

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1923.

A BILL

To provide for the relief and protection of tenants; to amend the Fair Rents Act, 1915, and certain other Acts; and for purposes connected therewith.

[MR. LEY;— , 1923.]

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 :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Tenants Relief and Protection Act, 1923."

Tenants Relief and Protection.

2. This Act is divided into Parts, as follows :—

PART I.—PRELIMINARY.

PART II.—DWELLING-HOUSES.

PART III.—BUSINESS PREMISES.

PART IV.—AMENDMENT OF FAIR RENTS ACT, 1915.

PART V—GENERAL.

Interpreta-
tion.

3. In this Act, unless the context or subject-matter otherwise indicates or requires—

“ Business premises ” means any premises let wholly or to a substantial extent for trade or business purposes, and includes—

- (a) any part separately let for trade or business purposes; and
- (b) any land or appurtenances let with the premises or part.

“ Dwelling-house ” means any premises let wholly or partially for residence, and includes—

- (a) any part separately let for residence;
- (b) any land or appurtenances let with the premises or part.

“ Landlord ” includes any person from time to time deriving title through or under the original landlord.

“ Lease ” includes any letting or agreement to let, whether oral, in writing, or by deed.

“ Tenancy ” includes any tenancy under a lease, and any renewal or continuance of the tenancy.

“ Tenant ” includes any person from time to time deriving title through or under the original tenant.

PART II.

DWELLING-HOUSES.

Application of Part II.

4. This Part applies only to a dwelling-house let or Rent.
5 to be let at a rent not exceeding seventy-eight pounds
per year or a proportionate sum for a less period.

Fitness for human habitation.

5. (1) In every lease of a dwelling-house there shall be implied the following covenants by the landlord with
10 the tenant—

Implied
covenant.
cf. English
Town Plan-
ning, &c.,
Act, 1909,
ss. 14, 15.

(a) that at the commencement of the tenancy the house is or will be in all respects reasonably fit for human habitation ;

15 (b) that during the tenancy the house will be kept in all respects reasonably fit for human habitation.

(2) In particular the covenants implied by this section shall be deemed to include an undertaking by the landlord with the tenant—

20 (a) that before the commencement of the tenancy the landlord has duly complied, or will duly comply, with any notice served upon him or any previous tenant by the Board of Health or by any municipal or other competent
25 authority, and not withdrawn, involving the doing of anything necessary to make the house reasonably fit for human habitation ;

30 (b) that during the tenancy the landlord will duly comply with any such notice served upon him or the tenant and not withdrawn ; provided that with respect to a notice served upon the tenant no obligation shall attach to the landlord until the tenant has notified him that the notice has been so served.

35 (3) For the purpose of complying with any notice referred to in this section the landlord may, by himself or by his agent at all reasonable times during the tenancy

cf. Convey-
ancing Act,
1919, s. 85
(1) (c).

with

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with workmen and others and all necessary materials and appliances, enter upon the dwelling-house or any part thereof :

Provided that anything necessary to be done shall be carried out by the landlord without undue interference 5 with the occupation and use of the dwelling-house by the tenant.

(4) The covenant implied by this section, that during the tenancy the house will be kept in all respects reasonably fit for human habitation, shall not apply in 10 respect of any unfitness for human habitation caused by the act neglect or default of the tenant or of any person residing with him on the premises.

(5) Where the house becomes during the tenancy unfit for human habitation, the onus of proving that the 15 unfitness was not caused by the act neglect or default of the tenant or of any person residing with him shall lie upon the tenant.

(6) This section shall not apply where the house is let for a period of not less than three years upon 20 the terms that it be made and kept by the tenant reasonably fit for human habitation, and the lease is not determinable at the option of either party before the expiration of that period.

(7) This section applies only to a lease made after 25 the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Prohibited practices.

Unlawful conditions.

6. (1) No person shall give, receive, or offer promise or agree to give or receive— 30

- (a) any bonus or premium or any sum of money other than rent in consideration of the grant renewal or continuance of a tenancy of a dwelling-house ;
- (b) any bonus or consideration for obtaining a key 35 in connection with the grant of a tenancy of a dwelling-house ;
- (c) any payment for any furniture or other article in consideration of the grant of a tenancy of a dwelling-house. (2) 40

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(2) Notwithstanding any other provision of this section the owner of a dwelling-house may make it a condition of the grant of a tenancy thereof that the lessee shall purchase any furniture or other article, provided 5 that the owner resided in the house and has not granted any other tenancy thereof since he so resided.

(3) Any money given or paid in contravention of this section may be recovered by the person by whom it was given or paid as a debt due to him by the person to 10 whom it was given or paid, provided that the proceedings for recovery are taken within three months after the money was given or paid.

(4) Any person who requires or receives any payment in contravention of this section shall be liable 15 to a penalty not exceeding *fifty* pounds.

7. (1) No person shall—

- (a) state his intention, whether by advertisement or otherwise, not to let a dwelling-house to any person who has a child or children;
- 20 (b) instruct an agent not to let a dwelling-house to any person who has a child or children;
- (c) refuse to let a dwelling-house to any respectable and responsible person because the applicant has a child or children.

25 (2) A person who does anything in contravention of this section shall be liable to a penalty not exceeding *fifty* pounds.

(3) In any prosecution under paragraph (c) of subsection one of this section the refusal to grant a 30 tenancy to a respectable and responsible person who has a child or children shall be prima facie evidence that the refusal was because the applicant had a child or children.

PART III.

BUSINESS PREMISES.

Unreasonable disturbance.

8. (1) A tenant of business premises may apply for relief against unreasonable disturbance by the landlord. 5

(2) The application may be made to the Land and Valuation Court as prescribed by rules of court.

(3) The grounds of relief against unreasonable disturbance shall be—

(a) that the tenant has established or increased a goodwill for the premises whereby their rental value has been increased; and 10

(b) that the landlord, without good and sufficient cause, refuses to grant a renewal of the tenancy for a period of at least six months, or requires an increase of rent from the tenant by reason of the increase in the rental value of the premises due to the establishment or increase of the goodwill. 15

(4) The onus of proof with respect to the matters in paragraph (a) of subsection three of this section, and with respect to the refusal or requirement of the landlord, shall lie upon the tenant, and the onus with respect to the matters (other than the refusal or requirement) in paragraph (b) of subsection three of this section shall lie upon the landlord. 20

(5) The court may make such order as it deems just and reasonable in the circumstances—

(a) for the continuance of the tenancy for a period not exceeding six months, at a rent not less than the rent payable under the lease; 30

(b) with respect to the costs of the application.

(6) In the exercise of its discretion under this section the court may consider—

(a) the lowness or otherwise of the rent paid by the tenant at any time during the tenancy;

(b) any concession or benefit made to or conferred on the tenant by the landlord in relation to the premises during the tenancy;

(c)

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- 5 (c) whether the landlord has informed the tenant at a reasonable period beforehand that the landlord refuses to grant a renewal of the tenancy, or that he will require an increase of rent;
- (d) any offer made by either of the parties with respect to a renewal of the tenancy or an increase of rent.

- (7) This section shall not apply—
- 10 (a) where the landlord gives the tenant six months' notice in writing that the landlord will not grant a renewal of the tenancy, or that he will require an increase of rent, and specifies in the notice the amount of the increase;
 - 15 (b) where the landlord is entitled to re-enter for breach by the tenant of any condition or covenant of his tenancy.

- (8) This section shall not apply in respect of—
- 20 (a) any establishment or increase of goodwill before the commencement of this Act;
 - (b) any increase of goodwill in the case of a tenancy created before the commencement of this Act for a fixed period, so far as the increase takes place before the expiration of the fixed period;
 - 25 (c) any increase of goodwill in the case of a yearly tenancy created before the commencement of this Act, so far as the increase takes place before the date on which the landlord would be entitled to determine the tenancy;
 - 30 (d) any increase of goodwill in the case of any other tenancy created before the commencement of this Act, so far as the increase takes place before the expiration of six months after the commencement of this Act;
 - 35 (e) any tenancy, whether created before or after the commencement of this Act, unless the tenancy continues for at least three years.

40 (9) This section shall have effect notwithstanding any stipulation to the contrary.

PART IV.

AMENDMENT OF FAIR RENTS ACT, 1915.

- Amendment of Act No. 66, 1915. **9.** The Fair Rents Act, 1915, as amended by the Fair Rents Amendment Act, 1920, is amended as follows :—
- Sec. 2. (a) By omitting from section two the definition of the word "tax"; 5
 - Sec. 3 (1). (b) (i) by omitting from subsection one of section three the words "one hundred and fifty-six" and by inserting in lieu thereof the words "seventy-eight"; 10
 - (ii) by omitting from the same subsection the words "this Act" where thirdly occurring and by inserting in lieu thereof the words "the Tenants Relief and Protection Act, 1923"; 15
 - (iii) by inserting in the same subsection after the word "residence" the words "or to any dwelling-house erected after or in the course of erection on the date of the commencement of the Tenants Relief and Protection Act, 1923"; 20
 - Sec. 9 (2). (c) by omitting from subsection two of section nine the words "and taxes" and by omitting the first proviso to that subsection; 25
 - Secs. 17A, 17B, 17C. (d) by omitting sections 17A, 17B, and 17C.

PART V.

GENERAL.

- Improvements. **11.** (1) A tenant of a dwelling-house or business premises shall be entitled to compensation from the landlord in respect of any improvement made by the tenant with the consent in writing of the landlord. 30
- (2) This section applies only if and as far as there is no agreement in writing to the contrary.
- (3) This section does not apply in respect of any improvement made before the commencement of this Act. 35
- 12.**

12. (1) Notwithstanding any provision of the Dis-^{Amendment}
 tress for Rent Act, 1737 (Imperial), any penalty in respect of 11 Geo. II,
 of the removal of goods and chattels in contravention of c. 19.
 that Act shall be such sum not exceeding double the
 5 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
 10 assisting therein.