

FAIR RENTS (AMENDMENT) ACT.

Act No. 2, 1926.

George V, An Act to amend the law relating to landlords and No. 2. tenants; to extend the provisions of the Fair Rents Act, 1915, as amended by the Fair Rents (Amendment) Act, 1920, to certain shops; to impose certain restrictions on the recovery of possession of dwelling-houses and shops; to amend the Fair Rents Act, 1915, the Landlord and Tenant Act, 1899, and certain other Acts: and for purposes connected therewith. [Assented to, 8th February, 1926.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Fair Rents (Amendment) Act, 1926," and shall be construed with the Fair Rents Act, 1915, as amended by the Fair Rents (Amendment) Act, 1920. The Fair Rents Act, 1915, as so amended, is in this Act referred to as the Principal Act.

Amendment
of Act No. 66,
1915, s. 2.

2. Section two of the Principal Act is amended—
(a) by inserting in the definition of "lease" after the word "dwelling-house" the words "or shop," and by adding at the end of the same definition the words "and 'leased' has a corresponding meaning";

(b)

- (b) by inserting after the word "dwelling-house" <sup>George V,
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- (c) by inserting after the words "mesne lessee" in the definition of "lessor" and "lessee" the words "and also any person from time to time deriving title under the original lessor or lessee";
- (d) by inserting after the definition of "Rent" the following definition:—
"Shop" means a building in which the business of selling goods by retail is carried on; and
- (e) by omitting the definition of "tax."

3. Section three of the Principal Act is omitted, and the following new section is substituted therefor:— <sup>Amendment
of Act No. 66,
1915, s. 3.</sup>

3. (1) This Act shall apply to any dwelling-house which is subject to a lease made before or after the commencement of this Act, at a rent not exceeding three pounds a week. <sup>Application
of Act.</sup>

(2) This Act shall apply to any shop which is subject to a lease made before or after the commencement of the Fair Rents (Amendment) Act, 1926, at a rent not exceeding six pounds a week or which at any time after the sixteenth day of September, one thousand nine hundred and twenty-five, and prior to the commencement of the Fair Rents (Amendment) Act, 1926, has been let at a rent not exceeding six pounds a week, but shall not apply to a shop subject to a lease for a term exceeding three years subsisting at the said commencement during the residue of the term.

(3) This Act shall apply to a building partly a dwelling-house and partly a shop, leased to one tenant at one rent not exceeding six pounds per week, but shall not apply to a building subject to a lease for a term exceeding three years subsisting at the commencement of the Fair Rents (Amendment) Act, 1926, during the residue of the term.

(4) This Act shall apply to a building partly a dwelling-house and partly a shop partially leased
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or wholly leased to separate tenants when any part leased if a separate building would be subject to this Act but only in respect of such part while so leased.

(5) This Act shall apply only within the localities appointed by the Governor and notified by proclamation published in the Gazette, either before or after the coming into operation of the Fair Rents (Amendment) Act, 1926.

(6) This Act shall not apply to premises licensed under the Liquor Act, 1912, or to dwelling-houses ordinarily leased for summer residence.

(7) This Act shall bind the Crown.

4. (1) Subsection one of section six of the Principal Act is omitted, and the following new subsection is substituted therefor:—

(1) (a) Any lessor; or

(b) any lessee who has paid or tendered all rent payable under his lease, or who satisfies the court that the non-payment of such rent is excusable,

may apply to the court for the determination of the fair rent of the dwelling-house or shop leased by or to him, and any lessee may so apply notwithstanding that notice to quit or notice to terminate the tenancy has been given.

(2) Subsections three, four, and five of section six of the Principal Act are amended by inserting the words "or shop" after the word "dwelling-house" wherever occurring.

5. Section nine of the Principal Act is amended—

- (a) by inserting in subsection one after the word "dwelling-house" wherever occurring, the words "or shop";
- (b) by omitting from subsection two the words "and taxes";
- (c) by inserting in subsection two after the word "dwelling-house" wherever it occurs the words "or shop."

6. Sections ten, fifteen, sixteen, twenty-one, and twenty-three of the Principal Act are amended by inserting the words "or shop" after the word "dwelling-house" wherever occurring.

7. Section eleven of the Principal Act is amended— George V, No. 2.

- (a) by inserting after the word “dwelling-house” wherever occurring the words “or shop”; Amendment of Act No. 66, 1915, s. 11.
- (b) by inserting after the word “lessor” where it firstly occurs the words “or any person purporting to act on his behalf”;
- (c) by omitting the words “or during the period of six months from the date of such determination” and by inserting in lieu thereof the words “or during the period the determination is in force”;
- (d) by omitting the word “lessor” where it secondly occurs and by inserting in lieu thereof the word “person.”

8. Section thirteen of the Principal Act is amended— Amendment of Act No. 66, 1915, s. 13.

- (a) by inserting after the word “dwelling-house” wherever occurring the words “or shop”;
- (b) by inserting the following paragraph at the end of the section—

The court may vary a determination where it is satisfied that by an error or omission an injustice has been occasioned thereby.

9. Subsection one of section 17A of the Principal Act is amended— Amendment of Act No. 66, 1915, s. 17A.

- (a) by inserting after the words “any person who” the words “whether as principal or agent or in any other capacity”;
- (b) by inserting in paragraph (a) after the word “dwelling-house” the words “or shop or for giving his consent to a sublease thereof”;
- (c) by inserting in paragraph (b) after the word “dwelling-house” the words “or shop.”

10. Section nineteen is omitted and the following new section inserted in lieu thereof:— Amendment of Act No. 66, 1915, s. 19.

19. (1) The court shall have the powers conferred by the Royal Commissions Act, 1923, on a commissioner appointed under Division 1 of Part II of that Act, and the said Act, section thirteen, and Division 2 of Part II excepted shall, mutatis mutandis, apply to any witness or person summoned by or appearing before the court.

(2)

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Amendment of
Act No. 66, 1915.
New section.

Restrictions
on right to
possession.

(2) The court may make such apportionment as seems just in any case in which it thinks an apportionment is necessary to carry out its powers under this Act.

11. The Principal Act is further amended by the addition after section twenty-one of the following new section :—

21A. (1) No order or judgment for the recovery of possession of any dwelling-house or shop, or for the ejectment of a lessee therefrom, shall be made or given unless—

- (a) some rent lawfully due from the lessee has not been paid, or some other obligation of the tenancy (whether under the lease or under this Act), so far as the same is consistent with this Act, has been broken or not performed; or
- (b) the lessee or any person residing with him has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises, or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house or shop has, in the opinion of the court, deteriorated owing to the acts of waste committed by the lessee or any such person; or
- (c) the lessee has given notice of his intention to quit, and in consequence of that notice the lessor has contracted to sell or let the dwelling-house or shop, or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or
- (d) the dwelling-house is reasonably required by the lessor for occupation as a residence for himself or for some member of his family or, in the case of a shop, the shop is reasonably required by the lessor for his own business, trade, or professional purposes or those of any member of his family; or

(e)

- (e) the lessor is a municipal or statutory authority, and the dwelling-house or shop is reasonably required for public purposes, or for the purpose of the execution of the duties or powers vested in such authority ; or
- (f) the dwelling-house or shop is reasonably required by the lessor for the purpose of demolition or of reconstruction to a substantial extent and the court is satisfied that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it ; or
- (g) the dwelling-house or shop is reasonably required by the lessor for the purpose of enabling him to comply with the requirements of a Local Government or Health authority ; or
- (h) the lessee was in the employment of the lessor or a former lessor and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment.

(2) At the time of the application for, or the making or giving of any order or judgment for, the recovery of possession of a dwelling-house or shop, or for the ejection of a lessee therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of the Fair Rents (Amendment) Act, 1926, and not executed, at any subsequent time, the court to which such application is made or by which such order or judgment is made or given, may adjourn the application, or stay or suspend execution on such order or judgment, or postpone the date of possession for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the lessee of arrears of rent, rent or mesne profits, or the cost of repairing acts of waste committed or suffered by the lessee or otherwise as it thinks fit, and if such conditions are complied with, that court may, if it thinks fit, discharge or rescind such order or judgment.

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Where any such order or judgment has been executed after the first day of October, one thousand nine hundred and twenty-five, the court by which the order or judgment was made or given may vary or discharge such order or judgment, and may make such order as is just for the purpose of preserving and restoring the rights and obligations of the parties thereto as they would have existed if such order or judgment had not been executed.

(3) Where a lessor has obtained an order or judgment for possession or ejectment which is subsequently proved to have been obtained by misrepresentation or the concealment of material facts, the court in which the order or judgment was obtained may order the lessor to pay to the former lessee such sum as appears sufficient as compensation for damage or loss sustained by that lessee as the result of the order or judgment.

(4) Nothing in this section shall prejudice or affect the powers conferred by section 8B of the Vagrancy Act, 1902, inserted by section six of the Police Offences (Amendment) Act, 1908.

(5) Notwithstanding anything contained in section eleven of this Act the lessor may give notice to quit and take proceedings to recover possession of the premises in any of the circumstances set out in subsection one of this section.

Amendment of 11 Geo. II, Distress for Rent Act, 1737 (Imperial), c. 19.

12. (1) Notwithstanding any provision of the in respect of the removal of goods and chattels in contravention of that Act shall be such sum not exceeding double the amount of the rent in arrear as the court or justices may think reasonable.

(2) In this section the expression "removal of goods and chattels" includes conveying away, carrying off, or concealing goods and chattels, or aiding or assisting therein.