



Landlord and Tenant (War Damage) Act 1939

1939 CHAPTER 72

PART II

DISCLAIMER AND RETENTION OF LEASES

Special provisions as to certain leases

13 Provision as to ground leases

- (1) In relation to a ground lease, this Part of this Act shall have effect subject to the modifications specified in this section.
- (2) The tenant shall not be entitled to serve a notice of retention nor, unless the court otherwise orders, a notice of disclaimer, and the landlord shall not be entitled to serve a notice to elect.
- (3) If, where the land comprised in a ground lease has suffered war damage, the court is satisfied on the application of the tenant, 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—
 - (a) the length of the unexpired part of the term of the lease, and the relation of the amount of the rent payable thereunder to the annual value, immediately before the occurrence of the war damage, of the land comprised in the lease; and
 - (b) any offers made by the landlord for an extension of the term of the lease or for an alteration of the rent reserved thereby, or for any other modification of the terms of the lease; that it is equitable to allow the tenant to disclaim the lease, the court may order that he be at liberty to serve a notice of disclaimer under this Part of this Act, on such conditions as to the payment of compensation and otherwise as the court thinks fit to impose, and that subsection (1) of section six of this Act shall not apply with respect to the notice.

- (4) Where a notice of disclaimer is served in pursuance of an order of the court made under the last foregoing subsection, the provisions of this Act authorising the landlord to serve a notice to avoid disclaimer within the period allowed by this Act shall not have effect, but any other provision of this Act relating to that period shall have effect as if the landlord were entitled to serve such a notice.

14 Determination of question whether a lease is a ground lease

- (1) Where in respect of a lease a notice of retention or a notice to elect is served, or a notice of disclaimer is served otherwise than under an order of the court under the last foregoing section—
- (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 term created by the lease, or having an interest in the reversion immediately expectant on the determination of the lease;
- 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 lease is a ground lease.
- (2) If, on an application made under this section, the court determines that the lease in respect of which a notice of disclaimer or a notice to elect has been served is not a ground lease, the period allowed under this Act within which a notice to avoid disclaimer may be served on 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.
- (3) Unless it is decided by the court on an application made under this section that a notice is of no effect on the ground that the lease to which it relates is a ground lease, the lease shall be deemed for the purpose of any proceedings pursuant to the notice not to be a ground lease.

15 Provisions as to leases comprising two or more separate tenements

- (1) In relation to a multiple lease (not being a ground 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 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 term created by the lease, or having an interest in the reversion immediately expectant on the determination of the lease;
- 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 disclaim the lease, whether wholly or as respects one or more of the separate tenements comprised therein or 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 term of the lease or for an alteration of the rent reserved thereby or for any other modification of the terms of the lease) it is equitable to allow the lease to be wholly disclaimed, the court—

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- (a) in a case where a notice of disclaimer has been served (whether in compliance with a notice to elect or not), shall order that the notice of disclaimer shall have effect under this Part of this Act, and 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, shall order that the tenant be at liberty to serve a notice of disclaimer and 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 or, on the application of the tenant, order that a notice of disclaimer shall be deemed to have been served by him on the date of the order.
- (4) If on such an application the court, having regard to the matters referred to in the last foregoing subsection, is not satisfied that it is equitable to allow the lease to be wholly disclaimed, but is satisfied that it is equitable to allow it to be disclaimed as regards 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 as respects the lease comprising the disclaimable tenement or tenements but not as respects the other lease; and
 - (d) where a notice of disclaimer has been served (whether in compliance with a notice to elect or not), shall order that the notice of disclaimer shall be of no effect; and
 - (e) where a notice to elect has been served (whether a notice of disclaimer has been served in compliance therewith or not), 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 lease to be disclaimed either wholly or as respects one or more of the separate tenements comprised therein, the court—
- (a) where a notice of disclaimer has been served (whether in compliance with a notice to elect or not), shall order that the notice of disclaimer shall be of no effect;
 - (b) where a notice to elect has been served and no notice of disclaimer has been served in compliance therewith, shall order that any notice of disclaimer thereafter served by the tenant in compliance with the notice shall be of no effect;
 - (c) where a notice to elect has been served and no notice of retention has been served in compliance therewith, may on the application of the tenant order

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that, notwithstanding any failure to comply with the notice to elect, the tenant shall not be deemed to have served a notice of retention.

- (6) Unless an application is made to the court under this section with respect to a notice of disclaimer 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.

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

17 Exclusion of agricultural and mining leases

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