



ANNO VICESIMO TERTIO

GEORGII V REGIS.

A.D. 1932.

No. 2092.

An Act to Provide for the Reduction for a certain Period of the Rent payable under certain Leases, and for other purposes.

[Assented to, November 23rd, 1932.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Landlord and Tenant (Rent Reduction) Act, 1932". Short title.

2. This Act shall come into operation on a day to be fixed by the Governor by proclamation. Commencement.

3. In this Act, unless the context otherwise requires or some other meaning is clearly intended— Interpretation.

"Court" means a Local Court of Full Jurisdiction consisting of the Local Court Judge or a Special Magistrate:

"Lease" means a letting of or agreement for letting land for any term more than one year or for a life or lives or for a life or lives and years, and the term "letting" includes sub-letting:

"Lessor" means any person for the time being entitled to receive the rents and profits of any land, and includes an under-lessor:

"Lessee"

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“Lessee” means the holder of land under a lease and includes the executors, administrators, assigns, guardians, committee of the estate or trustee in bankruptcy of a lessee or other person deriving title from a lessee :

“Land” does not include any incorporeal hereditament.

Application of Act.

4. (1) Notwithstanding the provisions of The Real Property Act, 1886, this Act shall apply to leases of land which is subject to the provisions of that Act, as well as to leases of other land.

(2) Subject as hereinafter mentioned this Act shall apply to—

(a) every lease existing at the commencement of this Act under which rent is payable at a rate agreed upon between the lessor and lessee during the period commencing on the first day of January, nineteen hundred and nineteen, and ending on the thirtieth day of June, nineteen hundred and thirty-one ;

(b) every lease granted after the thirtieth day of June, nineteen hundred and thirty-one, pursuant to, and at a rent determined either expressly or impliedly by, an option to renew granted before the said thirtieth day of June, nineteen hundred and thirty-one ; and

(c) every lease granted after the thirtieth day of June, nineteen hundred and thirty-one, and before the commencement of this Act, at a rent equal to or greater than the rent at which the premises were held on lease on the said day or if the premises were not then held on lease, the rent at which the premises were last previously so held.

(3) This Act applies to leases granted pursuant to any statute or with or under the approval, sanction, or authority of any court.

(4) Without limiting the generality of the foregoing provisions it is declared that this Act applies to leases granted by a mortgagee or a trustee.

Act not to apply to Crown leases.

5. This Act does not apply to any lease granted by or on behalf of the Crown.

Applications for reduction of rent.

6. (1) Subject to clause 4, any lessee by action instituted by claim in accordance with the Local Courts Act, 1926, may apply to the court at any time during the currency of his lease and not later than three years from the commencement of this Act for reduction of the rent payable thereunder.

(2) The provisions of the Local Courts Act, 1926, except where inconsistent with this Act and subject to any rules made under this Act, shall apply to actions under this Act so far as possible in the same way as they apply to actions under that Act.

(3) On any such application, unless the court in its discretion determines that owing to any unusual terms, conditions, or covenants in the lease or any special circumstances relating to the

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the lease, or the conduct of any party in relation to his rights or obligations under the lease, or any profits or losses accruing to either party from the lease or any sublease or other dealing in the lease, it is inequitable to grant any reduction or the full reduction hereinafter provided for, the court shall make an order for the reduction of the rent payable under such lease at the rate of four shillings and six pence for every pound of such rent and a proportionate part of four shillings and six pence for every part of a pound of such rent.

(4) If the court is satisfied that on any of the grounds aforesaid it is inequitable to grant any reduction or the full reduction provided for in this Act, the court may make such reduction not exceeding the rate hereinbefore mentioned as in its opinion the circumstances require, or may refuse the application if in its opinion such refusal is warranted.

(5) If the lessor has granted any reduction in rent since the first day of July, nineteen hundred and twenty-eight, the reduction ordered by the court under this Act shall be based on the amount of rent payable before that reduction was granted by the lessor, but the amount of reduction so granted by the lessor shall be included as part of the reduction ordered by the court.

(6) Where the lessor is by the lease liable as between himself and the lessee to pay any State or Commonwealth land tax, water rates, district rates, or municipal rates in respect of the leased land, the rent of the said land in respect of any period shall for the purposes of this Act be taken as the rent actually payable to the lessor in respect of that period less the amount of such land tax, water rates, and district or municipal rates proportionately attributable to that period, and any reduction of rent ordered under this Act shall be based on the rent as diminished by the deduction aforesaid.

7. Any reduction ordered by the court under this Act shall take effect as from the following date, namely:— Time from which order takes effect.

(a) if the lessee, after the commencement of this Act and before commencing proceedings in the court for reduction of rent, made a written application to the lessor for a reduction in accordance with the provisions of this Act the reduction shall take effect from the date when the said application was made:

(b) in any other case the reduction shall take effect from the date of the order:

Provided that if the court is satisfied that in the circumstances of any particular case it is just to fix some other date not earlier than the commencement of this Act, it may order that the reduction take effect from some such other date.

8. (1) Every payment of rent made during the period to which an order under this Act relates at the rate as reduced by such order shall be a full discharge of the lessee's liability under his lease to pay rent for the period to which such payment relates. Effect of order.

(2) During

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(2) During the continuance of any order made under this Act it shall not be lawful for any lessor to demand, sue for, distrain for, or otherwise enforce or attempt to enforce payment of rent in respect of any period to which the order relates at a rate greater than that fixed by the order.

Duration of order.

9. (1) Every order made under this Act shall remain in force until the expiration of three years from the commencement of this Act, or the expiration of the term of the lease, whichever occurs first.

(2) If during the currency of any order made under this Act there is any change in any material circumstance existing at the time when the order was made the lessor or lessee may apply to the court for a variation or rescission of the order and the court may, if it considers it just to do so, having regard to any such change of circumstances, make an order varying or rescinding any previous order for reduction of rent, but no such variation shall provide for a greater reduction of rent than four shillings and sixpence in the pound or for a reduction for any period beyond three years from the commencement of this Act or beyond the expiration of the term of the lease.

Release of guarantors.

10. Every reduction of rent ordered under this Act or granted pursuant to this Act shall have the effect of relieving to the extent of the reduction every guarantor who has guaranteed payment of such rent.

Costs.

11. (1) If the court is satisfied that—

- (a) the lessee has requested the lessor to reduce his rent to the extent contemplated by this Act;
- (b) the lessor has refused to make a reduction reasonable in the circumstances; and
- (c) the refusal is not justified having regard to the provisions of this Act,

the court may order the lessor to pay costs.

(2) If the court is satisfied that the lessee instituted or continued his application to the court after receiving an offer of reduction from the lessor which the court considers reasonable having regard to the provisions of this Act the court may order the lessee to pay costs.

(3) Every such order for the payment of costs shall fix the amount to be paid and the same shall be paid to the party in whose favor the order is made.

No appeal.

12. Every order made under this Act shall be final and conclusive and no appeal shall lie in respect thereof.

13. (1) Subject

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13. (1) Subject to any rules of court, applications under this Act shall be made to the local court of full jurisdiction nearest to the place where the demised property is situated, or where the defendant resides or carries on business, or to any other local court of full jurisdiction which the parties agree upon.

Courts having jurisdiction.

(2) Every court hearing an application under this Act shall be constituted by the Local Court Judge, or a Special Magistrate.

(3) Applications under this Act shall be heard and determined in chambers.

14. On any application under this Act the court shall inquire whether any persons not parties to the application and having any interest in the leased land are likely to be adversely affected by any order which may be made in the proceedings, and may order that any such person shall be served with notice of the proceedings and given an opportunity to be represented at the hearing and to adduce any relevant evidence, and in determining whether to make any order the court may consider any hardship likely to accrue to such person if the order were made or not made.

Duty of Court to hear all interested parties.

15. (1) Where the lessor is a trustee of the leased land he shall not be deemed to be guilty of a breach of trust by reason only of his *bona fide* making or offering to make a reduction of rent to such extent as he in his discretion considers proper, having regard to the rights of the lessee under this Act, or by failing to contest an application by the lessee to the court for a reasonable reduction of rent under this Act.

Provision as to trustee lessors and lessees.

(2) Where the lessee holds the leased land as trustee he shall not be deemed to be guilty of a breach of trust by reason only of the fact that he accepts a reasonable offer to reduce the rent made by the lessor or that he fails to make an application to the court in any case where such a reasonable offer has been made.

The court in making any order as to costs under this Act shall have regard, among other relevant considerations, to the fiduciary position of such lessor or lessee as trustee.

16. For the purposes of this Act rent shall be deemed to accrue due and payable from day to day.

Rent deemed to accrue from day to day.

17. No agreement or lease whether made or entered into before or after the commencement of this Act, and no term, covenant, or condition of any such agreement or lease shall operate so as to prevent any person from making an application under this Act, or any court from making an order under this Act, and any such agreement, term, covenant, or condition, to the extent to which it would operate to impose any burden, disability, forfeiture, or other disadvantage or loss upon any person in respect of making an application under this Act (whether this Act be specifically mentioned or not) or taking the benefit of any order made on any such application, shall be void.

Contracting out.

18. Rules

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Rules of Court.

18. Rules of court made under section 28 of the Local Courts Act, 1926, may, in addition to prescribing any other matters which may be prescribed by such rules, prescribe to what local courts of full jurisdiction applications under this Act are to be made and dealt with, and may prescribe the amount of fees and costs payable in respect of proceedings under this Act.

Provision for service and effect of orders in certain cases.

19. (1) (a) Where it appears to the court that any person interested in any matter under this Act is out of the State or cannot be found in the State or that the legal personal representative of any deceased person who was or would if living have been interested in any such matter is out of the State or cannot be found in the State the court may either *ex parte* or on notice (either special or general by public advertisement) to such person or persons and given in such manner as the court directs and on evidence either oral or by affidavit appoint some person or some public officer to represent such first-mentioned person or such legal personal representative (as the case may be) for all the purposes of such matter and the order so made and any service and any order or proceedings consequent or following thereon, in or in connection with such matter, shall bind such person or such legal personal representative (as the case may be) in the same manner and to the same extent as if such person or such legal personal representative (as the case may be) had in connection with such matter and according to the appropriate facts and circumstances been served or been a party to such matter :

(b) Where it appears to the court that any deceased person who was or would if living have been interested in any matter under this Act (whether such person died or was domiciled or resident in the State or not) has no legal personal representative in the State the court may either *ex parte* or on notice (either special or general by public advertisement) to such person or persons and given in such manner as the court directs and on evidence either oral or by affidavit appoint some person or the Public Trustee to represent the estate of such deceased person for all the purposes of such matter and the order so made and any service or any order or proceedings consequent or following thereon, in or in connection with such matter, shall bind the estate and the representatives of such deceased person in the same manner and to the same extent as if such deceased person had in South Australia at all material times a legal personal representative and such legal personal representative had in connection with such matter and according to the appropriate facts and circumstances been served or been a party to such matter :

(c) Where the court has made any appointment under paragraphs (a) or (b) the court may at any time on the application of any person and unless the court otherwise directs on summons to the person or officer so appointed and to any other person already a party to the matter in question and on evidence either oral or by affidavit make an order for substitution of the applicant or any other person for the person or officer so appointed and may make any necessary supplementary

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supplementary orders for the purpose of fully effecting such substitution :

(d) The court in making any appointment or order for substitution under paragraphs (a), (b), or (c) may at the time of making such appointment or order make such further order as it thinks fit for providing for the costs of the person or officer so appointed or of the person so substituted and as to how such costs, subject to any further order, are to be borne, and may at any later stage of the matter make further provision for such costs and the transference of the burden thereof as it thinks fit.

(2) This section shall take effect notwithstanding anything in any Act or law to the contrary, but shall be subject to any rules of court made under this Act.

20. (1) Any person who by any threat endeavours to persuade or prevent a lessee from making or prosecuting any application under this Act shall be guilty of an offence punishable summarily and liable to a penalty not exceeding Fifty Pounds. Threats against lessees.

(2) Any person who unlawfully does or procures any act or thing to be done for the purpose of imposing any burden, disability, forfeiture, or disadvantage upon a lessee by reason of his having made an application under this Act shall be guilty of an offence punishable summarily and liable to a penalty not exceeding Fifty Pounds.

21. No person shall publish, or cause to be published, in any newspaper, gazette, circular, or other document intended for public circulation, any reference to any application under this Act. Penalty for publishing particulars of applications.

Penalty on summary conviction—Ten Pounds.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

A. HORE-RUTHVEN, Governor.