

New Zealand.



ANALYSIS.

- | Title. | |
|--|---|
| 1. Short Title. | 14. Power to suspend proceedings for recovery of possession. |
| 2. Interpretation. | 15. Restrictions on letting or selling of dwellinghouse when possession recovered on ground that premises are required for landlord's own occupation. |
| 3. Application of this Act. | 16. Restrictions on right of landlord to distrain. |
| 4. Act to bind the Crown. | 17. Inspector of Factories may act on behalf of tenants. |
| 5. Restriction on raising rent. | 18. Procedure. |
| 6. Magistrate may determine fair rent to be paid by tenant. | 19. Costs in proceedings before Magistrate. |
| 7. Considerations to be taken into account in fixing fair rent of any dwellinghouse. | 20. Decisions of Court under this Act to be final. |
| 8. Duration of order fixing fair rent. | 21. Tenant debarred from contracting out of benefits provided by Act. |
| 9. Rent in excess of fair rent to be irrecoverable. | 22. Intimidating tenant an offence. |
| 10. Rent paid in excess of rent payable under this Act may be recovered by tenant. | 23. Penalty for offences. |
| 11. No fine or premium to be chargeable in respect of a tenancy or renewal. | 24. Regulations. |
| 12. Notice to be given by landlord before commencing proceedings for recovery of possession. | 25. Duration of Act. |
| 13. Limiting grounds for recovery of possession. | 26. Act to be administered by Labour Department. |

1936, No. 14.

AN ACT to make temporary Provision for the Restriction of Increases in the Rent of certain Classes of Dwellinghouses, for the Determination of Fair Rents therefor, and for certain Matters incidental thereto. Title.

[11th June, 1936.]

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

1. This Act may be cited as the Fair Rents Act, 1936.

2. In this Act, unless the context otherwise requires, “dwellinghouse” means any house or any part of a house let as a separate dwelling where the tenancy does not include any land other than the site of the dwellinghouse and a garden or other premises in connection therewith; and includes any furniture that may be let therewith; but does not include—

- (a) Any premises let at a rent that includes payments in respect of board or attendance; or
- (b) Any premises used by the tenant exclusively or principally for business purposes; or
- (c) Any premises forming part of a building originally erected for the purpose of being let as two or more separate flats or apartments.

3. (1) Nothing in this Act shall apply with respect to any dwellinghouse—

- (a) That is let for the first time as a dwellinghouse at any time after the passing of this Act; or
- (b) That has not been let as a dwellinghouse at any time since the twenty-seventh day of November, nineteen hundred and thirty-five, and before the passing of this Act; or
- (c) That is let as a dwellinghouse on the passing of this Act at a rent exceeding one hundred and fifty-six pounds a year (whether or not such rent is computed on an annual basis); or
- (d) That, in the case of a dwellinghouse to which the last preceding paragraph does not apply, has at any time since the twenty-seventh day of November, nineteen hundred and thirty-five, and before the passing of this Act, been let as a dwellinghouse at a rent exceeding one hundred and fifty-six pounds a year (whether or not such rent is computed on an annual basis); or
- (e) That is let on the passing of this Act pursuant to any housing-scheme that provides for the disposal of the dwellinghouses to which it relates by way of leases having a compulsory

REFER 19
No. 8.

Short Title.

Interpretation.

REFER 19

No. 8.
REFER 19
No. 8.

REFER 19
No. 8.

AMD. 19
No. 8.

REP. 19
No. 8.
Substitutn.

REF. 19
No. 8.
Substitutn.

Application
of this Act.

REFER 19
No. 8.

REP. 19
No. 8.
Substitutn.

or optional purchasing-clause, and is hereafter approved by the Governor-General in Council for the purposes of this section.

(2) Except as provided in the last preceding subsection, this Act applies to every dwellinghouse that on the passing of this Act or at any time thereafter is let as a dwellinghouse.

4. This Act shall bind the Crown.

5. (1) In this section the expression "the basic rent" means—

(a) With reference to a dwellinghouse let as such on the first day of May, nineteen hundred and thirty-six, the rent payable as on that date:

(b) With reference to a dwellinghouse that was not let as such on the first day of May, nineteen hundred and thirty-six, the rent that was last payable before that date, or, in the case of a dwellinghouse that was first let as such after the first day of May, nineteen hundred and thirty-six, and before the passing of this Act, the rent that was first payable in respect of such dwellinghouse.

(2) Any increase in the basic rent of any dwellinghouse to which this Act applies that has been made since the first day of May, nineteen hundred and thirty-six, and before the passing of this Act and any increase in the basic rent of any such dwellinghouse that is made after the passing of this Act shall, notwithstanding anything to the contrary in any agreement, be irrecoverable.

(3) Nothing in the foregoing provisions of this section shall be deemed to render irrecoverable any rent payable in respect of any dwellinghouse for any period if a fair rent has been fixed in accordance with this Act in respect of the dwellinghouse for that period, and the rent charged does not exceed the fair rent so fixed.

6. (1) On application in that behalf made by or on behalf of either the landlord or the tenant of any dwellinghouse to which this Act applies, a Stipendiary Magistrate may at any time and from time to time make an order determining the fair rent of that dwellinghouse for such period, not exceeding one year, as may be specified in that behalf in the order.

Act to bind
the Crown.

Restriction on
raising rent.

REP. 19
No. 5.
Substituted

REP. 19
No. 8.

Magistrate
may
determine
fair rent
to be paid
by tenant.

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

Provided that if the fair rent fixed by the order exceeds the rent payable under the tenancy, the order fixing the fair rent shall not take effect before the expiration of fourteen days after the date on which the order is made.

(3) If the fair rent so fixed exceeds the rent payable under the tenancy, the rent payable in respect of any period after the order has taken effect may be increased by the landlord to an amount not exceeding the fair rent.

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

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

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

7. (1) On the hearing of any application to fix the fair rent of any dwellinghouse to which this Act applies, the Magistrate shall have regard to the relative circumstances of the landlord and of the tenant, and, after taking such circumstances and all other relevant matters into consideration shall, subject to any regulations that may be made for the purposes of this Act, fix as the fair rent such rent as in his opinion it would be fair and equitable for the tenant to pay.

(2) Subject to any regulations as aforesaid, the fair rent fixed as aforesaid shall not exceed the basic rent, as defined for the purposes of section five hereof, or the rent (if any) payable as on the twenty-seventh day of

Considerations
to be taken
into account
in fixing fair
rent of any
dwellinghouse.

REFER 19
No. s.

AMD. 19
No. s.

November, nineteen hundred and thirty-five (whichever is the less), unless the Magistrate is satisfied, by evidence produced by the landlord, that in the special circumstances of the case it is fair and equitable that the fair rent should exceed such basic or other rent.

8. (1) Every order made under the foregoing provisions of this Act fixing the fair rent of any dwellinghouse for any period shall cease to have effect—

Duration of
order fixing
fair rent.

REFER 19
No. s.

(a) If during that period a subsequent order fixing the fair rent of such dwellinghouse takes effect; or

(b) If the tenant in occupation when the order was made ceases to be the tenant.

(2) Except as provided in the last preceding subsection, every order fixing the fair rent of any dwellinghouse shall continue in force for the period for which it was made, and shall then expire.

9. Where an order has been made under this Act fixing the fair rent of any dwellinghouse no rent in excess of the fair rent shall be recoverable for any period during which the order is in force.

Rent in excess
of fair rent
to be
irrecoverable.

10. Where any sum that by virtue of this Act is irrecoverable has at any time been paid on account of the rent of any dwellinghouse, the sum so paid may at any time within six months after the date of payment be recovered by or on behalf of the tenant by whom it was paid as a debt due to him by the landlord who received the payment, and may, without prejudice to any other mode of recovery, be deducted by the tenant from any rent payable by him to the landlord within the said period of six months.

Rent paid in
excess of rent
payable under
this Act may
be recovered
by tenant.

11. (1) Every person who, in consideration of the grant, renewal, or continuance of a tenancy of any dwellinghouse to which this Act applies, requires or accepts any fine, premium, or other sum in addition to the rent commits an offence against this Act. Where any such payment is made in respect of any such dwellinghouse the amount may at any time within six months after the date of payment be recovered by or on behalf of the tenant by whom it was paid as a debt due to him by the landlord who received the payment, and may, without prejudice to any other mode of recovery, be deducted by the tenant from any rent

No fine or
premium to
be chargeable
in respect of
a tenancy or
renewal.

REP. 1947
No. 62 s.

payable by him to the landlord within the said period of six months.

(2) Every person, not being a person to whom the last preceding subsection applies, commits an offence who stipulates for or demands or accepts for himself or for any other person any bonus, fine, premium, or other like sum in consideration of obtaining or offering to obtain or doing anything for the purpose of obtaining any dwellinghouse to which this Act applies for the occupation of any other person. All moneys paid by any person in breach of this subsection may, at any time within six months after the date of payment, be recovered by or on behalf of that person as a debt due to him by the person to whom or on whose behalf the moneys were paid.

(3) Every person commits an offence who stipulates for or demands or accepts, as a condition of the tenancy of any dwellinghouse to which this Act applies, payment for the furniture or fixtures or other effects of the dwellinghouse of any sum in excess of the fair selling-value of such furniture, fixtures, or other effects.

12. (1) No proceedings for the recovery by the landlord of possession of any dwellinghouse to which this Act applies, or for the ejection of the tenant therefrom, on any ground other than the grounds specified in paragraph (b) or in paragraph (c) of subsection one of the next succeeding section, shall be commenced in any Court unless notice in writing of his intention to commence the proceedings has been given by the landlord to the tenant at least fourteen days before the commencement of the proceedings:

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

(2) Every notice under this section shall contain an address for service, and shall be signed by the landlord or by some duly authorized attorney or agent of the landlord, and shall be deemed to be duly given if delivered to the tenant personally, or if posted by registered letter addressed to the tenant at the premises to which the notice relates. A notice so posted shall be deemed to have been given at the time when the registered letter would in the ordinary course of post be delivered.

Notice to be given by landlord before commencing proceedings for recovery of possession.

REFER 19
No. 8.

13. (1) An order for the recovery of possession of any dwellinghouse to which this Act applies, or for the ejectment of the tenant therefrom, may, subject to the next succeeding subsection, be made on one or more of the grounds following, but shall not be made on any other ground:—

(a) That the tenant has failed to pay rent at the agreed rate or at such other rate (if any) as may be payable in accordance with this Act (whichever is the less), or to perform the other conditions of the tenancy:

Limiting grounds for recovery of possession.

REFER 19
No. s.

REF 19
No. s.
Substituta.

(b) That the tenant has failed to take reasonable care of the premises or has committed waste:

REFER 19
No. s.

(c) That the tenant has been guilty of conduct that is a nuisance or annoyance to adjoining or neighbouring occupiers:

(d) That the premises are reasonably required by the landlord for his own occupation as a dwellinghouse:

AMD. 19
No. s.

(e) That the premises are reasonably required for occupation as a dwellinghouse by any person in the regular employment of the landlord:

REFER 19
No. s.

(f) That an agreement for the sale of the premises has been duly entered into, to be completed by transfer within one month from the date thereof, and that the premises are reasonably required by the purchaser for his own occupation as a dwellinghouse:

AMD. 19
No. s.

AMD. 19
No. s.

(g) That the tenant by subletting the dwellinghouse or any part thereof is making a profit which, having regard to the rent paid by the tenant, is unreasonable.

AMD. 19
No. s.

(2) On the hearing by any Court of any application for an order to which the last preceding subsection relates, the Court shall take into consideration the hardship that would be caused to the tenant or any other person by the grant of the application and the hardship that would be caused to the landlord or any other person by the refusal of the application, and all other relevant matters; and may in its discretion refuse the application, notwithstanding that any one or more of the grounds mentioned in the last preceding subsection may have been established.

REFER 19
No. s.

Power to suspend proceedings for recovery of possession.

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

Restrictions on letting or selling of dwellinghouse when possession recovered on ground that premises are required for landlord's own occupation.

15. (1) A landlord who obtains an order for possession of a dwellinghouse to which this Act applies on the ground defined in paragraph (d) of subsection one of section thirteen hereof, or who obtains possession of any such dwellinghouse by a representation to the effect that he requires possession on that ground, shall not let the dwellinghouse or permit any person other than himself or his wife, family, and domestic servants to occupy the dwellinghouse, or sell or make or enter into any agreement for the sale of the dwellinghouse, for a period of six months after the date when he obtains possession, unless he shall have first obtained an authorizing order of a Magistrate under subsection five hereof:

Provided that if the dwellinghouse contains more rooms than are reasonably required for the occupation of the landlord and his wife, family, and domestic servants the letting of any rooms that are not so required shall not be deemed to be in contravention of this subsection.

(2) If any document purporting to be an agreement is produced for the purpose of obtaining possession of any dwellinghouse to which this Act applies on the ground defined in paragraph (f) of subsection one of section thirteen hereof (whether by means of an order of any Court or otherwise) and is in any respect not a genuine agreement binding upon both vendor and purchaser and intended to be carried into full effect according to the tenor thereof, every person who is a signatory or party to the document or who, knowing

that the document is not a genuine agreement, is concerned in the production or use thereof shall be deemed to have committed an offence against this Act.

(3) Where an order for possession is made upon the ground defined in paragraph (f) of subsection one of section thirteen hereof, or where possession is obtained by a representation to the effect that possession is required on that ground, neither the landlord nor the purchaser shall let the dwellinghouse, or permit any person other than the purchaser, his wife, family, and domestic servants to occupy the dwellinghouse, or sell or make any agreement for the sale of the dwellinghouse, for a period of six months after the date when possession is obtained, unless he shall have first obtained an authorizing order of a Magistrate under subsection five hereof:

Provided that if the dwellinghouse contains more rooms than are reasonably required for the occupation of the purchaser and his wife, family, and domestic servants, the letting of any rooms that are not so required shall not be deemed to be in contravention of this subsection.

AMD. 19
No. s.

(4) Every person who does any act in contravention of the provisions of subsection one or subsection three of this section commits an offence against this Act.

AMD. 19
No. s.

(5) A Magistrate may grant an authorizing order to a person applying therefor under subsection one or subsection three of this section if it is proved to the satisfaction of the Magistrate that by reason of circumstances that have arisen since possession was obtained it is just that the applicant should be relieved from the restrictions imposed upon him by this section.

AMD. 19
No. s.

16. (1) No person shall be entitled to distrain for any rent which is declared by this Act to be irrecoverable.

Restrictions
on right
of landlord
to distrain.

(2) Except with the leave of a Magistrate, no person shall be entitled to distrain for any rent due in respect of any dwellinghouse to which this Act applies.

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

Inspector of
Factories may
act on behalf
of tenants.

REFER 19
No. s.
Procedure.

REFER 19
No. s.

Costs in
proceedings
before
Magistrate.

Decisions of
Court under
this Act to
be final.

Tenant
debarred from
contracting
out of
benefits
provided
by Act.

REFER 19
No. s.

17. With the authority in writing of the tenant of any dwellinghouse to which this Act applies, any Inspector of Factories may, on behalf of the tenant, make or oppose any application under this Act, or institute or appear in any proceedings for the recovery of any moneys claimed by the tenant under this Act, or defend or appear in any proceedings brought by the landlord in any Court in relation to the dwellinghouse.

18. (1) Any application made to a Magistrate under section six of this Act by or on behalf of the landlord or the tenant of any dwellinghouse may be made by motion, with notice to the tenant or landlord, as the case may be, of the dwellinghouse and to such other persons as may be prescribed or as the Magistrate considers entitled thereto.

(2) Unless the parties otherwise agree, every such application shall be made and heard in the office of the Magistrate's Court nearest to the place where the dwellinghouse to which the application relates is situated.

(3) Any application under this Act may be disposed of in Chambers.

19. No party to any proceedings on an application made under this Act shall be liable to pay the costs of any other party to the proceedings unless the Magistrate makes an order for the payment by any party of such costs on the ground that in his opinion the conduct of that party has been for the purpose of causing delay or has in any other respect been vexatious, or on the ground that it is desirable for any other special reason to make such an order.

20. No appeal shall lie from any decision, determination, or order made under the provisions of this Act; and, except upon the ground of lack of jurisdiction, no such decision, determination, or order shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

21. No covenant or agreement entered into before or after the passing of this Act shall have any force or effect to deprive any tenant of any right, power, privilege, or other benefit provided for by this Act:

Provided that the landlord and the tenant, by agreement in writing approved for the purposes of this Act by an Inspector of Factories, may fix the fair rent

of any dwellinghouse let by the landlord to the tenant, and the fair rent so fixed shall, while the agreement remains in force, be deemed for the purposes of this Act to be the fair rent of such dwellinghouse as if it had been fixed by order made by a Magistrate pursuant to section seven hereof.

22. Every person commits an offence who by any threat endeavours to dissuade or prevent a tenant from making or prosecuting any application under this Act.

23. Every person who commits an offence against this Act shall be liable on summary conviction to a fine of fifty pounds.

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

(2) Without limiting the general power hereinbefore conferred, regulations may be made under this section providing that the annual amount of the fair rent to be determined under this Act for any dwellinghouse shall be such proportion as may be prescribed (being not less than four per centum nor more than six per centum) of the capital value of the dwellinghouse, together with the average annual outgoings of the landlord in respect of rates, insurances, and repairs, the annual amount (if any) to be allowed in respect of depreciation of the dwellinghouse, and the annual amount to be allowed as the rent of the furniture (if any) let with the dwellinghouse. For the purposes of any such regulations the capital value, the annual outgoings, and the amounts to be allowed for depreciation and as rent of furniture (if any) in respect of any dwellinghouse shall be determined by the Magistrate. Regulations made for the purposes of this subsection may be of general application, or may relate to any specified part or parts of New Zealand, or to any specified class or classes of dwellinghouses.

25. (1) This Act shall continue in force until the thirtieth day of September, nineteen hundred and thirty-seven, and shall then be deemed to be repealed.

(2) The expiry of this Act shall not render recoverable any rent which during the continuance thereof was irrecoverable, or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

AMD. 19
No. 8.

Intimidating
tenant an
offence.

Penalty
for offences.

Regulations.

REFERR 19
No. 8.

Duration
of Act. REF. 19
No. 8.
Substituta.

(3) Notwithstanding the expiry of this Act, all proceedings pending on any application made under section six of this Act may be continued and completed as if this Act were still in force, and all orders under the said section theretofore made and then subsisting, or thereafter made in any such pending proceedings, shall enure as if this Act were still in force, and all proceedings may be taken and all jurisdiction exercised with respect to such orders accordingly.

(4) For the purposes of the last preceding subsection all regulations under this Act that are in force at the expiry of this Act shall continue in force as if this Act were still in force.

26. (1) This Act shall be administered by the Department of Labour established under the Labour Department Act, 1908.

(2) Section two of the Labour Department Amendment Act, 1936, shall apply in all respects as if this Act were one of the Acts specified in the First Schedule thereto.

Act to be
administered
by Labour
Department.
See Reprint
of Statutes,
Vol. VIII,
p. 1175
1936, No. 4