



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

## 1941 CHAPTER 9

### 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—

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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, Notices Affecting Leaseholds. (See end of Document for details)

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- (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,—

- (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

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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;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

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