



ANALYSIS

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1964, No. 23

An Act to amend the Tenancy Act 1955

[30 October 1964

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

1. Short Title—This Act may be cited as the Tenancy Amendment Act 1964, and shall be read together with and deemed part of the Tenancy Act 1955 (hereinafter referred to as the principal Act).

2. Act to apply to certain properties—This Act shall apply to any property (as defined in subsection (1) of section 2 of the principal Act) which is in the lawful possession of a tenant at the date of the passing of this Act, unless, at that date,—

(a) The principal Act does not apply to the property in respect of the tenancy of that tenant; or

- (b) Part IV and sections 45, 46, and 47 of the principal Act do not apply to the property in respect of the tenancy of that tenant.

3. Certain tenants may apply for new tenancies—(1) Any tenant who is in lawful possession, at the date of the passing of this Act, of the whole or part of a property to which this Act applies and whose tenancy—

- (a) Has expired or been terminated; or
- (b) Will expire or terminate, without a right of renewal, by effluxion of time before the nineteenth day of November, nineteen hundred and sixty-four; or
- (c) Is determinable (apart from the provisions of the principal Act or this Act) at the will of the landlord by one year's notice or by some lesser period of notice,—

may, if he wishes to obtain a new tenancy of the property or of any part thereof, give notice in writing to his landlord, before the nineteenth day of November, nineteen hundred and sixty-four, of his wish to obtain a new tenancy.

(2) Where any tenant has sublet any part of the premises let to him he shall not give a notice under this section in respect of any part of the premises let to a subtenant at the date of the passing of this Act.

(3) Every notice given under this section shall contain general particulars of the proposed term of the new tenancy and, where the tenant cannot or does not wish to apply for a new tenancy of the whole property, a general description of the part of the property which the tenant seeks to have let to him under the new tenancy. The notice may also show a proposed rent and any conditions which the tenant would particularly like to have included in a new tenancy agreement.

(4) Every notice given under this section shall be expressed to be given pursuant to the provisions of this section.

(5) Every notice given under this section shall contain an address for service, and shall be signed by the tenant or by some duly authorised attorney or agent of the tenant, and shall be given in accordance with section 50 of the principal Act.

(6) A subtenant shall not be a tenant for the purposes of this section unless he is in possession of the property with the express or implied consent of the landlord of the tenant who sublet it to him; and subsection (2) of section 44 of the principal Act shall apply for the purposes of this subsection.

4. Duties of intermediate landlords—(1) Every landlord who receives a notice from a tenant under this Act (including a notice forwarded under this section) and who, at the date when he receives it, is neither the legal or equitable owner of the property nor a tenant who has a tenancy of premises that comprise or include the property which will expire by effluxion of time only after the eighteenth day of November, nineteen hundred and sixty-seven, or which can be renewed by virtue of the provisions of the lease or agreement so that it will so expire only after that date, shall forthwith forward any notice so received to his immediate landlord in accordance with section 50 of the principal Act. He shall also give the tenant notice in writing of the name and address of that landlord and of the date when he forwarded the notice.

(2) Every person who fails to comply in any respect with the provisions of subsection (1) of this section commits an offence against the principal Act.

5. Head landlord may require subtenant to give notice direct—(1) Every person who is the landlord of any premises may inform any person who is not his immediate tenant but who is apparently entitled as a tenant of the whole or part of those premises to issue a notice under section 3 of this Act that he requires a copy of any such notice issued or to be issued by that tenant to be given to him and, where any such copy is given to the landlord before he receives the original notice he shall give the notice mentioned in subsection (1) of section 6 of this Act within two months after the date of the receipt of that copy by him.

(2) Every tenant who is informed by any superior landlord pursuant to subsection (1) of this section that he is required to give that landlord a copy of any notice issued by him under section 3 of this Act shall, if the information is in writing signed by or on behalf of the landlord, give the required copy to that landlord within seven days after the date when he is so informed or before the nineteenth day of November, nineteen hundred and sixty-four, whichever is the later.

(3) Every person who fails to comply with the provisions of subsection (2) of this section commits an offence against the principal Act.

(4) Nothing in this section shall derogate from the provisions of section 3 and section 4 of this Act.

6. Landlord to give counter notice—(1) Every landlord who is the legal or equitable owner of the property or is a tenant who has a tenancy of the kind described in section 4 of this Act, and who is given a notice under section 3 of this Act (including such a notice forwarded to him under section 4 of this Act) shall, within two months after the date of the receipt of the notice by him, give the tenant who issued the notice a notice in writing specifying either—

- (a) The terms on which he is prepared to grant a new tenancy; or
- (b) The grounds on which he objects to the grant of a new tenancy.

(2) If the landlord fails to give the notice mentioned in subsection (1) of this section within the appropriate period of two months section 8A of the principal Act (as inserted by section 4 of the Tenancy Amendment Act 1961) shall be read in relation to the property to which the tenant's notice related as if the words "six years" were substituted for the words "three years" therein.

7. Application to Court—(1) At any time within one month after the receipt by him of the landlord's notice under section 6 of this Act the tenant may, if he has not agreed in writing with the landlord on the terms of a new tenancy, apply to a Magistrate's Court for a new tenancy of the whole or part of the property.

(2) On any such application the Court shall make an order for the grant of a tenancy of the property or some part thereof unless the landlord mentioned in section 6 of this Act opposes the application and establishes, to the satisfaction of the Court, any of the grounds set out in subsection (1) of section 8 of this Act.

(3) Subject to the provisions of this Act, the Court shall determine the terms and conditions of the tenancy.

(4) The term of the new tenancy shall expire not later than the eighteenth day of November, nineteen hundred and sixty-seven.

(5) The rent payable under the new tenancy shall be such as may be agreed between the landlord mentioned in section 6 of this Act and the tenant or as, in default of such agreement, may be determined by the Court to be that at which, having regard to the terms of the tenancy (other than those relating to rent) the property might reasonably be expected to be let in the open market by a willing lessor, there being disregarded—

- (a) Any effect on rent of the fact that the tenant or his predecessors in title have been in occupation of the property:
- (b) Any goodwill attached to the property by reason of the carrying on thereat of the business of the tenant (whether by him or by a predecessor of his in that business):
- (c) Any effect on rent of any improvement carried out by the tenant after the eighteenth day of November, nineteen hundred and sixty-one, otherwise than in pursuance of an obligation to his immediate landlord.

(6) Where any subtenant applies for a tenancy under subsection (1) of this section all persons who stand between him and the landlord entitled to oppose his application may be joined as parties to the proceedings and the Court may, if it makes an order for the grant of a tenancy, determine any incidental questions which arise therefrom including, without limiting the generality of the powers hereby conferred, the power to determine—

- (a) When the subtenant shall cease to be the tenant of his immediate landlord:
- (b) When any premises shall be excluded from any tenancy:
- (c) To what extent any rent shall be reduced as the result of the exclusion of any premises from any tenancy—

and any such determination shall be binding on the parties to the proceedings.

(7) Every application made under this section shall be made as if it were an application to fix the fair rent of the property and the provisions of section 26 of the principal Act (with the exception of subsection (2)) shall apply accordingly with any necessary modifications.

8. Grounds of opposition to new tenancy—(1) The grounds on which a landlord may oppose an application under subsection (1) of section 7 of this Act are such of the following grounds as may be stated in the landlord's notice under section 6 of this Act, namely—

- (a) Any of the grounds specified in paragraphs (a), (b), or (c) of section 36 of the principal Act:
- (b) That the tenant has been persistently late in paying rent that has become due:

- (c) That suitable alternative accommodation is available for the tenant or will be available for him if he is not granted a new tenancy:
 - (d) That the landlord has a firm and settled intention to demolish or reconstruct the premises or a substantial part of those premises within one year after the day when he obtains vacant possession of those premises and that he could not reasonably do so without obtaining possession of the property:
 - (e) That the landlord has a firm and settled intention to carry out substantial work of construction on the premises or part thereof and that he could not reasonably do so without obtaining possession of the property:
 - (f) That the landlord was at the eighth day of September, nineteen hundred and sixty-four, the legal or equitable owner of the premises or of a leasehold interest therein superior to that of the tenant and reasonably requires the premises for his own occupation or for occupation by his son or daughter:
 - (g) That the landlord is a trustee who has been the legal or equitable owner of the premises or of a leasehold interest therein superior to that of the tenant throughout the period of one year ended with the date of the passing of this Act and that the premises are reasonably required by a beneficiary under the trust for his own occupation:
 - (h) That the landlord has before the eighth day of September, nineteen hundred and sixty-four, let or agreed to let the premises to a person other than the tenant in lawful possession of those premises at the date of the passing of this Act for a term commencing after the eighteenth day of November, nineteen hundred and sixty-four, and that, in anticipation of obtaining possession of those premises, that person has entered into such contracts or commitments or has so altered his position, that the hardship which would be caused to him by the making of an order for the grant of a new tenancy would exceed the hardship which would be caused to the said tenant by the refusal of the Court to make such an order.
- (2) For the purposes of paragraph (f) of subsection (1) of this section a landlord which is a company shall be deemed to require premises for its own occupation if it requires

them for occupation by another company that is and was at the eighth day of September, nineteen hundred and sixty-four, a subsidiary or the holding company or a subsidiary of the holding company of the landlord. In this subsection the terms "subsidiary" and "holding company" have the same meaning as in section 158 of the Companies Act 1955.

(3) For the purposes of paragraph (f) of subsection (1) of this section a landlord which is a company shall be deemed to require premises for its own occupation if it requires them for occupation by a son or daughter of a person who at the eighth day of September, nineteen hundred and sixty-four, held shares in that company which either alone or together with any shares held by that person's spouse, son, or daughter constituted more than half in nominal value of the company's equity share capital as defined in subsection (5) of section 158 of the Companies Act 1955.

9. Interim continuation of protection of principal Act—

(1) Where a notice has been given under section 3 of this Act in respect of any property that property shall not become free from the application of the provisions of the principal Act by virtue of the provisions of section 8A of that Act until—

- (a) The tenant who gave the notice gives up possession of the property; or
- (b) The tenant and the person who is or would be the landlord of the property for the purposes of section 6 of this Act enter into a written agreement granting the tenant a new tenancy of the whole or part of the property; or
- (c) Where the landlord has given the tenant a notice in accordance with subsection (1) of section 6 of this Act, the period of one month mentioned in subsection (1) of section 7 of this Act expires without the tenant applying to the Magistrate's Court for a new tenancy of the whole or part of the property; or
- (d) The expiration of two months after the date on which any application by the tenant for a new tenancy of the whole or part of that property under this Act is finally disposed of; or
- (e) The tenant is ejected pursuant to an order for the ejection of the tenant therefrom made under section 36 of the principal Act; or

(f) The eighteenth day of November, nineteen hundred and sixty-seven,—
whichever is first in point of time.

(2) The reference in paragraph (d) of subsection (1) of this section to the date on which an application is finally disposed of shall be construed as a reference to the earliest date by which the proceedings on the application (including any proceedings of or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired, except that if the application is withdrawn or any appeal is abandoned or any new tenancy is not accepted by the tenant pursuant to section 10 of this Act the reference shall be construed as a reference to the date of the withdrawal or abandonment or the date when the tenant notifies the Court that he does not accept the new tenancy as the case may be.

10. Carrying out of order for new tenancy—(1) Where the Court makes an order for the grant of a new tenancy then, unless within fourteen days after the date of the making of the order the tenant notifies the Court and the landlord in writing that he does not accept the new tenancy, the landlord shall be bound to execute or make in favour of the tenant, and the tenant shall be bound to accept, a lease or agreement for a tenancy embodying the terms agreed by the landlord and tenant or determined by the Court in accordance with the provisions of this Act.

(2) Where the tenant notifies the Court within the said period of fourteen days that he does not accept the new tenancy the Court may revoke or vary any order as to the payment of costs which it made in the proceedings or, where it did not award costs in the proceedings, may award such costs. Any appeal lodged by any party to the proceedings before any such non-acceptance is notified to the Court shall not proceed.

11. Appeal to Supreme Court where rent exceeds one thousand and fifty pounds—Where a Magistrate's Court has made an order for the grant of a new tenancy and the rent payable in respect of the new tenancy exceeds an annual rent of one thousand and fifty pounds or where that Court has refused to make an order granting a new tenancy, any party to the proceedings may appeal to the Supreme Court in accordance with the provisions of Part V of the Magistrates' Courts Act 1947 (except section 71), and those provisions shall apply accordingly:

Provided that the determination of the Supreme Court on any such appeal shall be final.

12. Decisions to be final—Except as expressly provided in this Act, no appeal shall lie from any decision, determination, or order made by the Court under this Act, and no such decision, determination, or order shall be liable to be challenged, reviewed, quashed, or called in question in any Court on any ground except lack of jurisdiction.

13. Compensation for possession obtained by misrepresentation—(1) Where the Court refuses an order for the grant of a new tenancy and it is subsequently made to appear to the Court that the Court was induced to refuse the grant by misrepresentation or by concealment of material facts, the Court may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as a result of the refusal:

Provided that a sum not exceeding two hundred and fifty pounds may be awarded as compensation in any event even though no actual loss or damage is proved.

(2) Without limiting the generality of subsection (1) of this section, where a landlord successfully opposes the grant of a new tenancy of any premises on any of the grounds set out in paragraphs (d), (e), (f), and (g) of subsection (1) of section 8 of this Act, and thereafter obtains possession of the premises, he shall be deemed, in the absence of proof to the contrary, to have induced the Court to refuse the grant by misrepresentation (or by concealment of material facts) if—

- (a) Where the ground was that set out in the said paragraph (d), he fails to demolish or reconstruct the premises or a substantial part thereof within the period of one year referred to in that paragraph; or
- (b) Where the ground was that set out in the said paragraph (e), he fails to commence and actively pursue the work of construction referred to in that paragraph within eighteen months after the date when vacant possession of the property is obtained; or
- (c) Where the ground was that set out in the said paragraph (f), the intended occupant fails to occupy the premises himself for at least eighteen months out of the twenty-four months following the date when vacant possession of the property is obtained; or

(d) Where the ground was that set out in the said paragraph (g), he permits anyone other than the beneficiary under the trust referred to in that paragraph to occupy the premises during the period of eighteen months after the date when vacant possession is obtained.

(3) In this section the expression "the landlord" means the person opposing an application for the grant of a new tenancy, and the expression "the tenant" means the person to whom the grant of a new tenancy was refused.

14. Provisions as to mortgagees in possession—Anything authorised or required by the provisions of this Act to be done at any time by, to, or with the landlord shall, if at any time the interest of the landlord is subject to a mortgage and the mortgagee is in possession or a receiver appointed by the mortgagee or by the Court is in receipt of the rents and profits, be deemed to be authorised or required to be done by, to, or with the mortgagee instead of the landlord.

This Act is administered in the Department of Labour.
