer at the registered office of the company; and
- (b) on the landlord, by delivering it to him or to his agent personally, or by leaving it for either of them at his most usual place of abode, or by sending it through the post in a registered letter addressed to either of them there, or in case of a company, by delivering it, or sending it in a registered letter, to the secretary or other proper officer at the registered office of the company.
- Appointment of certified bailiffs. 63.-(1) The magistrate in charge of any judicial district may appoint such and so many fit and proper persons as certified bailiffs as may be necessary in that district to expedite the execution of distress warrants and warrants to give possession of land or buildings to former landlords.
- (2) A certified bailiff shall by virtue of his appointment be a special constable and have all the powers and immunities of such a constable, and he shall be paid for each execution such sum as may from time to time be prescribed by the Minister by Order published in the *Gazette*.
- 40 of 1963.

(3) For the purpose of the execution of any such warrant, a certified bailiff shall have the same powers and authorities as a bailiff of the court.

64.-(1) Every person shall, before acting as an agent, be registered as such with the clerk of the court of the judicial district in which the tenement is situate, and if he so acts while his name is not on the register, he commits an offence.

Registration of agents.

(2) The magistrate in charge of any judicial district may authorise the clerk of court of that district to register any fit and proper person as an agent and any person so registered may be removed from the register by order of the magistrate on any ground of misconduct which the magistrate may think sufficient.

(3) The clerk of court shall keep a register called the "Landlords' Agents Register" (hereinbefore in this section referred to as "the register") in which he shall enter the name, address and occupation of every person whom he has been authorised by the magistrate to register as an agent and he shall remove the name of any agent from the register if directed so to do by the magistrate.

(4) The register or an extract therefrom shall be *prima facie* evidence in all courts of the registration, or the non-registration, of a person as an agent.

65.-(1) Except where a rent-book is in use as required by section 66, every landlord or his agent shall give to every tenant, or person representing a tenant, who pays any sum of money for or on account of rent a receipt or acknowledgment for such rent or portion of rent so paid.

Receipts or acknowledgements to be given on payment of rent.

(2) The full name and address of the landlord shall be written or printed by the landlord or his agent on every such receipt or acknowledgment.

- Rent-book. 66.-(1) Where the rent for the year, month or week does not exceed fifteen dollars, the landlord shall provide a rent-book in respect of every tenant.
- (2) The names and addresses of the landlord and the tenant, a short description of the tenement and the amount of the rent reserved shall be legibly written by the landlord at the head of the first page of every rent-book.
- (3) The rent-book shall remain in the custody of the tenant, but it shall be delivered up by him to the landlord or his agent so often as it may be necessary for the making of entries therein by the landlord or his agent who shall make such entries and forthwith re-deliver the rent-book to the tenant.
- (4) The landlord or his agent shall, at the time of every payment of money for or on account of rent, enter in the rent-book every sum of money so paid to him.
- (5) The landlord shall provide in the said rent-book a number of blank pages, the first of which shall be headed "Notices" for the purpose of enabling notices affecting the tenancy to be given by the landlord or the tenant, and every landlord or his agent on the one hand or tenant on the other shall, on the first occasion on which the rent-book comes into his possession after the insertion therein of any notice by the other, place his signature immediately below that notice in acknowledgment of the fact that he has seen that notice.
- Disturbance of tenant's peaceable enjoyment. 67.-(1) No landlord or agent shall, during the subsistence of any tenancy, remove the roof, window, door or any other part of a tenement without the consent of the tenant or otherwise than in the execution of any duty to repair the buildings, and every landlord or agent who violates this section commits an offence and on conviction thereof under the Summary Jurisdiction Acts shall be liable to a fine not exceeding two hundred and fifty dollars.
- CAP. 98.
CAP. 99.

(2) Any damages sustained by the tenant by reason of a violation of subsection (1) may, with the consent of the tenant, be assessed by the magistrate at the hearing of the criminal proceedings against the landlord or the agent and the magistrate may order such damages to be paid to the tenant out of the penalty imposed upon the landlord or agent in those proceedings.

(3) Nothing in this section shall take away or in any way prejudice the right of action accruing to a tenant by reason of any such wrongful act by or on the part of a landlord or his agent or on account of any disturbance of the peaceful enjoyment by the tenant of the tenement, so, however, that the tenant shall not be entitled both to damages under subsection (2) and to damages in an action at law.

68.-(1) Every landlord or agent who commits a breach of sections 65 and 66 in any respect whatever or fails to comply with any of those sections commits an offence under this Act.

Offences and penalties.

(2) Every tenant who-

- (a) wilfully damages or fouls any tenement; and
- (b) after the determination of his tenancy and with respect to any building formerly in his possession as tenant, wilfully damages any land or building or maliciously carries away or disposes of any door key or other part of such building,

commits an offence.

(3) Every person who, with intent to defraud-

- (a) makes any false entry in a rent-book; or

(b) extracts from a rent-book any page thereof, or
obliterates or obscures any writing or entry made
therein by a landlord or his agent or a tenant; or

(c) destroys or mutilates a rent-book,

commits an offence.

(4) Every person who assaults or obstructs any police officer,
bailiff or other person in the execution of any duty under this Act commits an
offence.

(5) Every person who commits an offence under this Act for
which no special penalty is provided shall, on conviction thereof under the
Summary Jurisdiction Acts, be liable to a fine not exceeding one hundred
and twenty dollars or to imprisonment for a term not exceeding three
months.

CAP. 98.
CAP. 99.

Power to
prescribe forms,
fees and costs.

69. The Minister may prescribe-

(a) forms for the purposes of this Act, and

40 of 1963.

(b) the fees and costs which are to be demanded and taken
in respect of the several matters to be done under this
Act, and the Inferior Courts Act shall apply to those
fees and costs as if they were fees and costs payable
under that Act.

CAP. 94.