

FAIR RENTS ACT.

Act No. 37, 1939.

An Act to make provision in relation to the rents of certain dwelling-houses and shops; to provide for the determination and enforcement of fair rents for certain dwelling-houses and shops; to amend certain Acts; and for purposes consequent thereon or incidental thereto. [Assented to, 13th November, 1939.]

George VI.
No. 37, 1939.

BE

No. 37, 1939.

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 and commencement.

1. (1) This Act may be cited as the "Fair Rents Act, 1939."

(2) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Definitions.

2. In this Act, unless the contrary intention appears:—

"Dwelling-house" means any premises leased wholly or partially for residence by a lessee and includes any part of any such premises separately leased and any land or appurtenances leased with such premises or such part thereof.

"Lease" includes, subject to the limitations of section three of this Act, every letting of a dwelling-house or shop whether oral, in writing, or by deed; and "leased" has a corresponding meaning.

"Lessor" and "lessee" mean the parties to a lease as herein defined and respectively include a mesne lessor and a mesne lessee and also any person from time to time deriving title under the original lessor or lessee.

"Prescribed" means prescribed by this Act or by the regulations made thereunder.

"Rates" means any charges levied by the council of a municipality or shire or by the Municipal Council of Sydney or by the Metropolitan Water, Sewerage and Drainage Board, or the Hunter District Water Board, or the Broken Hill Water Board, or by a statutory authority.

"Rent" includes—

(a) any bonus paid or to be paid by the lessee to his lessor;

(b) the value to the lessor of any covenants or conditions in or relating to the lease to be performed by the lessee other than usual covenants and conditions;

(c)

- (c) any rates or taxes payable by the lessee in respect of the dwelling-house or shop, but excepting excess water rates, garbage, and sanitary charges if paid by the tenant.

No. 37, 1939.

Where in any lease made after the thirty-first day of August, one thousand nine hundred and thirty-nine, it is provided that a reduced amount, as rent, shall be accepted by the lessor upon any condition to be performed by the lessee, such reduced amount shall be taken to be the rent under the lease; and if any rebate, discount, allowance or other reduction from any rent is provided for in any such lease, the rent shall be deemed to be the amount payable by the lessee after every such reduction is made.

“Shop” means any premises leased wholly or partially for the purposes of a shop and includes any part of any such premises separately leased, and any land or appurtenances leased with such premises or such part thereof.

3. (1) Subject to section four this Act shall apply to—
- (a) 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 ten shillings a week or which, at any time after the thirty-first day of May, one thousand nine hundred and thirty-nine, and before the commencement of this Act, has been subject to a lease as a dwelling-house at a rent not exceeding three pounds ten shillings a week;
- (b) any shop which is subject to a lease made before or after the commencement of this Act, at a rent not exceeding six pounds a week or which, at any time after the thirty-first day of May, one thousand nine hundred and thirty-nine, and before the commencement of this Act, has been subject to a lease as a shop at a rent not exceeding six pounds a week;
- (c) a building partly a dwelling-house and partly a shop leased to one tenant at one rent not exceeding six pounds a week;

(d)

Application
of Act.

444 **Fair Rents Act.**

No. 37, 1939.

(d) a building partly a dwelling-house and partly a shop partially leased 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.

(2) This Act shall bind the Crown.

Act not to
apply in
certain
cases.

4. (1) This Act shall not apply to—

(a) any premises licensed under the Liquor Act, 1912; or

(b) the premises of any registered club; or

(c) any dwelling-house ordinarily leased for summer residence; or

(d) a dwelling-house with which is occupied an area greater than one half-acre.

(2) This Act shall not apply to any building erected on agricultural land as defined in the Agricultural Lessees Relief Act, 1931.

Fixation
of rents.

5. (1) (a) Where a dwelling-house or shop was subject to a lease as a dwelling-house or shop which was subsisting at any time after the thirty-first day of May, one thousand nine hundred and thirty-nine, but was not subsisting on the thirty-first day of August, one thousand nine hundred and thirty-nine, then, until a determination of the fair rent thereof is made by a court under this Act, the rent payable after the commencement of this Act by any lessee of such dwelling-house or shop shall not exceed the rent which was payable as for the last rental period before the thirty-first day of August, one thousand nine hundred and thirty-nine, under the lease which was subsisting during that rental period.

(b) Where a dwelling-house or shop was subject to a lease as a dwelling-house or shop which was subsisting on the thirty-first day of August, one thousand nine hundred and thirty-nine, then, until a determination of the fair rent thereof is made by a court under this Act, the rent payable after the commencement of this Act by any lessee of such dwelling-house or shop shall not exceed the rent which was payable as at the thirty-first day of August, one thousand nine hundred and thirty-nine, under the lease which was subsisting at that date.

(2)

(2) The provisions of subsection two of section thirteen and of sections fourteen, fifteen and sixteen of this Act shall apply to and in respect of any dwelling-house or shop to which subsection one of this section applies in like manner as if the maximum rent payable by the lessee of such dwelling-house or shop under subsection one of this section had been determined by a court under this Act as the fair rent of that dwelling-house or shop.

For the purposes of the application of the provisions of subsection two of section thirteen and of sections fourteen, fifteen and sixteen of this Act to any such dwelling-house or shop a reference in any of those provisions to the period during which a determination is in force shall, in the application of that provision to a particular dwelling-house or shop, be construed as a reference to the period during which subsection one of this section continues to apply to that dwelling-house or shop.

(3) Where—

- (a) a sum has been paid by a lessee, either before or after the commencement of this Act, as rent for a dwelling-house or shop to which subsection one of this section applies; and
- (b) such sum was so paid in respect of a rental period which commenced after the thirty-first day of August, one thousand nine hundred and thirty-nine, and expired before the commencement of this Act; and
- (c) such sum was in excess of the maximum rent which, under subsection one of this section, is payable after the commencement of this Act for that dwelling-house or shop in respect of a like rental period,

the amount of such excess may be recovered by the lessee who paid the same from the lessor to whom it was paid in an action of debt in any competent court.

(4) It shall be a sufficient defence to any action referred to in subsection three of this section if the defendant proves—

- (a) that substantial alterations or additions had been made to the dwelling-house or shop, or that the

No. 37, 1939.

the outgoings of the lessor in respect of the dwelling-house or shop had been increased; and

- (b) (i) that, in the case of a dwelling-house or shop to which paragraph (a) of subsection one of this section applies, such additions or alterations had been made or such outgoings had been increased since the last rental period referred to in that paragraph and before the commencement of the rental period in respect of which the amount sought to be recovered was paid; or
- (ii) that, in the case of a dwelling-house or shop to which paragraph (b) of subsection one of this section applies, such additions or alterations had been made or such outgoings had been increased since the thirty-first day of August, one thousand nine hundred and thirty-nine, and before the commencement of the rental period in respect of which the amount sought to be recovered was paid; and
- (c) that the rent of which the amount sought to be recovered formed part was, in the circumstances, a reasonable rent for the dwelling-house or shop.

(5) Proceedings in an action for the recovery of any amount pursuant to subsection three of this section shall be instituted within three months after the commencement of this Act.

Court.

6. (1) The jurisdiction conferred upon a court by this Act shall be exercised by the court of petty sessions nearest to the dwelling-house or shop in respect of which an application under this Act is made:

Provided that such jurisdiction may be exercised by a court of petty sessions which is not the court of petty sessions nearest to the dwelling-house or shop in respect of which the application is made if it is satisfied that no hardship will be occasioned to either party thereby.

(2) A court exercising jurisdiction under this Act shall be holden before a stipendiary or police magistrate.

(3) The court of petty sessions holden at the Water Police Office, Sydney, shall not exercise the jurisdiction conferred on a court by this Act.

7.

No. 37, 1939.

Application
to deter-
mine rent.

7. (1) (a) Any lessor; or
(b) any lessee who has paid or tendered all rent payable under his lease,

may apply to a court for the determination of the fair rent of the dwelling-house or shop leased by or to him.

(2) The application shall be made to the clerk of the court of petty sessions and shall be in or to the effect of the form prescribed.

(3) The court shall hear the application and determine the fair rent.

(4) If the dwelling-house or shop be subject to any mortgage the mortgagee shall be entitled to notice of the application and to be a party to the proceedings.

(5) Where, prior to the date of the receipt of the application, the lessor has given a valid written notice to terminate the lease or to quit the premises and such notice has not been waived, the court shall not entertain the application.

(6) Where the dwelling-house or shop is vacated by the applicant lessee at or before the date fixed for the hearing of the application, the court may strike such application out of its list.

8. (1) The court may receive as evidence statutory declarations made as prescribed, and shall take the oral evidence of the parties and of witnesses called on their behalf. But the magistrate may, if he thinks fit, require the attendance of any declarant for purposes of cross-examination on the contents of his declaration, and failing such attendance the declaration shall not be receivable as evidence. Evidence and powers of court.

(2) The practice upon the hearing of any application under this Act shall in respect of the examination and cross-examination of witnesses and the right of addressing the magistrate upon the case in reply or otherwise be as nearly as possible in accordance with that of the Supreme Court upon the trial of an issue of fact in an action at law.

(3) Upon the hearing of any application under this Act any party thereto may be represented by counsel or attorney, or by an agent duly appointed in writing in that behalf.

9.

No. 37, 1939.

Determina-
tion.

9. (1) In determining the fair rent the court shall first ascertain the capital value of the dwelling-house or shop as at the time of the receipt of the application.

Such capital value shall be the capital sum which the fee-simple of the property comprising the dwelling-house or shop and the land occupied therewith might be expected to realise if offered for sale on such reasonable terms and conditions as a bona-fide seller would require.

(2) (a) The court shall determine the fair rent at a rate of one and one-half per centum above the prescribed rate on the capital value of the dwelling-house or shop determined as aforesaid, plus the annual rates on the same, plus the amount estimated to be required annually for repairs (including painting), maintenance, and renewal, and plus insurance of any buildings, and plus an amount estimated to be the annual depreciation in value of the buildings, if such depreciation diminishes their letting value, and plus such amount (if any) as the court may deem proper to be allowed for the estimated time per year when the dwelling-house or shop may be untenanted.

(b) (i) For the purposes of this subsection the expression "the prescribed rate" means the rate specified in a notification published by the Minister in the Gazette and in force for the time being.

(ii) The Minister shall cause a notification of the prescribed rate to be published in the Gazette within one week after the commencement of this Act, and thereafter at intervals of not less than three months.

(iii) Any such notification shall be deemed to be revoked by a subsequent notification under this section.

(iv) The rate which shall be specified in any such notification shall be the average rate of interest on first mortgages on urban securities as calculated by the Government Statistician from particulars shown in mortgages on such securities registered at the office of the Registrar-General during a period of not less than three months and not more than twelve months preceding the date upon which the notification of such rate is published in the Gazette.

(v)

(v) The average rate of interest shall be so calculated to the nearest one-quarter of one per centum.

(3) If the court by its determination increases or decreases the rent of any dwelling-house or shop above or below the rent payable under the lease at the date when the application was made, such increase or decrease shall not take effect until the expiration of fourteen days after the date of such determination.

10. Where a dwelling-house or shop is occupied by two or more separate lessees, the court shall determine the fair rent of the whole, and then determine the proportion of such fair rent which it shall deem to be the fair rent of the portion of the dwelling-house or shop of the lessee making the application.

Lessee of part of a dwelling-house or shop.

11. (1) Where an application has been made by a lessee to determine the fair rent of a dwelling-house or shop leased to him, then if the lessee has duly paid the rent of the dwelling-house or shop and has otherwise performed the conditions of his lease, the lessor or any person purporting to act on his behalf shall not, without reasonable cause, demand any increased rent or give any notice or take any proceedings to determine the lease or recover possession of the dwelling-house or shop during the pendency of the application or during the period the determination is in force.

Lessor not to demand increase in rent.

Any person contravening any of the provisions of this section shall be liable to a penalty not exceeding fifty pounds.

(2) Where a valid notice to quit a dwelling-house or shop or to terminate the lease thereof has been given prior to the lodging of an application for the determination of the fair rent thereof, the taking of proceedings to recover possession of the dwelling-house or shop shall not be a contravention of this section.

(3) Where at least twenty-eight days' notice to quit a dwelling-house or shop or to terminate the lease thereof at the end of the period of a determination or at some date subsequent to such period, is given by a lessor, the giving of such notice shall not in any case be a contravention of this section.

No. 37, 1939.

(4) Where a lessor has upon the sale of a dwelling-house or shop agreed to give vacant possession thereof to the purchaser, and gives at least twenty-eight days' notice to the lessee requiring him to quit the dwelling-house or shop, neither the giving of such notice nor the taking of any proceedings to recover the possession of the dwelling-house or shop shall be a contravention of this section.

(5) Where a dwelling-house is reasonably required by the lessor for occupation as a residence for himself or for some member of his family, and the lessor gives at least twenty-eight days' notice to the lessee requiring him to quit the dwelling-house, neither the giving of such notice nor the taking of any proceedings to recover the possession of the dwelling-house shall be a contravention of this section.

(6) The provisions of subsections two, three, four and five of this section shall not be construed so as to affect the generality of the expression "reasonable cause" in subsection one of this section.

Furnished
dwelling-
houses.

12. In any case where the applicant is the lessee of a dwelling-house and furniture, the court shall determine the fair rent of the dwelling-house irrespective of the furniture, and shall also determine in its discretion the amount of rent to be paid for the furniture.

Period for
which deter-
mination is
in force.

13. (1) The determination of the court, except as hereinafter provided, shall remain in force for a period of twelve months after the determination.

(2) Such determination while in force shall apply to any lease of the dwelling-house or shop then current, and to the lessor and lessee thereof, notwithstanding any change of ownership or tenancy.

(3) The court may, upon application made as prescribed, vary a determination where it is satisfied—

(a) that by an error or omission an injustice has been occasioned thereby; or

(b) that substantial alterations or additions have been made to the dwelling-house or shop since the determination was made; or

(c)

(c) that the outgoings of the lessor in respect of the dwelling-house or shop have been increased since the determination was made.

No. 37, 1939.

(4) Except as provided in subsection three of this section a determination of the fair rent of a dwelling-house or shop shall not be varied while such determination is in force.

(5) An application shall not be made to determine the fair rent of a dwelling-house or shop in respect of which a determination is for the time being in force.

14. During the period in which any determination of the fair rent of a dwelling-house or shop is in force, the rent payable by any lessee shall not exceed the fair rent as so determined, notwithstanding any term or covenant in any lease current at the time of the application, or made at any time thereafter during such period, and any sum paid as rent during such period by any lessee in excess of such fair rent may be recovered by the lessee from the lessor to whom it was paid in an action of debt in any competent court.

Rent not to exceed rent as determined.

15. Any person who, during the period in which any determination of the fair rent of a dwelling-house or shop is in force, lets the said dwelling-house or shop at a rent exceeding the fair rent determined by the court, or during such period knowingly receives any sum as rent exceeding the fair rent as so determined shall be liable to a penalty not exceeding twenty pounds.

Penalty on lessor.

16. While any such determination in respect of a dwelling-house or shop is in force, the legal remedies for enforcing any covenant or agreement—

Covenants to pay rent in excess of that determined to be void.

- (a) to pay rent for such dwelling-house or shop in excess of that fixed by such determination; or
- (b) which directly or indirectly would secure to any person the payment of rent or of money in respect of the occupation of such dwelling-house or shop so that the amount received by such person would exceed the fair rent fixed by such determination,

shall be limited to enforcing the fair rent so determined.

17.

No. 37, 1939.

Threats
against
lessees.

17. (1) Any person who by any threat endeavours to dissuade or prevent a lessee from making or prosecuting any application under this Act shall be liable to a penalty not exceeding fifty pounds.

(2) Any person who unlawfully does or procures any act or thing to be done for the purpose of imposing any detriment or disadvantage upon a lessee by reason of his having made an application under this Act, shall be liable to a penalty not exceeding fifty pounds; and if two or more persons concur in the doing of any such act, or in procuring any such thing to be done, they shall each be liable to a penalty not exceeding one hundred pounds.

Bonus, etc.,
for lease,
unlawful.

18. (1) Any person who, whether as principal or agent or in any other capacity,—

(a) gives or receives, or offers, promises, or agrees to give or receive any bonus or premium or any sum of money other than rent in consideration of the grant or acceptance of any lease or of the renewal thereof or of an agreement for a lease or for the renewal of a lease of a dwelling-house or shop, or for giving his consent to a sublease thereof; or

(b) makes it a condition of the granting of any lease that the lessee shall purchase any furniture or other article, or pay or give any consideration for obtaining a key of the dwelling-house or shop,

shall be liable to a penalty not exceeding fifty pounds.

(2) Any agreement, whether oral or in writing, which in any way contravenes the provisions of this section shall to that extent be null and void.

Penalty for
refusal to
let dwelling-
house to
applicant
with family.

19. Any person who refuses to let a dwelling-house to any respectable and responsible applicant who has a child or children shall be liable to a penalty not exceeding fifty pounds:

Provided that in any prosecution under this section it shall be a sufficient defence to show that such refusal was not due to the fact that the applicant had a child or children.

20. Any person who—

- (a) instructs an agent not to let; or
- (b) states his intention, whether by advertisement or otherwise, not to let,

a dwelling-house to any person who has a child or children shall be liable to a penalty not exceeding fifty pounds.

No. 37, 1939.

Penalty.

21. (1) The court in every case shall have jurisdiction to inquire and decide whether any application or subject-matter is within the provisions of this Act, and whether such application and subject-matter may be considered and determined hereunder; and every decision, determination and order of the court purporting to have been made under the provisions of this Act shall be final, and no writ of prohibition or certiorari shall lie in respect thereof.

Determina-
tion to be
final.

(2) The court may, at any stage of the proceedings before it, state, in the form of a special case for the opinion of the Supreme Court, any question of law arising in the course of the proceedings.

(3) The Supreme Court, for the purpose of hearing any such case, may consist of one or more judges.

(4) The judges of the Supreme Court, or any two of them, may make rules with regard to the setting down of any case for argument, and the hearing and decision of the same and its return with the decision of the Supreme Court thereon.

(5) The decision of the Supreme Court on the hearing of any such case shall be binding upon the court and upon the parties to the proceedings.

22. 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.

Court may
make appor-
tionment.

23. No costs shall be allowed in any proceeding under this Act.

Costs.

24. Any covenant or agreement by which any person purports to limit his right to proceed under this Act for the determination of the fair rent of a dwelling-house or shop or to affect any rights to which he would be entitled under this Act shall be void.

Contracts
limiting
right to
proceed
under this
Act to be
void.

25.

Fair Rents Act.

No. 37, 1939.

Inspection
of rate
books.

25. The clerk or other officer having custody of the rate books of a municipality or shire shall allow the clerk of a court of petty sessions to inspect and take copies of or extracts from such rate books, and shall not be entitled to charge any fees in respect of such inspection, copies, or extracts.

Information
as to fair
rents.

26. Any person on tendering the sum of sixpence shall be entitled to obtain from the clerk of the court of petty sessions information as to the fair rent of any dwelling-house or shop, as fixed by the court.

Regulations.

27. (1) The Governor may make regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed in order to give effect to this Act.

(2) Without prejudice to the generality of subsection one of this section, the Governor may make regulations—

- (a) regulating the making and receipt of applications to determine fair rent or to vary any determination and prescribing the notices to be given of the same and the manner in which such notices may be given;
- (b) prescribing the procedure in respect of applications to the court;
- (c) prescribing the forms which may be used for the purposes of this Act;
- (d) prescribing the duties and powers of the clerks of courts of petty sessions for the purposes of this Act; and
- (e) imposing penalties not exceeding fifty pounds for any breach of the regulations.

(3) Such regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in such regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session; and if not, then within fourteen sitting days after the commencement of the next session.

(4)

(4) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

28. Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a stipendiary or police magistrate or any two justices. Recovery of penalties.

29. This Act shall continue in force for the duration of the present war between His Majesty and Germany, and for a period of twelve months after the declaration of peace and no longer. Duration of Act.

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