

Leases

Leases.            47.     Subject to this Act and to any other law, the proprietor of land may lease the land or part of it to any person for a definite period or for the life of

*Registered Land*

[CAP. 194 43

the lessor or of the lessee or for a period which though indefinite may be terminated by the lessor or the lessee, and subject to such conditions as he thinks fit:

Provided that, if only part is leased, the lease shall be accompanied by a plan or other description which the Registrar, in his absolute discretion, thinks adequate to identify the part leased.

48.-(1) Where in any lease the term is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to have created a periodic tenancy.

Periodic tenancies.

(2)     Where the proprietor of land permits the exclusive occupation of the land or any part thereof by any other person at a rent but without any agreement in writing, that occupation shall be deemed to

(3)     The period of a periodic tenancy created by this section shall be the period by reference to which the rent is payable, and the tenancy may be determined by either party giving to the other notice the length of which shall, subject to any other law, be not less than the period of the tenancy and shall expire on the last day of the period of any periodic tenancy.

49.     A lease for a specified period of or exceeding two years, or for the life of the lessor or of the lessee, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, is or exceeds two years, shall be in the prescribed form, and shall be completed by-

Registration of leases.

(a)     opening a register in respect of the lease in the name of the lessee;

(b)     filing the lease; and

- (c) noting the lease in the encumbrances section of the register of the lessor's land or lease.

- Lessors' consent to dealing with lease. 50. Upon the registration of a lease containing an agreement, express or implied, by the lessee that he will not transfer, sublet, charge or part with possession of the land leased or any part thereof without the written consent of the lessor, the agreement shall be noted in the register of the lease and no such dealing with the lease shall be registered until the consent of the lessor, verified in accordance with section 110, has been produced to the Registrar.
- Lease of charged land. 51. Where any land is subject to a charge, no lease of such land shall be registered without the previous consent in writing of the proprietor of the charge, verified in accordance with section 110, unless the charge expressly dispenses with the necessity for such consent.
- Computation of duration of leases. 52.-(1) Where the period of a lease is expressed as commencing on a particular day, that day is excluded in computing that period.
- (2) Where no day of commencement is named, the period commences on the day of execution of the lease, and that day is excluded in computing that period.
- (3) Where the period is a year or a number of years, in the absence of an express agreement to the contrary the lease shall last during the whole anniversary of the day on which such period commences.
- Future leases. 53.-(1) A lease may be made for a period to commence on a future date, not being later than twenty-one years from the date on which the lease is executed but shall be of no effect unless it is registered.
- (2) Any instrument purporting to create a lease to commence on a date more than twenty-one years after the date of the instrument, or to take effect on the fulfilment of any condition, is void.

54.-(1) Where a person, having lawfully entered into occupation of any land as lessee, continues to occupy that land with the consent of the lessor after the termination of the lease he shall, in the absence of any evidence to the contrary, be deemed to be a tenant holding the land on a periodic tenancy on the same conditions as those of the lease so far as those conditions are appropriate to a periodic tenancy. Holding over.

(2) For the purposes of this section, the acceptance of rent in respect of any period after the termination of the lease shall, if the former tenant is still in occupation, and subject to any agreement to the contrary, be taken as evidence of consent to the continued occupation of the land.

55. Except as otherwise expressly provided in the lease, the lessor shall be implied in every lease to have agreed- Agreements implied in leases on part of lessor.

- (a) that, so long as the lessee pays the rent and observes and performs the agreements and conditions contained or implied in the lease and on his part to be observed and performed, the lessee shall and may peaceably and quietly possess and enjoy the leased premises during the period of the lease without any interruption from or by the lessor or any person rightfully claiming through him;
- (b) not to use or permit to be used any adjoining or neighbouring land of which he is the proprietor or lessee in any way which would render the leased premises unfit, or materially less fit, for the purpose for which they are leased;
- (c) where part only of a building is leased, to keep the roof, main walls and main drains, and the common passages and common installations, in repair;

- (d) where any dwelling house, flat or room is leased furnished, that such house, flat or room is fit for habitation at the commencement of the tenancy; and
- (e) that, if at any time the leased premises or any part thereof is destroyed or damaged by fire, earthquake, hurricane, flood, civil commotion or accident not attributable to the negligence of the lessee, his servants or his licensees, so as to render the leased premises or any part thereof wholly or partially unfit for occupation or use, the rent or a just proportion thereof according to the nature and extent of the damage sustained shall be suspended and cease to be payable until the leased premises have again been rendered fit for occupation and use; but that if the leased premises have not been so rendered fit for occupation and use within six months of their destruction or damage as aforesaid, the lessee may at his option, and on giving one month's written notice of his intention to do so, terminate the lease.

Agreements implied in leases on the part of lessee.

56. Except as otherwise expressly provided in the lease, the lessee shall be implied in every lease, to have agreed-

- (a) to pay the rent reserved by the lease at the times and in the manner therein specified;
- (b) to pay all rates, taxes and other outgoings which are at any time payable in respect of the leased premises during the continuance of the lease, unless the same are payable exclusively by the lessor by virtue of any written law;
- (c) in the case of agricultural land, to farm the same in

accordance with the practice and any rules of good husbandry and to yield up the land at the end of the term;

- (d) except where part only of a building is leased, or where a dwelling house is leased furnished, to keep all buildings comprised in the lease and all boundary marks in repair;
- (e) where part only of a building is leased, or where a dwelling house is leased furnished, to keep the leased premises, except the roof, main walls and main drains and the common passages and common installations, in repair;
- (f) to permit the lessor or his agent with or without workmen or others at all convenient times and after reasonable notice to enter on the leased premises and examine its condition;
- (g) to repair or otherwise make good any defect or breach of agreement for which the lessee is responsible and of which notice has been given by the lessor to the lessee, within such reasonable period as may be specified in the notice; and
- (h) not to transfer, charge, sublease or otherwise part with the possession of the leased premises or any part thereof without the previous written consent of the lessor, but such consent shall not be unreasonably withheld.

57.-(1) Where an agreement is contained or implied in any lease to keep a building or a particular part of a building "in repair", it shall, in the absence

Meaning of "in repair".

of an express provision to the contrary, mean in such state of repair as that in which a prudent owner might reasonably be expected to keep his property, due allowance being made for the age, character and locality of the building at the commencement of the lease.

(2) There shall not be read into an agreement as mentioned in subsection (1) an undertaking to put any building into a better state of repair than that in which it was at the commencement of the lease.

Lessor's right of forfeiture and effect of forfeiture on sublease.

58.-(1) Subject to section 60 and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee-

- (a) commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease; or
- (b) is adjudicated bankrupt; or
- (c) being a company, goes into liquidation.

(2) The right of forfeiture may be-

- (a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or
- (b) enforced by action in a court of law.

(3) Subject to subsection (4), the right of forfeiture shall be taken to have been waived if-

- (a) the lessor accepts rent which has become due since the breach of the agreement or condition which entitled the

lessor to forfeit the lease or has by any other positive act shown an intention to treat the lease as subsisting; and

- (b) the lessor is, or should by reasonable diligence have become, aware of the commission of the breach, and has not exercised his right of forfeiture within a reasonable time thereafter.

(4) The acceptance of rent after the lessor has commenced an action in a court under subsection (2) shall not operate as a waiver.

(5) The forfeiture of a lease shall terminate every sublease and every other interest appearing in the register relating to that lease, but-

- (a) where the forfeiture is set aside by a court on the grounds that it was procured by the lessor in fraud of the sublessee; or
- (b) where a court grants relief against the forfeiture under section 60,

every such sublease and other interest shall be deemed not to have terminated.

59. Notwithstanding anything to the contrary in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease whether expressed or implied, until the lessor has served on the lessee, a notice-

Notice before forfeiture.

- (a) specifying the particular breach complained of;
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice;

- (c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money.

Relief against forfeiture.

60.-(1) A lessee upon whom a notice has been served under section 59, or against whom the lessor is proceeding by action or re-entry, to enforce his right of forfeiture, may apply to a court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and if it grants relief, may grant it on such terms as it thinks fit.

(2) Subject to subsection (3), the court, on application by any person claiming as sublessee or chargee any interest in the property or part of the property comprised in the lease forfeited or sought to be forfeited, may make an order vesting the property or such part of the property in such sublessee or chargee for the whole period of the lease or any less period, upon such conditions as the court, in the circumstances of the case, thinks fit.

(3) Nothing in subsection (2) shall apply in the case of a forfeiture arising from a breach to which the sublessee is a party or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the property leased.

(4) For the purpose of this section, a lease limited to continue as long only as the lessee abstains from committing a breach of the agreement or condition shall be and take effect as a lease to continue for any longer term for which it could subsist, but terminable by a provision for re-entry on such breach.

(5) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not.



61. Subject to section 59, the agreements and conditions contained or implied in any registered lease may be varied, negated or added to, and the period of any registered lease may from time to time be extended by an instrument executed by the lessor and the lessee for the time being and registered before the expiration of the then current term of the lease. Variation and extension of leases.
62. Where, upon presentation of a lease for registration, the Registrar is satisfied that the lessee is the person registered as the proprietor of a prior lease in respect of the same land, he shall cancel the registration of the prior lease and register the new lease, subject to the encumbrances registered against the prior lease. Substitution of leases.
- 63.-(1) Subject to any provision in his lease affecting his right to do so, the proprietor of a registered lease may, by a sublease in the prescribed form, sublease for any period which is less than the remainder of the period of his lease. Sublease.
- (2) Except as otherwise expressly provided in this Act, the provisions of this Act affecting leases, lessors and lessees shall apply to subleases, sublessors and sublessees, with such adaptations as are necessary for such application.
- (3) If a lease is terminated by operation of law or under any law relating to bankruptcy or liquidation proceedings, such termination shall terminate the sublease.
- (4) In addition to the agreements specified by this Act to be implied in leases, there shall be implied in every sublease under this Act an agreement by the sublessor that he will, during the continuance of the sublease, pay the rent reserved by the lease under which the sublessor holds, and observe and perform the agreements and conditions thereof.
- (5) Where a sublessee has paid to the sublessor's lessor the rent

or any part of the rent payable by the sublessor under the lease under which the sublessor holds, the sublessee shall be entitled to set off any sum so paid against the rent payable by him to the sublessor in respect of the sublease.

Surrender of leases.

64.-(1) Where the lessor and the lessee agree that the lease shall be surrendered, it shall be surrendered in the following manner-

- (a) either an instrument shall be prepared in the prescribed form, or the word "surrendered" shall be inscribed on the lease or on the duplicate or triplicate thereof; and
- (b) the instrument or inscription shall then be executed by the lessor or lessee; and
- (c) the Registrar shall then cancel the registration of the lease; and
- (d) the instrument or inscribed lease shall then be filed,

and thereupon, or upon such earlier date as is expressed in the instrument or inscription, the interest of the lessee shall cease.

(2) No lease which is subject to a charge or a sublease shall be surrendered without the consent in writing of the proprietor of the charge or sublease.

Determination of leases.

65.-(1) Where-

- (a) the period of a lease has expired; or
- (b) an event upon which a lease is expressed to terminate has happened; or
- (c) a lessor has lawfully re-entered; or

- (d) a notice duly given to terminate the lease has expired, and the lessor has recovered possession of the land leased,

the lease and every other interest appearing on the register relating to the lease shall thereupon terminate, and the lessor may apply in writing to the Registrar to cancel the registration.

(2) An application under this section shall be supported by such evidence of the matters giving rise to the termination and the recovery of possession by the lessor as the Registrar may require, and the Registrar, on being satisfied on the matters set forth in the application, shall cancel the registration of the lease.

66. Where application is made to the Registrar to register any lease which is not compulsorily registrable under this Act but which is capable of registration, the Registrar shall not register such lease unless-

Voluntary registration of leases.

- (a) it is in the prescribed form, or in such form as the Registrar may approve, and is tendered with the prescribed fees; and
- (b) in the case of a sublease, every lease superior to that sublease complies with condition (a) of this section and is registered in priority to the sublease.