



# 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<sup>M1</sup>, 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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**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<sup>F1</sup>... 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<sup>F1</sup>... 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,<sup>F1</sup>... 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.

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.

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- (3) Every person upon whom a notice is served in pursuance of the last preceding sub-section or this sub-section shall, within seven days from the receipt of the notice, serve upon every person (other than the person from whom he has received the notice)—
- (a) who has immediately derived from him an interest in the land comprised in the lease; or
  - (b) to whom he has immediately assigned such an interest;
- a notice stating the date on which the first-mentioned notice was served on him and the terms thereof and the effect of this and the next following sub-section.
- (4) If any person fails to comply with the provisions of this section, he shall be liable to make good to any other person any damage suffered by that other person by reason of the failure.

## **8 Effect of notice of disclaimer.**

- (1) Where a notice of disclaimer is served the following provisions of this section shall have effect, subject to any order of the court under the next following section, at the expiration of the period allowed under this Act within which notice to avoid disclaimer may be served, unless a notice to avoid disclaimer is served within that period or the notice of disclaimer is otherwise of no effect under this Part of this Act.
- (2) As from the date when the notice of disclaimer was served—
- (a) the lease disclaimed shall be deemed to have been surrendered; and
  - (b) all sub-leases derived out of the tenancy created by the lease disclaimed shall also be deemed to have been surrendered, except a sub-lease—
    - (i) by virtue whereof any person is entitled to the actual occupation of the land comprised in the disclaimed lease or of any part thereof; and
    - (ii) in respect of which no notice of disclaimer has been served; and
  - (c) all interests in the tenancy created by the lease disclaimed or any sub-lease which is deemed to have been surrendered as aforesaid shall be deemed to have been extinguished.
- (3) Any notice of disclaimer, notice of retention or notice to elect served in respect of any sub-lease which is deemed to have been surrendered by virtue of this section shall be of no effect.

## **9 Power of court to modify effect of notice of disclaimer.**

- (1) On an application duly made under this section, the court shall have power to modify the operation of a notice of disclaimer as stated in the last foregoing section as follows:—
- (a) by varying the date on which sub-section (2) of that section takes effect or the date as from which any lease or sub-lease is deemed to have been surrendered or any interest therein is deemed to have been extinguished;
  - (b) by excepting from the operation of that section, on such terms as the court thinks just, any sub-lease and any interest therein which would otherwise be deemed to have been surrendered or extinguished;
  - (c) by vesting on such terms as the court thinks just the lease disclaimed, or any sub-lease which would otherwise be deemed to have been surrendered, in any person having an interest in the lease or sub-lease other than the tenant thereunder;

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- (d) by imposing such terms and making such orders as to the removal of fixtures and otherwise as the court thinks just.
- (2) The terms imposed by the court under paragraph ( b ) or paragraph ( c ) of the last foregoing sub-section may include such alterations as the court thinks just of the terms of the lease or sub-lease in question.
- (3) An application under this section may be made by any person—
  - (a) having an interest in or derived out of the tenancy created by the lease disclaimed; or
  - (b) having an interest in the reversion;at any time within the period allowed under this Act for serving a notice to avoid disclaimer.
- (4) Unless the court otherwise directs, no application under this section and no order of the court thereon shall prejudice the right of a landlord to serve a notice to avoid disclaimer within the period allowed by this Act.

#### NOTICES OF RETENTION AND NOTICES TO AVOID DISCLAIMER

### 10 Effect of notice of retention.

- (1) Where a notice of retention is served or is deemed to have been served in respect of a lease, then, unless the notice of retention is of no effect under this Part of this Act or the notice to elect by virtue whereof the notice of retention is deemed to have been served is of no effect under this Part of this Act, the lease shall have effect subject to the following modifications:—

- (a) there shall be implied in the lease, notwithstanding anything in Part I of this Act, a covenant by the tenant with the landlord that the land comprised in the lease shall be rendered fit as soon as is reasonably practicable after the date when the notice was served or is deemed to have been served:

Provided that where before that date any person has guaranteed the performance of the covenants in the lease, the guarantee shall be deemed not to extend to the covenant implied in the lease by virtue of this paragraph;

- (b) subject to the powers of the court under the following provisions of this sub-section, no rent shall be payable by the tenant under the lease in respect of the period beginning with the date when the notice was served or is deemed to have been served and ending with the date on which the land is rendered fit;
- (c) where the court is satisfied, on the application of the landlord made at any time before the land has been rendered fit, that part of the land is capable of beneficial occupation, the court may direct that there shall be payable by the tenant such rent, at such times and in respect of such period as the court may fix:

Provided that the amount of the rent fixed by the court under this paragraph shall not exceed such proportion of—

- (i) the annual value at the time of the application of so much of the land as is at that time capable of beneficial occupation; or
- (ii) the full annual rent reserved by the lease;

whichever is the less, as the period in respect of which the rent is payable bears to a year;

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- (d) where the court is satisfied, on the application of the landlord made at any time, that there has been unreasonable delay on the part of the tenant in rendering the land fit, the court may direct that there shall be payable by the tenant such rent (not exceeding the rent reserved by the lease) at such times and in respect of such period as the court may fix.
- (2) In this section the expression “rent,” in relation to a lease, includes any periodical sum payable by the tenant to the landlord in connection with his tenancy, whether for services, lighting, heating, board, use of furniture or otherwise, and references to rent reserved by a lease include references to any such sum contracted to be paid by any agreement.

## **11 Effect of notice to avoid disclaimer.**

- (1) Where a notice to avoid disclaimer is served in respect of a notice of disclaimer, the notice of disclaimer shall be of no effect and, unless the notice of disclaimer is of no effect by reason of some other provision of this Part of this Act, the lease to which it relates shall have effect subject to the following modifications:—
  - (a) there shall be implied in the lease, notwithstanding anything in Part I of this Act, a covenant by the landlord with the tenant that the land comprised in the lease shall be rendered fit as soon as is reasonably practicable after the service of the notice to avoid disclaimer:
 

Provided that where before the service of the said notice any person has guaranteed the performance of the covenants in the lease, the guarantee shall be deemed not to extend to the covenant implied in the lease by virtue of this paragraph;
  - (b) subject to the powers of the court under the next following paragraph, no rent shall be payable by the tenant under the lease in respect of the period beginning with the date of the service of the notice of disclaimer and ending with the date on which the land is rendered fit;
  - (c) where the court is satisfied, on the application of the landlord made at any time before the land has been rendered fit, that any part of the land is capable of beneficial occupation, the court shall have the same powers as it has under paragraph (c) of sub-section (1) of the last foregoing section.
- (2) In this section the expression “rent” has the same meaning as in the last foregoing section.

## **12 Recurrence of war damage after service of notice.**

- (1) Where land comprised in a lease has been rendered unfit by war damage, and further war damage occurs to the land before it has been rendered fit and after notice of retention has been or is deemed to have been served, or notice to avoid disclaimer has been served, in respect of the lease, the tenant or the landlord, as the case may be, may apply to the court for leave to withdraw the notice.
- (2) On any such application the court shall grant leave to withdraw the notice if it is satisfied that the liability of the tenant or the landlord, as the case may be, in respect of repairs under the lease as modified in pursuance of the notice has been materially increased by the further war damage.
- (3) As from the date on which the notice is withdrawn—

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- (a) any notice to elect served on the tenant or notice of disclaimer served on the landlord before that date shall be of no effect; and
- (b) the lease shall have effect as if the notice withdrawn had never been served, or been deemed to have been served:

Provided that nothing in this sub-section shall, unless the court having regard to all the circumstances of the case otherwise determines, impose on the tenant a liability for rent under the lease in respect of any period before that date.

- (4) In this section the expression “rent” has the same meaning as it has in the two last foregoing sections.

#### SPECIAL PROVISIONS AS TO LETTINGS OF PARTICULAR CLASSES

### 13 Provisions as to short tenancies.

- (1) In relation to a short tenancy, as hereinafter defined, section four of this Act shall not apply, and the references in this Part of this Act to a lease, under-lease, sub-lease, interest in the tenancy created by a lease, tenant, sub-tenant, or person having an interest in or derived out of the tenancy created by a lease (except the references in section seven to an underlease or to a person having an interest in the land comprised in a lease) shall be construed as not including references to a short tenancy or, as the case may be, to a tenant holding under a short tenancy.
- (2) Where for any period any land let on a short tenancy is unfit by reason of war damage and is not occupied either in whole or in part by the tenant, no rent shall be payable under the tenancy in respect of that period.
- (3) Where any such land as aforesaid, or any part thereof, is occupied by the tenant while the land is unfit by reason of war damage, there shall be payable by the tenant in respect of the period of such occupation such rent as may be agreed between him and the landlord or, in default of agreement, as may be fixed by the court.
- (4) For the purposes of this section, a dwelling-house let on a short tenancy which has been rendered unfit by war damage shall be deemed at any time to be fit if it has been repaired to such extent as is reasonably practicable at that time, having regard to the circumstances prevailing in the locality, and as is sufficient to render the dwelling-house reasonably capable of being used for housing purposes, and continues to be in that state of repair:

Provided that, if a dwelling-house is deemed to be fit by virtue of this sub-section, but the extent of the accommodation therein has been substantially diminished as the result of the damage, the rent payable by the tenant in respect of the period during which the accommodation is so diminished shall be reduced to such extent as may be agreed between him and the landlord or, in default of agreement, as may be fixed by the court.

- (5) If the council<sup>F2</sup> of the county borough or county district in whose borough or district the dwelling-house is situated issue a certificate that the dwelling-house has been repaired to the extent mentioned in the last foregoing sub-section, the production of the certificate shall, as respects any period during which the certificate is in force, be sufficient evidence that the house was fit for the purposes of this section during that period, unless the contrary is proved:

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Provided that the council shall, on the application of the tenant made not less than three months after the issue of the certificate or after his last application, inspect the dwelling-house, and if they are satisfied that—

- (a) further repairs have become reasonably practicable since the issue of the certificate and have not been carried out; or
- (b) the works of repair carried out before the issue of the certificate have not been maintained in a reasonably efficient state;

they shall revoke the certificate and serve a notice of the revocation on the tenant and on the landlord, and, as from the date of the service of the notice, the certificate shall cease to have effect except as respects any period before the said date; and, as respects any period after the said date and before the date of the issue of a new certificate under this sub-section, the production of the notice shall be sufficient evidence that the dwelling-house was unfit by reason of war damage during that period, unless the contrary is proved.

The functions of the council<sup>F2</sup> of a county borough or county district under this sub-section may be exercised on their behalf by such officers as may be authorised in writing by the council, and, for the purposes of this sub-section, an instrument purporting to be such a certificate as aforesaid and to be signed by an officer of the council shall, without further proof, be deemed to be a certificate duly issued, unless the contrary is proved.

- (6) Where the court is satisfied, on the application of the landlord of any land let on a short tenancy which has been rendered unfit by war damage, that—
  - (a) the land is fit;
  - (b) a period of not less than one month has elapsed since the land was rendered fit, and during the whole of that period the tenant has not been in occupation of the land either in whole or in part and has not paid any rent in respect of that period or any part thereof; and
  - (c) the landlord has made all reasonable efforts to communicate with the tenant and has failed to do so;

the court may, if it thinks fit, determine the tenancy and give immediate possession of the tenant's interest in the land and, where the tenant has sub-let the whole or any part of the land, the court may give directions preserving the rights of the sub-tenant or determining those rights, either immediately or after the landlord has complied with such requirements as may be specified.

- (7) The landlord or tenant of any land let on a short tenancy may at any time apply to the court to determine whether the land is or was at any time unfit by reason of war damage, or any other question arising under this section in relation to the tenancy.
- (8) For the purposes of this section a tenant shall not be deemed to be in occupation of any land which is unfit by reason of war damage by reason only—
  - (a) that furniture or other goods belonging to or used by him remain on the land;
  - (b) that he visits the land from time to time for the purposes of removing, or taking steps to preserve, any such furniture or goods; or
  - (c) that he retains possession of the keys of any buildings or works situated on the land;

and where the tenant has sub-let the whole or any part of the land, the occupation of the sub-tenant shall, as between the tenant and his landlord, be deemed to be the occupation of the tenant.

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**F2** 1972 c.9 (NI)

#### **14 Provisions as to leases comprising two or more separate tenements.**

- (1) In relation to a multiple lease, section six of this Act shall not apply and the other provisions of this Part of this Act shall have effect subject to the modifications specified in this section.
- (2) Where a notice of disclaimer,<sup>F3</sup>... or a notice to elect is served with respect to the lease—
  - (a) the person serving the notice or the person on whom it is served; or
  - (b) any other person having an interest in or derived out of the tenancy created by the lease, or having an interest in the reversion;may apply to the court, within one month from the service of the notice, to determine the question whether the tenant should be allowed to exercise the right of disclaimer<sup>F3</sup>..., either as respects the lease as a whole, or as respects one or more of the separate tenements comprised therein, or should not be allowed to exercise that right at all.
- (3) If on such an application the court is satisfied that, having regard to the extent of the war damage suffered by the land comprised in the lease as a whole and all the circumstances of the case (including any offers made by the landlord for an extension of the period of the tenancy created by the lease or for an alternation of the rent reserved thereby or for any other modification of the terms of the lease) it is equitable to allow the tenant to exercise the said right in respect of the lease as a whole, the court shall give a direction accordingly, and any notice of disclaimer<sup>F3</sup>... already served shall have effect under this Part of this Act, and the court—
  - (a) in a case where a notice of disclaimer has been served (whether in compliance with a notice to elect or not) may extend to such date as it may fix the period allowed under this Act within which a notice to avoid disclaimer may be served by the landlord; or
  - (b) in a case where a notice to elect has been served and has not been complied with, may extend to such date as it may fix the period allowed under this Act within which the notice to elect must be complied with.
- (4) If on such an application the court, having regard to the matters referred to in the last foregoing sub-section, is not satisfied that it is equitable to allow the tenant to exercise the right of disclaimer<sup>F3</sup>... as respects the lease as a whole, but is satisfied that it is equitable to allow him to exercise the said right as respects one or more of the separate tenements comprised therein (hereafter referred to as “the disclaimable tenements” ), the court—
  - (a) shall order that the lease shall be treated as if it were two separate leases, one comprising the disclaimable tenement or tenements, and the other comprising the remainder of the tenements; and
  - (b) shall give such consequential directions as to the apportionment of the rent and otherwise as it thinks just, including directions as respects any sub-lease comprising a disclaimable tenement and a tenement which is not disclaimable; and
  - (c) shall order that the tenant shall be at liberty to serve a notice of disclaimer<sup>F3</sup>... as respects the lease comprising the disclaimable tenement or tenements but not as respects the other lease; and

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- (d) where a notice of disclaimer<sup>F3</sup>... has been served (whether in compliance with a notice to elect or not), shall order that the notice shall be of no effect; and
  - (e) where a notice to elect has been served, may extend to such date as it may fix the period allowed under this Act within which the notice to elect must be complied with; and
  - (f) may empower the landlord, if the tenant serves a notice of disclaimer as respects the lease comprising the disclaimable tenement or tenements, to enter upon the land comprised in the other lease for the purpose of doing work on the land comprised in the disclaimed lease.
- (5) If on such an application the court, having regard to the matters referred to in subsection (3) of this section, is not satisfied that it is equitable to allow the tenant to exercise the right of disclaimer<sup>F3</sup>... as respects the lease as a whole or as respects one or more of the separate tenements comprised therein, the court shall direct that the land comprised in the lease shall not be deemed to be unfit for the purposes of this Part of this Act and that any notice of disclaimer<sup>F3</sup>... or notice to elect relating thereto shall cease to have effect:

Provided that the court may, if having regard to the extent of the war damage suffered by the land it considers it equitable to do so, order that the rent reserved by the lease shall, until the war damage is made good, be reduced to such extent as may be specified.

- (6) Unless an application is made to the court under this section with respect to a notice of disclaimer<sup>F3</sup>... or a notice to elect served with respect to a multiple lease, the land comprised in the lease shall be deemed for the purpose of any proceedings pursuant to the notice to have been unfit by reason of war damage at the time when the notice was served.

<b>F3</b> 1995 c.44
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## **15 Power of landlord to recover possession of whole property comprised in ground lease or multiple lease.**

- (1) Where under this Part of this Act—
- (a) a ground lease has been disclaimed or a multiple lease has been disclaimed as respects all or some of the separate tenements comprised therein; and
  - (b) the landlord is not entitled to possession of the whole of the land comprised in the lease free from any interest in or derived out of the tenancy created by the lease;

the court may, on the application of the landlord made at any time, grant to him the right to such possession on such terms as to payment of compensation or otherwise as appears just.

- (2) Where—
- (a) land comprised in a ground lease which has not been disclaimed under this Part of this Act is unfit by reason of war damage; and
  - (b) the tenancy created by the lease will expire before the expiration of five years from the date of an application under this section;

the court may, if it is satisfied on the application of the landlord, having regard to all the circumstances of the case, that it is equitable so to do, grant to him the right

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*Changes to legislation: There are currently no known outstanding effects for the Landlord and Tenant (War Damage) Act (Northern Ireland) 1941. (See end of Document for details)*

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to possession of the land comprised in the lease on such terms as to payment of compensation or otherwise as appear just.

**16 Exclusion of agricultural and mining leases.**

Nothing in this Part of this Act shall apply to an agricultural lease or a mining lease.

PROVISIONS AS TO APPORTIONMENT OF RENT

**17 Apportionment of rent in case of war damage to leased premises.**

Where—

- (a) any lease is deemed to have been surrendered by virtue of section eight of this Act; or
- (b) the rent payable under any lease ceases to be payable for any period by virtue of section ten or section eleven of this Act, or, in the case of a short tenancy to which section thirteen of this Act applies, by virtue of that section;

the rent payable in respect of the period during which the surrender takes effect or the rent ceases to be payable as aforesaid shall be apportionable, whether the rent under the lease is payable in advance or otherwise, and any rent paid by the tenant in respect of that period in excess of the amount apportionable to the part of the period preceding the date on which the surrender takes effect or the rent ceases to be payable, as the case may be, shall be recoverable by him.

*Part III (ss.18#25) rep. by 1995 c. 44*

**PART IV**

MISCELLANEOUS AND GENERAL

MISCELLANEOUS

**26 Powers of court as to restrictive covenants in certain cases.**

- (1) Where the buildings comprised in a ground lease or a multiple lease (whether made before or after the passing of this Act) have been rendered unfit by war damage, and the interest created by the lease is affected by any restriction arising under covenant or otherwise as to the user of the land comprised therein or the buildings thereon, the following provisions of this section shall have effect.
- (2) The court shall have power, on the application of any person interested, by order wholly or partially to discharge or modify any such restriction as aforesaid (subject to the payment by the applicant of compensation to any person suffering loss in consequence of the order) on being satisfied that the proposed discharge or modification is desirable in order to permit the economical use or development of the land comprised in the lease, or is otherwise desirable in the national interest.
- (3) Where any restriction affecting the interest created by the lease is wholly or partially discharged or modified on any of the grounds specified in the last foregoing subsection, the powers of the court may be exercised on any of those grounds in relation to

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any similar restriction affecting the freehold or other interest out of which the interest created by the lease is derived.

- (4) The court shall have power on the application of any person interested—
  - (a) to declare whether or not in any particular case any land is affected by a restriction imposed by any instrument; or
  - (b) to declare what, upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed and whether the same is enforceable and, if so, by whom.
- (5) The court shall, before making any order under this section, direct such inquiries, if any, to be made, and such notices, if any, whether by way of advertisement or otherwise, to be given to such of the persons who appear to be entitled to the benefit of the restriction intended to be discharged, modified or dealt with as, having regard to any inquiries, notices or other proceedings previously made, given or taken, the court may think fit.
- (6) Any order made under this section shall be binding on all persons, whether ascertained or of full age or capacity or not, then entitled or thereafter capable of becoming entitled to the benefit of any restriction which is thereby discharged, modified or dealt with, and whether such persons are parties to the proceedings or have been served with notices or not.
- (7) An order may be made under this section notwithstanding that any instrument which is alleged to impose the restriction intended to be discharged, modified or dealt with, may not have been produced to the court, and the court may act on such evidence of that instrument as it may think sufficient.
- (8) This section applies to restrictions whether subsisting at the passing of this Act or imposed thereafter, but does not apply where the restriction was imposed on the occasion of a disposition made gratuitously or for a nominal consideration for public purposes.
- (9) An order under this section shall, in so far as it relates to land the ownership of which is registered under the Local Registration of Title (Ireland) Act, 1891 <sup>F4</sup>, be registered upon production thereof in the proper office for the registration of titles.
- (10) Where any proceedings by action or otherwise are taken in any court to enforce a restrictive covenant, any person against whom the proceedings are taken may, in such proceedings, apply to that court for an order giving leave to make an application under this section and staying the proceedings in the meantime.

<b>F4</b> <a href="#">1970 c.18 (NI)</a>
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## 27    **Provision as to agricultural and mining leases.**

Where any buildings or works comprised in an agricultural lease or mining lease (whether made before or after the passing of this Act) are unfit by reason of war damage, the court may, on the application of the tenant, either determine the lease or modify the terms thereof, whether by reducing the rent payable thereunder or otherwise, according as appears just having regard to all the circumstances of the case.

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## **28 Relief from obligation to insure against war damage.**

Any express obligation to insure land against war damage shall be void and be deemed always to have been void, and any obligation to insure land against fire or other risks shall be construed as not including and as never having included, an obligation to insure against war damage, and any proceedings pending at the passing of this Act relating to any such obligation to insure land against war damage shall be discontinued upon such terms as the court thinks just:

Provided that the foregoing provision shall not affect the exercise before the passing of this Act of any right or remedy arising in consequence of a failure to perform an obligation to insure against war damage, but the court may, on the application of any person prejudiced by the exercise of any such right or remedy, grant such relief as it thinks just.

## **29 Powers of entry of landlord and tenant of damaged land.**

- (1) Where any building or works on land comprised in a lease is or are unfit by reason of war damage and urgent repairs to the building or works are necessary to prevent deterioration and are not being executed, any person who has the fee simple in the land or a lease of the land or is a mortgagee of the fee simple or a lease, or any person authorised by any such person as aforesaid may, if he cannot obtain permission to enter upon the building or works from the person having control thereof, or cannot obtain such permission without unreasonable delay, enter upon the building or works for the purpose of executing the necessary repairs, and may use such force as is reasonably necessary for effecting entry.
- (2) Any tenant of any land which is unfit by reason of war damage shall be entitled, notwithstanding that he has served a notice of disclaimer, to enter upon the land for the purpose of taking any measures necessary to preserve or remove any furniture or other goods belonging to or used by him.

## **30 Determination of disputes as to whether land has been rendered fit.**

Where—

- (a) the land comprised in any lease has been rendered unfit by war damage and a notice of retention or a notice to avoid disclaimer has been served in respect of the lease; and
- (b) repairs have been carried out to the land;

either the landlord or the tenant may apply to the court to determine whether the land has been rendered fit and, if so, the date on which it was rendered fit.

## **31 Provision in case where land sustains damage other than war damage.**

- (1) Where—
  - (a) any land comprised in a lease has been reinstated or redeveloped under this Act, or has otherwise been rendered fit in pursuance of an obligation imposed thereunder;
  - (b) the cost of reinstatement, of redevelopment or of rendering the land fit has been increased by reason of any damage or dilapidation occurring to the land, not being war damage or ordinary wear and tear; and

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- (c) the person by whom the land was reinstated, redeveloped or rendered fit would have been entitled, but for section one of this Act, to require any person, being his landlord or tenant under any lease comprising the land, to make good the said damage or dilapidation or any part thereof, or to indemnify him in respect of the cost of making good the said damage or dilapidation or any part thereof; the first-mentioned person shall be entitled to recover from his said landlord or tenant the amount by which the said cost has been so increased, or, as the case may be, such part of the said increase as is attributable to the said part of the damage or dilapidation.
- (2) Any person from whom any sum has been recovered under this section shall have the like right (if any) to recover that sum or any part thereof from any person, being his landlord or tenant under any lease comprising the land, as if he himself had reinstated, redeveloped or rendered fit the land.
- (3) Nothing in this section shall be taken to affect any right in respect of money payable under a policy of insurance in respect of any such damage or dilapidation as aforesaid, or any right to damages for a failure to insure land in respect thereof, but any amount recovered by any person, or made available for the reinstatement, redevelopment or rendering fit of the land by any person, by virtue of any such right, shall be deducted from the amount recoverable by that person under this section in respect of that damage or dilapidation.

### **32 Limitation on right of tenant to surrender premises under 1860 c.154.**

Section forty of the Landlord and Tenant Law Amendment Act (Ireland), 1860 (which contains provisions conferring upon a tenant the right, in certain cases, to surrender premises where any dwelling house or other building constituting the substantial matter of the demise has been destroyed by accidental fire or other inevitable accident) shall not apply in any case where the land comprised in a lease is unfit by reason of war damage.

#### GENERAL

### **33 Jurisdiction of the county court and appeals to the Supreme Court.**

- (1) The jurisdiction of the court under this Act shall be exercised by the county court within the jurisdiction of which the land to which the proceedings relate (or any part thereof) is situate.
- (2) In any proceedings under this Act a county court judge may, if he thinks fit, summon to his assistance, in such manner as may be prescribed by rules of court, a person of skill and experience in the matter to which the proceedings relate who may be willing to sit with the judge and act as assessor.
- (3) Where an assessor is summoned by a judge in any proceedings by virtue of the last foregoing sub-section—
- (a) the assessor may, if so directed by the judge, inspect the land to which the proceedings relate without the judge, and report to the judge in writing thereon; and
  - (b) the judge may, on consideration of the report and any observations of the parties thereon, give such judgment or make such order in the proceedings as may be just.

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*Changes to legislation: There are currently no known outstanding effects for the Landlord and Tenant (War Damage) Act (Northern Ireland) 1941. (See end of Document for details)*

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- (4) The remuneration of assessors for sitting as aforesaid shall be at such rate as may be prescribed by rules of court made with the consent of the Ministry of Finance.
- (5) The remuneration of an assessor summoned as aforesaid shall be defrayed out of moneys provided by Parliament.
- (6) Provision may be made by rules of court for regulating the procedure and costs of any applications to and proceedings in the county court under this Act.

[<sup>F5</sup> (7) If any party to any proceedings in the county court under this Act is dissatisfied with the order, determination, direction or decision of the court he may appeal therefrom to the High Court.]

F5 1978 c.23

### 34 Provision as to notices.

- (1) Any notice required or authorised to be served under this Act shall be in writing.
- (2) Any such notice may be served either—
  - (a) by delivering it to the person on whom it is to be served; or
  - (b) by leaving it at the usual or last known place of abode of that person; or
  - (c) by sending it in a prepaid registered letter<sup>F6</sup> addressed to that person at his usual or last known place of abode; or
  - (d) in a case where it is to be served on a body corporate, by delivering it to the secretary or clerk thereof at the registered or principal office thereof or sending it in a prepaid registered letter<sup>F6</sup> addressed to the secretary or clerk thereof at that office; or
  - (e) in such other manner as the court on an application made in that behalf may direct.
- (3) Where the interest of a former landlord or tenant in the land comprised in a lease has passed to any person—
  - (a) service of any such notice on that former landlord or tenant by a person who does not know and has no reason to believe that the interest has passed, shall be treated for the purpose of this Act as service on the person to whom the interest has passed;
  - (b) the former landlord or tenant, on the receipt of any such notice, shall forthwith serve the notice on the person to whom the interest has passed, and, if he fails to do so, shall be liable to make good to any other person any damage suffered by that other person by reason of the failure.
- (4) A notice with respect to a lease shall be deemed for the purposes of this Act to have been served on the landlord if it is served on any person for the time being authorised by the landlord to receive the rent payable under the lease.

F6 1963 c.5 (NI)

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*Changes to legislation: There are currently no known outstanding effects for the Landlord and Tenant (War Damage) Act (Northern Ireland) 1941. (See end of Document for details)*

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**35 Contracting out forbidden.**

The provisions of this Act shall have effect in relation to any war damage notwithstanding any contract to the contrary made before that damage occurred.

*S. 36 rep. by 1995 c. 44*

**37 Application to the Crown.**

This Act binds the Crown, and shall apply to land belonging to His Majesty, or belonging to a department of the Government of Northern Ireland or of the Government of the United Kingdom, or held in trust for His Majesty for the purposes of any such department.

SUPPLEMENTAL

**38 Interpretation.**

(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say:—

“Agricultural lease” means a lease the land comprised wherein consists wholly or mainly of agricultural land or agricultural buildings within the meaning of the Valuation Acts Amendment Act (Northern Ireland), 1932<sup>M2F7</sup>;

“Annual value,” in relation to land, means the rent at which the land might reasonably be expected to let from year to year, if the tenant undertook to pay all usual tenants' rates and taxes and the landlord undertook to bear the cost of repairs and insurance and the other expenses necessary to command that rent;

“Disposition” means any instrument (including an enactment) or oral transaction, whether made before or after the passing of this Act, creating or transferring any interest in land;

“Dwelling-house” means a house or part of a house let as a separate dwelling, and does not exclude a house or part of a house so let by reason only that part of the premises is used as a shop or office or for business, trade or professional purposes;

“Fee simple” includes estates held under fee farm grants and perpetuity grants;

“Ground lease” means a lease at a rent (or, where the rent varies, at a maximum rent) which does not substantially exceed the rent which a tenant might reasonably have been expected, at the commencement of the tenancy created by the lease, to pay for the land comprised in the lease, excluding any buildings, for a tenancy of the same duration as the tenancy created by the lease;

“Interest,” in relation to land, means any estate or interest in the land, whether legal or equitable;

“Land” means land of any tenure, and includes any buildings or works situated on, over or under land;

“Landlord” in relation to a lease means the person who under the lease is, as between himself and the tenant, for the time being entitled to the rents and profits of the demised premises payable under the lease, and includes a mortgagee of the lessor's interest who

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is in possession of that interest or has appointed a receiver of the rents and profits thereof;

“Lease” means a lease, under-lease or other contract of tenancy (whether in writing or oral) in respect of any lands in consideration of a rent or return, and (without prejudice to the generality of this definition) includes—

- (a) a grant of land in perpetuity in consideration of a rent or return;
- (b) an assignment operating as a lease or underlease; and
- (c) an agreement for any such lease, underlease, grant, assignment or other contract of tenancy;

and also includes a ground lease;

“Mining lease” means a lease for any mining purpose or purposes connected therewith, and

“mining purposes” include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under land, and the erection of buildings, and the execution of engineering and other works suitable for those purposes;

“Mortgage” includes charge and debenture;

“Multiple lease” means a lease comprising buildings which are used or adapted for use as two or more separate tenements;

“Rent,” in relation to any short tenancy, includes any periodical sum payable by the tenant to the landlord in connection with his tenancy, whether for services, lighting, heating, board, use of furniture, or otherwise, and references to rent payable under the tenancy include references to any such sum contracted to be paid by any agreement;

“Reversion” includes the landlord's interest in a lease or in the land comprised therein;

“Rules of court” means rules made by the authority having power to make rules of court for regulating the practice of the county courts or, as the case may [<sup>F8</sup> require, rules under section 55 of the Judicature (Northern Ireland) Act 1978 <sup>M3</sup>];

“Short tenancy” means any tenancy or sub-tenancy which the tenant is entitled to determine at any time by a notice to quit expiring not later than the end of the next complete quarter or the next complete period of three months of the tenancy, and, in a case where a person is holding over any land, which he previously held under a short tenancy, by virtue of the Rent and Mortgage Interest (Restrictions) Acts (Northern Ireland), 1920 to 1940, Part II of the Rent and Mortgage Interest (Restrictions) Act (Northern Ireland), 1940 <sup>M4</sup> <sup>F9</sup>, ..., such person shall be deemed to be holding the land under a short tenancy;

“Tenant,” in relation to a lease, means the person for the time being entitled to the tenancy created by the lease;

“Unfit” means—

- (a) in relation to buildings or works, or to land of which three-quarters or more of the value is attributable to buildings or works, unfit for the purpose for which those buildings or works were used or adapted for use immediately before the occurrence of the war damage in question, having regard to the class of tenant likely to occupy similar buildings or works which are not unfit for that

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purpose, to the standard of accommodation available at the material time, and to all other circumstances; and

- (b) in relation to other land, unfit for any purpose for which the tenant can be reasonably expected to use the land, having regard to the terms of the lease under which it is held;

and the expression “fit” shall be construed accordingly;

“War damage” has the meaning assigned to that expression by sub-sections (1) and (2) of section eighty of the War Damage Act, 1941 <sup>M5</sup>.

- (2) Sub-section (3) of section eighty of the War Damage Act, 1941, shall apply for the purposes of this Act as it applies for the purposes of the first-mentioned Act.

*Subs. (3) rep. by 1995 c. 44*

- (4) References in this Act to buildings or works on land shall be construed as including references to buildings or works under and over land.

*Subs.(5) rep by 1954 c.33 (NI)*

<b>F7</b>	1977 NI 28
<b>F8</b>	1978 c.23
<b>F9</b>	SL(R) 1993 c.50

**Marginal Citations**

<b>M2</b>	1932 c. 26
<b>M3</b>	1978 c. 23
<b>M4</b>	1940 c. 7
<b>M5</b>	1941 c. 12

**39 Short title.**

This Act may be cited as the Landlord and Tenant (War Damage) Act (Northern Ireland), 1941.

**Changes to legislation:**

There are currently no known outstanding effects for the Landlord and Tenant (War Damage) Act (Northern Ireland) 1941.