

Nuisances.

2 Section ninety-one of the Principal Act is amended by inserting in paragraph x. after the word "smoke" the words ", fumes, gases,".

Procedure as to summary non-judicial proceedings.

3 Section ninety-three of the Principal Act is amended—

- (a) by inserting before the word "Any" (first occurring), the numerals and symbols "(1)"; and
 (b) by adding at the end thereof the following subsection:—

"(2) For the purposes of this section the local authority shall be satisfied of the existence of a nuisance if the Director informs it in writing that the nuisance exists."

Repair of unhealthy buildings.

4 Section one hundred and eighteen B of the Principal Act is amended—

- (a) by inserting in paragraph (d) of subsection (1) after the word "roof" the words "or the"; and
 (b) by omitting from paragraph (f) of subsection (1) the word "so" (first occurring).

Power to close cellars in case of two convictions.

5 Section one hundred and twenty-one of the Principal Act is amended by inserting at the end thereof the words "at the owner's expense".

New section 122A.

6 At the end of Part XIII. of the Principal Act the following section is inserted:—

Certain expenses to be a charge on land.

"122A. Where the local authority does any work on any land which works it is empowered under any provision of this Part to do at the expense of the owner of that land, the amount so made recoverable from that owner shall until payment be a charge on the land on which that work is done."

LANDLORD AND TENANT (No. 3).

No. 62 of 1950.

AN ACT to amend the *Landlord and Tenant Act* 1949. [7 December, 1950.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title.

1—(1) This Act may be cited as the *Landlord and Tenant Act (No. 3)* 1950.

(2) The *Landlord and Tenant Act 1949**, as subsequently amended, is in this Act referred to as the Principal Act.

(3) Section fifteen of this Act shall be deemed to have commenced on the twenty-ninth day of November, 1950, and the remaining sections of this Act shall commence on the date on which the Governor assents to this Act.

2 Section three of the Principal Act is amended—

Interpre-
tation.

(a) by inserting after the definition of “ authorised officer ” the following definition:—

“ ‘ agricultural premises ’ means estates, stations, farms, and pieces of land ordinarily used for grazing, sheep farming, agriculture, fruit growing, market gardening, dairy farming, poultry farming, or pig farming, together with all houses, farms, stables, sheds, and other buildings thereon (whether or not any such houses, barns, stables, sheds, or buildings have been leased separately); ”; and

(b) by omitting paragraph (a) of the definition of “ prescribed premises ” and substituting therefor the following paragraph:—

“ (a) agricultural premises; ”,
and by omitting the word “ and ”, after paragraph (b) of that definition, and inserting after paragraph (c) of that definition the following paragraph:—

“ ; and

(d) any premises, or the premises included in any class of premises, declared by the Governor, by proclamation, to be excluded from the operation of this Act.”.

3—(1) Section four of the Principal Act is amended by adding at the end thereof the following subsection:—

Saving and
transitory
provisions.

“ (6) For the purposes of this section, the Commonwealth Regulations shall be deemed to have been validly made and to have been in operation in this State immediately prior to the commencing day, whether or not those Regulations were, on the commencing day or at any time prior to the commencing day, within the limits of the legislative power of the Commonwealth, and the provisions of this section shall be read and construed accordingly.”.

(2) Subsection (1) of this section shall be deemed to have come into operation on the date of the commencement of the Principal Act.

Crown
bound except
in certain
cases.

4 Section five of the Principal Act is amended by adding at the end thereof the following subsection:—

“(2) No interest of a lessee in any prescribed premises shall vest in His Majesty by virtue of any notification under section thirteen, section twenty-one A, or section twenty-one C of the *Lands Resumption Act 1910**.”

5 After section twelve of the Principal Act the following section is inserted:—

Permitted
increases of
fixed rent.

“12A.—(1) Where any prescribed premises were leased, together with goods or not, on the prescribed date, the lessor may, notwithstanding anything contained elsewhere in this Act, obtain an increase of rent in accordance with the provisions of this section.

(2) An increase under this section shall be obtainable by service by the lessor on the lessee of a demand in writing for the increase, and the demand may only be given when, but for this Act, the lessor might obtain immediate possession of the premises or, by notice to quit, determine the lessee's tenancy thereof, and shall take effect—

(a) if, but for this Act, the lessor might obtain immediate possession of the premises, seven days after the service thereof; and

(b) if, but for this Act, the lessor might determine the lessee's tenancy by notice to quit, on the first day on which any such notice to quit would determine the tenancy.

(3) The increase so obtainable shall be such sum as may be demanded by the lessor, but not exceeding—

(a) in the case of a dwelling-house, twenty per cent of the rent payable on the prescribed date; and

(b) in the case of any other prescribed premises, thirty-five per cent of the rent payable on the prescribed date.

(4) Upon and after the date on which a demand under this section takes effect the rent as so increased shall be payable to and be recoverable by the lessor from the lessee.

(5) If within fourteen days after the service of a demand under this section the lessee makes application for the determination of the fair rent of the premises, the demand shall not take effect, but the Controller shall, notwithstanding anything to the contrary in section nineteen, fix the date on which the demand would, but for the application, have taken effect as the date on which the determination shall take effect, and the fair rent so determined shall be payable to, and be recoverable by, the lessor from the lessee on and from the date so fixed:

* 1 Geo. V. No. 11. For this Act, as amended to 1936, see Reprint of Statutes, Vol. VI., p. 5. Subsequently amended by 4 Geo. VI. No. 11, 8 Geo. VI. No. 12, and 9 & 10 Geo. VI. No. 59.

Provided that if the fair rent so determined exceeds the rent as increased by the demand under this section, the excess shall not be payable before some date fixed by the Controller, being a date which he might have otherwise fixed as the date on which the determination is to come into force.

(6) Notwithstanding anything contained in subsection (2) of this section no lessor shall make any such demand, and no such demand shall have any effect, where the premises are the subject—

- (a) of a subsisting closure order under section one hundred and eighteen of the *Public Health Act 1935**;
- (b) being a hovel or ruin, of a subsisting order under section one hundred and eighteen A of that Act;
- (c) of a subsisting order under section one hundred and eighteen B of that Act requiring the owner to rectify the defect;
- (d) of a requisition under section ninety-three of that Act to abate a subsisting nuisance arising from any want or defect of a structural character in the premises;
- (e) of an unfulfilled duty to take down, make, secure, or repair under section twenty-three of the *Building Act 1937†*;
- (f) of a subsisting order under section twenty-eight of the *Building Act 1937†*; or
- (g) of a subsisting order under section thirty-two of the *Towns Act 1934‡*,

but in such a case the lessor may, notwithstanding any shortness of time since any previous determination of the fair rent of the premises, make application for such a determination.

(7) Where such an application is made only by virtue of subsection (6) of this section the Controller may not fix a date for his determination to come into force earlier than the first day on which, but for that subsection, the lessor might have obtained an increase of rent by means of a demand.

(8) Any lessor who makes or causes to be made any demand under this section shall send or cause to be sent by pre-paid post to the Controller a copy of that demand to reach him within seven days of the service of that demand.”

6 Section eighteen of the Principal Act is amended by adding at the end thereof the following subsection:—

Matters to be considered.

“(2) The provisions of this section shall be applied by the Controller in such manner as to allow of—

* 26 Geo. V. No. 43. For this Act, as amended to 1949, see Appendix E to the annual volume of the Statutes for 1949.

† 1 Geo. VI. No. 73, as amended by 4 Geo. VI. No. 13 and 7 Geo. VI. No. 39.

‡ 5 Geo. V. No. 47. For this Act, as amended to 1936, see Reprint of Statutes, Vol. V., p. 170. Subsequently amended by 5 Geo. VI. No. 41, 8 Geo. VI. No. 15, 8 & 9 Geo. VI. No. 86, 9 Geo. VI. No. 9, 10 Geo. VI. No. 53, and 11 Geo. VI. No. 56.

- (a) in the case of prescribed premises leased on the prescribed date, a general increase—
 - (i) in the case of dwelling-houses, of twenty per cent; and
 - (ii) in the case of other prescribed premises, of thirty-five per cent,
 on the general level of rents on the prescribed date; and
- (b) in the case of prescribed premises which were not in existence or which were not leased on the prescribed date, the determination of fair rents generally not lower than those of similar premises leased on the prescribed date.

Effect of fixing fair rent.

7 Section twenty of the Principal Act is amended—

- (a) by inserting after the word “Division” the words “or under Division IV. of this Part”; and
- (b) by adding at the end thereof the following subsection:—

“(2) Where the fair rent of any prescribed premises, as so determined by the Controller, exceeds the rent payable under the lease of those premises, the fair rent thereof, as so determined, shall, as from the first day on which the lessor could, but for this Act, determine the tenancy or recover possession of the premises (not being earlier than the date on which the determination came into force) and notwithstanding anything elsewhere contained in this Act, be payable by the lessee to the lessor as if it were expressly reserved by the lease, and shall, without prejudice to any other method of recovery, be recoverable by the lessor from the lessee by action in any court of competent jurisdiction.”.

8 After section twenty of the Principal Act the following section is inserted:—

Controller may determine rents of his own motion.
Cf. c. r. 23

“20A.—(1) The Controller may of his own motion, after inquiry, determine the fair rent of any prescribed premises other than shared accommodation.

(2) The Controller shall give to the lessor and to the lessee of the premises, and to the other persons referred to in section sixteen notice of his intention to determine the fair rent of the premises, and the notice shall, for the purposes of this Division, be deemed to be an application.

(3) In determining the fair rent of prescribed premises under this section, the Controller shall have the same powers as he has in relation to the determination of the fair rent of premises on an application made by any person under section fifteen, and any determination made by the Controller under this section shall have the same effect for all purposes as a determination made upon an application.”.

9 Section twenty-three of the Principal Act is amended by adding at the end thereof the following subsections:—

Determina-
tion of rent
of shared
accommoda-
tion.

“(9) The Controller may, of his own motion, determine the fair rent of any shared accommodation, and may, for that purpose, at any time cause any shared accommodation to be inspected.

(10) Where the Controller proposes to determine of his own motion the fair rent of any shared accommodation he shall give notice of his intention to do so to the lessor of the prescribed premises and to any person entitled to make an application under subsection (1) of this section.

(11) Where the fair rent of any shared accommodation is determined by the Controller of his own motion, the determination shall have the same effect for all purposes as a determination made upon an application, and the provisions of subsections (4) to (8) of this section shall apply to any determination so made as if it were a determination made upon an application.”.

10 After section twenty-five of the Principal Act the following Division is inserted:—

“*Division IVA.—Rent of Sub-Let Premises.*

“25A.—(1) The Controller may of his own motion, and shall, upon the application of the lessor determine the fair rent of any prescribed premises which are sub-let.

Controller
may fix rent
of sub-let
premises.

(2) The Controller shall give to the lessor and the lessee of the prescribed premises and to the other persons referred to in section sixteen notice of his intention to determine the fair rent of the premises and, where the Controller proceeds of his own motion, the notice so given to the lessor shall, for the purposes of Division III. of this Part and of this Division, be deemed to be an application.

(3) For the purposes of this section, prescribed premises shall be deemed to be sub-let if the lessee has, for valuable consideration, licensed any person to occupy the premises, either continuously or periodically.

“25B.—(1) Where the fair rent of any prescribed premises which are sub-let (including the fair rent of that portion, if any, of the premises which is occupied, or retained for his own use, by the lessor) exceeds the rent payable to the lessor by whom the application is made or to whom it relates, the Controller may, in proceedings under section twenty-five A or on the application of the lessor, and in the latter case after seven days’ notice of the application to the lessee, determine an amount (in this section referred to as the ‘sub-letting loading’), not greater than the difference between the rent and the fair rent, which, in the opinion of the Controller, is fair compensation for any increase in the cost of maintenance borne by the lessor by reason of the sub-letting.

Increase
of rent.

(2) The determination of a sub-letting loading shall operate only—

(a) for a period to be fixed by the Controller in the determination; or

(b) until the determination is sooner discharged or varied pursuant to subsection (3) of this section.

(3) Upon any change in the mode of occupation of any premises in respect of which a sub-letting loading operates, the lessor or the lessee may apply to the Controller to discharge or vary the sub-letting loading, and, upon seven days' notice to the other party and after inquiry, the Controller may discharge or vary the sub-letting loading as he may think fit.

(4) While a sub-letting loading operates in respect of any prescribed premises, the lessee shall be liable, notwithstanding any enactment or rule of law or any agreement to the contrary, to pay to the lessor the sub-letting loading by way of additional rent, and the lessor may, without prejudice to any other method of recovery, recover the same by action in a court of competent jurisdiction."

Appeal from
determination.

11 Section twenty-six of the Principal Act is amended by omitting from subsection (1) the word "twenty-eight" and substituting therefor the word "fourteen".

Certificate
as to fair
rent.

12 Section fifty of the Principal Act is amended by inserting after subsection (1) the following subsection:—

"(1A) In any proceedings before any court, a certificate by the Controller specifying the amount of any sub-letting loading determined pursuant to section twenty-five B, shall be evidence of the matters specified in the certificate."

Court to
consider
harshness.

13 Section sixty of the Principal Act is amended—

(a) by inserting after subsection (1) the following subsections:—

"(1A) Notwithstanding anything contained elsewhere in this Act but subject to subsections (1B) and (1C) of this section, where the application is made on the ground that the premises (being a dwelling-house) are reasonably required by the lessor for occupation by himself, or, in the case of joint lessors, by one of themselves, if the court is satisfied that the premises are so required it shall so exercise the discretion and powers conferred on it by this section and by section sixty-one that the date for recovery of possession or for ejection is not postponed beyond—

(a) twelve months after the date on which the hearing of the proceedings was commenced, if the proceedings were commenced on or after the date of the

commencement of the *Landlord and Tenant Act (No. 3) 1950*; or

- (b) the first day of January, 1952, if the proceedings were commenced before the date of commencement of that Act.

(1B) No lessor shall be entitled to receive the benefit of the provisions of subsection (1A) of this section if the lessor or his spouse is the owner of any premises in this State other than the premises which are the subject of the application and is, at the date of the application, residing in the firstmentioned premises.

(1C) Where the application is made on the ground that the premises (being a dwelling-house) are reasonably required by the lessor for occupation by himself, or, in the case of joint lessors, by one of themselves, and an order for the recovery of possession or for ejection is made by the court, the lessee may, at any time before the order has been executed (whether the time within which it is to be executed has expired or not), apply to the court to stay or suspend the execution of the order, or to vary, discharge, or rescind the order, on the ground that, since the hearing of the application was commenced, the ground on which the order was made has ceased to exist, and if the court is satisfied that such ground has so ceased to exist it may stay or suspend the execution of the order, or vary, discharge, or rescind the order, as it thinks just.”; and

- (b) by adding at the end thereof the following subsection:—

“(6) The provisions of subsection (1) of this section shall not apply to or in respect of any proceedings for recovery of possession of any prescribed premises (being a dwelling-house) or for the ejection of the lessee therefrom taken on the ground that the premises are reasonably required by the lessor for occupation by himself (or in the case of joint lessors by one of themselves) by any lessor who, or in the case of joint lessors of whom one, is a person who is—

- (a) of or over the age of sixty-five years, being a male, or sixty years, being a female; or

- (b) in receipt of a pension under Part IV. of the *Social Services Consolidation Act 1947-1950** of the Commonwealth, or

* No. 26 of 1947, as amended by Nos. 38 and 69 of 1948, No. 16 of 1949, and No. 6 of 1950.

any pension payable to a widowed mother, widow, or wife, pursuant to the provisions of the *Australian Soldiers' Repatriation Act 1920-1949** of the Commonwealth,

and who has not, or whose spouse with whom he co-habits has not, the ownership and possession of a habitable dwelling-house in Tasmania ”.

Exclusion of premises let for a short term from operation of Part III.

14 Section seventy-three of the Principal Act is amended—

(a) by omitting subsection (1) and substituting therefor the following subsection:—

“(1) The lessor or former lessor under a lease or a proposed lessor under a proposed lease of any prescribed premises (other than any premises or the premises included in any class of premises declared by the Governor, by proclamation, to be premises to which this subsection does not apply)—

(a) for a period not exceeding twelve months; or

(b) to an employee of the lessor, former lessor, or proposed lessor, as the case may be,

may, at any time while the lessee or former lessee is in occupation of the premises, or prior to the commencement of the term of the proposed lease, make application in writing to the Controller to exclude the premises from the operation of this Part.”;

(b) by inserting after subsection (3) the following subsection:—

“(3A) The Controller shall, in every certificate issued under subsection (3) of this section, set out the ground upon which he gives the certificate.”; and

(c) by adding at the end of subsection (4) the words “, if the ground on which the certificate was given does not exist or has ceased to exist.”.

Expiry of Act.

15 Section eighty-eight of the Principal Act is amended by omitting therefrom the words “ thirtieth day of November, 1950 ” and substituting therefor the words “ thirty-first day of October, 1951 ”.

* No. 6 of 1920, as amended by No. 34 of 1921, No. 23 of 1922, No. 14 of 1929, No. 74 of 1930, No. 32 of 1934, No. 58 of 1935, No. 67 of 1936, Nos. 12, 24, and 42 of 1937, No. 55 of 1938, Nos. 37 and 96 of 1940, No. 49 of 1941, No. 22 of 1943, No. 49 of 1946, Nos. 1, 29, and 74 of 1947, No. 39 of 1948, and No. 38 of 1949.