Landlord and Tenant (War Damage) Act (Northern Ireland) 1941

1941 CHAPTER 9

An Act to modify the rights and liabilities of landlords, tenants and other persons interested in land damaged by war. [14th October 1941]

PART I

MODIFICATION OF OBLIGATIONS TO REPAIR

1 Relief from obligation to repair in cases of war damage.

(1) Where, by virtue of the provisions (whether express or implied) of a disposition or of any contract collateral thereto, an obligation (in this Part of this Act referred to as an "obligation to repair") is imposed on any person to do any repairs in relation to the land comprised in the disposition, those provisions shall be construed as not extending to the imposition of any liability on that person to make good any war damage occurring to the land so comprised.

(2) Where war damage occurs to land comprised in a disposition, then, in so far as compliance with an obligation to repair, as modified by the provisions of the preceding sub-section, is, having regard to the extent of the war damage—

(a) impracticable, or only practicable at a cost which is unreasonable in view of all the circumstances; or

(b) of no substantial advantage to the person who, but for the provisions of this sub-section, would be entitled to the benefit of the obligation;

the obligation shall be suspended until the war damage is made good to such an extent that compliance with the obligation is practicable at a reasonable cost and is of substantial advantage to the person entitled to the benefit thereof.

(3) Any disposition or contract collateral thereto, containing a provision whereunder an obligation to make good war damage as such is imposed on any person, shall have effect as if that provision were not contained therein.

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(4) Where, under the foregoing provisions of this section, an obligation to repair is modified or suspended or an obligation to make good war damage as such is extinguished, all rights and remedies (whether by way of damages, forfeiture, re-entry, sale, foreclosure or otherwise) arising out of the non-fulfilment of the obligation, including all rights against any person who has guaranteed the fulfilment of the obligation, shall be modified or suspended or extinguished accordingly.

(5) Where a disposition is made under or in pursuance of an enactment which imposes an obligation to repair in relation to the land the subject of the disposition, the obligation shall be deemed for the purposes of this section to have been imposed by virtue of the provisions of the disposition.

(6) The provisions of this section shall have effect subject to the provisions of Part II of this Act relating to notices of retention and notices to avoid disclaimer.

2 Supplementary provisions to be implied in leases and mortgages.

(1) Where, by virtue of the provisions (whether express or implied) of any lease (whether made before or after the passing of this Act) or any contract collateral thereto, an obligation to repair is imposed on the tenant, the lease shall have effect as if there were contained therein covenants by the tenant with the landlord that, in the event of war damage occurring to the land comprised in the lease, the tenant will—

(a) as soon as practicable after the damage has become known to him, serve a notice on the landlord stating that the damage has occurred and the general nature of the damage so far as it is known to him; and

(b) permit the landlord or any person authorised by him, at such times as may be reasonable in the circumstances, to enter upon the land for the purpose of ascertaining the extent of the damage and making it good either temporarily or permanently.

(2) The foregoing sub-section shall have effect as if references to a lease, tenant and landlord included respectively references to a mortgage, mortgagor and mortgagee:

Provided that it shall not be lawful for a mortgagee without the leave of the court to enforce any right or remedy arising out of a breach of the covenant referred to in paragraph (*a*) of the foregoing sub-section.

3 Raising of money for making good war damage on settled land, etc.

(1) Where war damage occurs to settled land or land which is held on trust for sale, the making good of the damage shall be deemed to be an improvement authorised by the Settled Land Act, 1882 [MI], and mentioned in section twenty-five of that Act.

(2) Capital money arising under the said Act may be applied in or towards the making good of war damage without any scheme for the execution of the improvement being first submitted to, or approved by, the trustees of the settlement or the court, and accordingly in the application of section twenty-six of the said Act to the expenditure of capital money for the making good of war damage the references to a scheme and to its submission and approval shall not apply.

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Annotations:

Marginal Citations
M1 1882 c. 38

PART II

DISCLAIMER AND RETENTION OF LEASES

NOTICES AFFECTING LEASEHOLDS

4 Power to disclaim leases or to retain on altered terms.

(1) Where the land comprised in a lease is unfit by reason of war damage, the following provisions of this section shall have effect, whether the lease was made before or after the commencement of this Act.

(2) The tenant may serve on the landlord either—

(a) a notice (hereafter in this Act referred to as a "notice of disclaimer") stating that he elects to disclaim the lease; or

(b) a notice (hereafter in this Act referred to as a "notice of retention") stating that he elects to retain the lease on the terms hereafter specified in this Act.

(3) The landlord may, if no such notice has been served by the tenant, serve upon the tenant a notice (hereafter in this Act referred to as a "notice to elect") requiring the tenant to serve on him, within the period allowed under this Act, either a notice of disclaimer or a notice of retention.

(4) Where a notice to elect is served and the tenant does not comply therewith within the said period, he shall, unless the notice is of no effect under this Part of this Act, be deemed for the purpose of this Act to have served on the landlord at the expiration of the said period a notice of retention.

(5) Where a notice of disclaimer is served (whether in pursuance of a notice to elect or not) the landlord may, within the period allowed under this Act, serve upon the tenant a notice (hereafter in this Act referred to as a "notice to avoid disclaimer") requiring the tenant to retain the lease on the terms hereafter specified in this Act.

5 Period for complying with notice to elect or serving notice to avoid disclaimer.

(1) The period allowed under this Act—

(a) within which a tenant upon whom a notice to elect has been served must comply therewith; and

(b) within which a landlord upon whom a notice of disclaimer has been served by a tenant may serve on the tenant a notice to avoid disclaimer;

shall, unless it is extended or abridged under this Part of this Act, be a period of one month from the date when the notice to elect or the notice of disclaimer, as the case may be, was served.

(2) If, in the case of a notice to elect,—

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(a) the tenant on whom it is served, or his predecessor in title, has granted an under-lease which comprises the land to which the notice relates or any part thereof; and

(b) the said tenant, before the expiration of a period of fourteen days from the service of the notice, serves a notice to elect on the tenant under that under-lease (hereafter in this section referred to as "the sub-tenant") and informs the landlord in writing that such a notice has been served;

the said period of one month shall—

(i) in a case where the sub-tenant complies with the notice to elect within the period allowed under this Act, and the said period of one month expires before the expiration of a period of seven days from the date when he complies with the notice, be extended until the expiration of those seven days; and

(ii) in a case where the sub-tenant fails to comply with the notice to elect within the period so allowed, and the said period of one month expires before the expiration of a period of seven days from the end of the period so allowed, be extended until the expiration of those seven days.

(3) If, in the case of a notice of disclaimer, the landlord on whom it is served—

(a) is himself a tenant of the land to which the notice relates under a superior lease; and

(b) before the expiration of a period of fourteen days from the service of the notice, serves on his landlord (hereafter in this sub-section referred to as "the superior landlord") a notice of disclaimer in respect of that superior lease and informs his tenant in writing that such a notice has been served;

the said period of one month shall—

(i) in a case where the superior landlord serves on the landlord within the period allowed under this Act a notice to avoid disclaimer, and the said period of one month expires before the expiration of a period of seven days from the date when that notice was served, be extended until the expiration of those seven days; and

(ii) in a case where no such notice is served by the superior landlord within the period allowed under this Act, and the said period of one month expires before the expiration of a period of seven days from the end of the period so allowed, be extended until the expiration of those seven days.

(4) Any period mentioned in this section may be extended or abridged by the court, on such terms as it thinks fit, on the application of any person affected by the extension or abridgment.

(5) An application to the court under the last foregoing sub-section for the extension of any such period may be made at any time whether before or after the expiration of that period, but where it is made after the expiration of the period, the court shall not extend the period unless it is satisfied that the interests of persons affected by the extension other than the applicant will be adequately protected by the terms imposed by the court or on the terms of an agreement or otherwise.

6 Determination of disputes as to unfitness of premises.

(1) Where a notice of disclaimer[F1]... is served—

(a) any person having an interest in or derived out of the tenancy created by the lease to which the notice relates; or

(b) any person having an interest in the reversion;

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may, at any time within one month from the service of the notice, apply to the court to determine whether the notice is of no effect on the ground that the land comprised in the lease was not unfit by reason of war damage at the time when the notice was served.

(2) Within one month from the service of a notice to elect on a tenant, he may serve on the landlord a notice (hereafter in this section referred to as a "counter-notice")—

(a) claiming that the notice to elect is of no effect on the ground that the land to which it relates was not unfit by reason of war damage at the time when the notice was served; and

(b) stating the effect of the next following sub-section.

(3) Where a counter-notice is served, the notice to elect shall be of no effect unless the court, on the application of the landlord made within fourteen days from the service of the counter-notice, determines that the land in question was unfit by reason of war damage at the time when the notice to elect was served.

(4) If on any application made under this section... the court determines that the land in question was unfit by reason of war damage at the time when the notice of disclaimer or notice to elect was served, the period allowed under this Act within which a notice to avoid disclaimer may be served by the landlord, or the notice to elect is to be complied with by the tenant, as the case may be, may be extended to such date as the court may fix.

(5) Unless it is decided by the court on an application made under this section that a notice of disclaimer,... a notice to elect is of no effect on the ground that the land to which it relates was not unfit by reason of war damage at the time when the notice was served, the land shall be deemed for the purpose of any proceedings pursuant to the notice to have been unfit by reason of war damage at that time.

Annotations:
F1 1995 c.44

NOTICES OF DISCLAIMER

7 Particulars to be included in notices of disclaimer, etc.

(1) A tenant serving a notice of disclaimer shall include therein such of the following particulars with respect to the lease disclaimed as are known to him, or can reasonably be ascertained by him, namely—

(a) the duration of the tenancy created by, and the rent reserved by, any immediate under-lease of the land comprised in the lease or any part thereof;

(b) the name and address of the person to whom that under-lease was granted and of the person (if any) to whom it has been assigned;

(c) if the interest created by the lease is mortgaged, the fact of the mortgage and the name and address of the mortgagee and his successor in title (if any).

(2) Within seven days from the service of a notice of disclaimer, the tenant serving the notice shall serve upon any person claiming immediately under him (whether as assignee, mortgagee or lessee) in respect of an interest in the land comprised in the lease a notice stating that he has served the notice of disclaimer and the name and address of the landlord on whom it was served and such other particulars as are necessary to identify the lease disclaimed.