



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

1941 CHAPTER 9

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 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

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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 ^{F1}, 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.

Annotations:

F1 1970 c.18 (NI)

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.

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.

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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
 - (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,

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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.

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