



# Business Tenancies Act (Northern Ireland) 1964

## 1964 CHAPTER 36

### PART I

#### SECURITY OF TENURE FOR BUSINESS, PROFESSIONAL AND CERTAIN OTHER TENANTS

##### APPLICATION TO THE LANDS TRIBUNAL FOR NEW TENANCIES

#### **8 Application to Lands Tribunal for new tenancies.**

- (1) A tenant under a tenancy to which this Part applies may apply to the Lands Tribunal for the grant of a new tenancy—
  - (a) where the landlord has served a notice to determine the tenancy in accordance with section 4; or
  - (b) where the tenant has made a request for a new tenancy in accordance with section 5.
- (2) An application made in consequence of a notice to determine served by the landlord under section 4 shall not be entertained by the Lands Tribunal unless the tenant has notified the landlord that he will not be willing at the date of termination to give up possession of the property comprised in the tenancy.
- (3) An application under this section shall not be entertained by the Lands Tribunal unless it is made not less than two nor more than four months (or with the written consent of the landlord within such longer period as the landlord may specify) after the service of the landlord's notice to determine under section 4, or as the case may be, after the making of the tenant's request for a new tenancy under section 5.

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## **9 Interim continuation of tenancies pending determination by the Lands Tribunal.**

(1) In any case where—

- (a) a notice to determine a tenancy has been served under section 4 or a request for a new tenancy made under section 5; and
- (b) an application to the Lands Tribunal has been made under section 8; and
- (c) but for this section the effect of that notice or request would be to terminate the tenancy before the expiration of the period of three months beginning with the date on which the application is finally disposed of;

the effect of the notice or request shall be to terminate the tenancy either at such date as the Lands Tribunal may direct or at the expiration of the said period of three months and not at any other time.

- (2) The reference in subsection (1)( c) to the date on which an application is finally disposed of shall be construed as a reference to the earliest date by which the proceedings on the application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired, except that if the application is withdrawn or any appeal is abandoned the reference shall be construed as a reference to the date of the withdrawal or abandonment.

## **10 Opposition by landlord to application for new tenancy.**

- (1) The grounds on which a landlord may oppose an application made under section 8 to the Lands Tribunal for a new tenancy are such of the following grounds as may be stated in the landlord's notice to determine under section 4, or as the case may be, in the landlord's notice under section 5(6), that is to say:—

- (a) where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with those obligations;
- (b) that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due;
- (c) that the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding;
- (d) that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, and—
  - (i) that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances; and
  - (ii) that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding;
- (e) where the current tenancy was created by the subletting of part only of the property comprised in a superior tenancy and the landlord is the owner of an estate in reversion expectant on the termination of that superior tenancy, that the aggregate of the rents reasonably obtainable on separate lettings of the

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holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purpose of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy;

- (f) that on the termination of the current tenancy the landlord intends—
- (i) to demolish or rebuild the premises comprised in the holding or a substantial part of those premises; or
  - (ii) to carry out substantial works of construction on the holding or part thereof;

and that the landlord could not reasonably do so without obtaining possession of the holding;

- (g) subject to subsection (3), that on the termination of the current tenancy the landlord intends that the holding will be occupied for a reasonable period for the purposes, or partly for the purposes, of a business to be carried on by him or by a company in which he has a controlling interest, or as his residence.
- (2) Where the landlord opposes an application on the ground specified in subsection (1) ( f) the Lands Tribunal may require the landlord to furnish evidence that planning permission required under any enactment has been granted to him in respect of the works which he intends to undertake.
- (3) The landlord shall not be entitled to oppose an application on the ground specified in subsection (1)( g) if the estate of the landlord, or an estate which has merged in that estate and but for the merger would be the estate of the landlord, was purchased or created after the beginning of the period of five years which ends with the termination of the current tenancy, and at all times since the purchase or creation thereof the holding has been comprised in a tenancy or successive tenancies of the description specified in section 1(1).
- (4) For the purposes of subsection (1)( g) the landlord shall be deemed to have a controlling interest in a company if he has the power to secure, by means of the holding of shares or the possession of voting power in or in relation to the company, or by virtue of any powers conferred by the articles of association or other document regulating that company, that the affairs of the company are conducted in accordance with his wishes.

## **11 Dismissal of application for new tenancy where landlord successfully opposes.**

- (1) The Lands Tribunal shall not make an order under this Part for the grant of a new tenancy where the landlord opposes an application under section 8 on grounds on which he is entitled to oppose it in accordance with section 10 and establishes any of those grounds to the satisfaction of the Lands Tribunal.
- (2) Where in a case not falling within subsection (1) the landlord opposes an application for the grant of a new tenancy on one or more of the grounds specified in paragraphs ( d), ( e) and ( f) of section 10(1) but fails to establish any of those grounds to the satisfaction of the Lands Tribunal, the Lands Tribunal, if it would have been satisfied as to any of those grounds had the date of termination specified in the landlord's notice to determine or, as the case may be, the date specified in the tenant's request for a new tenancy as the date from which the new tenancy is to begin, been such later date as

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the Lands Tribunal may determine, being a date not more than one year later than the date so specified,—

- (a) shall make a declaration to that effect, stating on which of the said grounds it would have been satisfied as aforesaid and specifying the later date determined by the Lands Tribunal as aforesaid, but shall not make an order for the grant of a new tenancy; and
- (b) if, within fourteen days after the making of the declaration, the tenant so requires, shall make an order substituting that later date for the date specified in the said landlord's notice to determine or the tenant's request, and thereupon that notice or request shall have effect accordingly.

## **12 Powers of Lands Tribunal to grant a new tenancy on application.**

- (1) Where the tenant applies under section 8 to the Lands Tribunal for the grant of a new tenancy and—
  - (a) the landlord fails to establish to the satisfaction of the Lands Tribunal any of the grounds of opposition to the grant of a new tenancy under section 10; or
  - (b) the Lands Tribunal does not make a declaration under section 11(2);
the Lands Tribunal shall make an order for the grant of a new tenancy comprising such property, at such rent and on such other terms, as are provided in the succeeding provisions of this Part.
- (2) Where a tenancy is continued or a new tenancy is granted under this Part in any premises, such continued or new tenancy shall for all purposes be deemed to be a graft upon the tenancy previously subsisting in those premises, and the interest of the tenant thereunder shall be subject to any rights or equities arising from its being such graft.
- (3) Subsection (2) shall not operate so as to extend any liability under any guarantee or other security for the payment of rent.

## **13 Property to be comprised in new tenancy.**

- (1) Subject to subsection (2) an order under section 12 for the grant of a new tenancy shall be an order for the grant of a new tenancy of the holding; and in the absence of agreement between the landlord and the tenant as to the property which constitutes the holding the Lands Tribunal shall in the order designate that property by reference to the circumstances existing at the date of the order.
- (2) Where the property comprised in the current tenancy includes other property besides the holding and the landlord requires any new tenancy ordered to be granted under section 12 to be a tenancy of the whole of the property comprised in the current tenancy the Lands Tribunal shall make an order for the grant of a new tenancy of the whole of the property comprised in the current tenancy; and in any such case references in the succeeding provisions of this Part to the holding shall be construed as references to the whole of that property.
- (3) Where the current tenancy includes rights enjoyed by the tenant in connection with the holding, those rights shall, unless the parties otherwise agree or the Lands Tribunal otherwise directs, be included in a tenancy ordered to be granted under section 12.

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## **14 Duration of new tenancy.**

- (1) Where the Lands Tribunal makes an order under this Part for the grant of a new tenancy, the new tenancy shall be—
  - (a) a tenancy for such period as may be agreed between the landlord and tenant; or
  - (b) in the absence of agreement, a tenancy for such period, not exceeding fourteen years, as may be determined by the Lands Tribunal to be reasonable in all the circumstances, and shall begin on the coming to an end of the current tenancy.
- (2) Where the period for which in accordance with this Part it is agreed or determined by the Lands Tribunal that a new tenancy should be granted thereunder will extend beyond the date on which the estate of the immediate landlord will come to an end, then subject to subsection (3), the power of the Lands Tribunal under this Part to order such a grant shall include power to order the grant of a new tenancy until the expiration of that estate and, subject to the following provisions of this section, to order the grant of such a reversionary tenancy or reversionary tenancies as may be required to secure that the combined effects of those grants will be equivalent to the grant of a tenancy for that period; and the provisions of this Part shall, subject to the necessary modifications, apply to the grant of a tenancy together with one or more reversionary tenancies as they apply in relation to the grant of one new tenancy.
- (3) The Lands Tribunal shall not under subsection (2) grant a reversionary tenancy unless the tenant has, within such time as may be prescribed by Lands Tribunal Rules, served notice of his application for a new tenancy on any person, other than the landlord, having a reversionary estate which would be affected by the grant of the reversionary tenancy.
- (4) Any person having a reversionary estate which is likely to be affected by the grant of a reversionary tenancy (including any terms or conditions attached to such grant) may in accordance with Lands Tribunal Rules apply to the Lands Tribunal to be made a party to the proceedings and, on such application being granted, may oppose the grant of the reversionary tenancy on any grounds which appear to the Lands Tribunal to be relevant and shall be bound by the proceedings.

## **15 Rent under new tenancy.**

- (1) The rent payable under a new tenancy granted by order of the Lands Tribunal under this Part shall be such as may be agreed between the landlord and the tenant.
- (2) In the absence of agreement the rent shall be such as may be determined by the Lands Tribunal to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor, there being disregarded—
  - (a) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding;
  - (b) any goodwill attached to the holding by reason of the carrying on thereat of the business of the tenant (whether by him or by a predecessor of his in that business);
  - (c) any effect on rent of any improvement—
    - (i) carried out by the tenant or a predecessor in title of his; or
    - (ii) where the tenant or a predecessor in title of his has remained in occupation of the holding during two or more tenancies, carried out

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by him or that predecessor in title during a tenancy other than the current tenancy;

other than in pursuance of an obligation to the immediate landlord;

- (d) in the case of a holding comprising premises licensed under the Licensing Acts (Northern Ireland)<sup>F1</sup>, any addition to its value attributable to the licence, if it appears to the Lands Tribunal that having regard to the terms of the current tenancy and any other relevant circumstances the benefit of the licence belongs to the tenant.

- (3) None of the provisions of the [<sup>F2</sup> Rent (Northern Ireland) Order 1978 ] shall operate to limit or affect the amount of the rent which may be fixed by the Lands Tribunal under subsection (2).

*Subs. (4) rep. by 1978 NI 20*

**F1** [1971 c.13 \(NI\)](#)

**F2** [1978 NI 20](#)

## **16 Other terms of new tenancy.**

The terms of a tenancy granted by order of the Lands Tribunal under this Part (other than terms as to the duration thereof and as to the rent payable thereunder) shall be such as may be agreed between the landlord and the tenant, or as, in the absence of agreement, may be determined by the Lands Tribunal; and in determining those terms the Lands Tribunal shall have regard to the terms of the current tenancy and to all relevant circumstances.

## **17 Carrying out of order for new tenancy.**

- (1) Where the Lands Tribunal makes an order under this Part for the grant of a new tenancy, then, unless the order is revoked under subsection (2) or the landlord and tenant agree not to act upon the order, the landlord shall be bound to execute or make in favour of the tenant, and the tenant shall be bound to accept, an agreement for a tenancy of the holding embodying the terms agreed between the landlord and the tenant or determined by the Lands Tribunal in accordance with the foregoing provisions of this Part; and where the landlord executes or makes such an agreement the tenant shall be bound, if so required by the landlord, to execute a counterpart or duplicate thereof.
- (2) If the tenant, within fourteen days after the making of an order under this Part for the grant of a new tenancy, applies to the Lands Tribunal for the revocation of the order, the Lands Tribunal shall revoke the order; and where the order is so revoked, then, if it is so agreed between the landlord and the tenant or determined by the Lands Tribunal, the current tenancy shall continue beyond the date at which, but for this subsection, it would have come to an end, for such period as may be so agreed or determined to be necessary to afford to the landlord a reasonable opportunity for re-letting or otherwise disposing of the premises which would have been comprised in the new tenancy; and while the current tenancy continues by virtue of this subsection it shall not be a tenancy to which this Part (other than this subsection and subsection (3)) applies.
- (3) Where an order is revoked under subsection (2) any provision thereof as to payment of costs shall not cease to have effect by reason only of the revocation; but the Lands Tribunal may, if it thinks fit, revoke or vary any such provision or, where no costs have been awarded in the proceedings for the revoked order, award such costs.

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- (4) An agreement made under this section, where the estate of the landlord is subject to a mortgage, shall be deemed to be one authorised by section 18 of the Conveyancing Act 1881 (which confers certain powers of leasing on mortgagors in possession), and subsection (13) of that section (which allows those powers to be restricted or excluded by agreement) shall not have effect in relation to such an agreement.
- (5) In subsection (4) the references to section 18 of the Conveyancing Act 1881 shall be construed as a reference to that section as modified by subsection (10) of section 3 of the Conveyancing Act 1911 and, so far as it relates to the powers of leasing, by subsection (11) of the said section 3.
- (6) Where a landlord or tenant refuses, neglects or fails within a reasonable time to execute or accept any document which he is bound under the provisions of this section to execute or accept, the Lands Tribunal may, on the application in accordance with Lands Tribunal Rules of any interested party, nominate some proper person to execute or accept or join in executing or accepting the document on behalf of the person in default, and the person so nominated may recover summarily as a civil debt due to him by the person in default any fees, costs or other expenses incurred by him in executing or accepting that document.

## **18 Powers of Lands Tribunal where landlord cannot be found or is under a disability.**

Where, on an application under this Part for the grant of a new tenancy, the landlord or any landlord cannot be found or is under a disability or is acting in a fiduciary capacity, the Lands Tribunal may make such order as it may think proper to enable the new tenancy to be granted notwithstanding that impossibility of being found, disability or fiduciary capacity, as the case may be.

## **19<sup>F3</sup> Compensation where order for new tenancy is precluded on certain grounds.**

- (1) Where on the making of an application under section 8, the Lands Tribunal is precluded (whether by subsection (1) or subsection (2) of section 11) from making an order for the grant of a new tenancy by reason of any of the grounds specified in paragraphs (e), (f) and (g) of subsection (1) of section 10, and not of any grounds specified in any other paragraph of that subsection, then, subject to the provisions of this Part, the tenant shall be entitled on quitting the holding to recover from the landlord by way of compensation an amount determined in accordance with the following provisions of this section.
- (2) The said amount shall be as follows, that is to say:—
  - (a) where the conditions specified in subsection (3) are satisfied it shall be twice the net annual value of the holding;
  - (b) in any other case it shall be the net annual value of the holding.
- (3) The said conditions are—
  - (a) that during the whole of the fourteen years immediately preceding the termination of the current tenancy, premises being or comprised in the holding have been occupied for the purposes of a business carried on by the occupier or for those and other purposes;
  - (b) that, if during those fourteen years there was a change in the occupier of the premises, the person who was the occupier immediately after the change was

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the successor to the business carried on by the person who was the occupier immediately before the change.

- (4) Where the Lands Tribunal is precluded from making an order for the grant of a new tenancy under this Part in the circumstances mentioned in subsection (1), the Lands Tribunal shall, on the application of the tenant, certify that fact.
- (5) For the purposes of subsection (2) the question of net annual value of the holding shall be referred to the Commissioner of Valuation and shall be decided as follows:—
  - (a) the net annual value shall be that value shown in the valuation list in force under the Valuation Acts at the date on which the landlord's notice under section 4 or, as the case may be, section 5(6), is served;
  - (b) where no such value is so shown with respect to the holding but such a value or values is or are shown with respect to premises comprised in or comprising the holding or part of it, the net annual value of the holding shall be taken to be such value as is certified by the Commissioner of Valuation to be attributable to the value or values so shown;
  - (c) where the net annual value of the holding cannot be ascertained in accordance with the foregoing provisions of this subsection, it shall be taken to be the value which the Commissioner of Valuation certifies would on a proper assessment be the value to be entered in the said valuation list as the net annual value of the holding.
- (6) The Ministry of Finance may by regulations made subject to negative resolution prescribe the procedure in connection with references under subsection (5).
- (7) In this section the reference to the termination of the current tenancy is a reference to the date of termination specified in the landlord's notice to determine under section 4, or, as the case may be, the date specified in the tenant's request for a new tenancy as the date from which the new tenancy is to begin.

F3    1973 NI 21
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## 20      **Restriction on agreements excluding provisions of Part I.**

- (1) So much of any agreement relating to a tenancy to which this Part applies (whether contained in the instrument creating the tenancy or not) as purports directly or indirectly by any means whatsoever to preclude the tenant from making an application or request under this Part or provides for the termination or the surrender of the tenancy in the event of his making such an application or request or for the imposition of any penalty, restriction or disability on the tenant in that event, shall be void.
- (2) Where—
  - (a) during the whole of the five years immediately preceding the date on which the tenant under a tenancy to which this Part applies is to quit the holding, premises being or comprised in the holding have been occupied for the purposes of a business carried on by the occupier or for those and other purposes; and
  - (b) if during those five years there was a change in the occupier of the premises, the person who was the occupier immediately after the change was the successor to the business carried on by the person who was the occupier immediately before the change;



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any agreement (whether contained in the instrument creating the tenancy or not and whether made before or after the termination of that tenancy) which purports to exclude or reduce compensation under section 19 shall to that extent be void, so however that this subsection shall not affect any agreement as to the amount of any such compensation which is made after the right to compensation has accrued.

- (3) In a case not falling within subsection (2) the right to compensation conferred by section 19 may be excluded or modified by agreement.

## **21 Compensation for misrepresentation, etc., or landlord's failure to fulfil intentions.**

- (1) Where under this Part the Lands Tribunal refuses an order for the grant of a new tenancy, and it is subsequently made to appear to the Lands Tribunal that the Lands Tribunal was induced to refuse the grant by misrepresentation or by the concealment of material facts or that the intentions of the landlord as represented by him to the Lands Tribunal regarding any of the matters specified in section 10(1)(e)(f) or (g) have not without reasonable excuse been fulfilled, the Lands Tribunal may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the refusal and any such order shall be enforceable as if it were an order made by a county court which had jurisdiction to make such an order.
- (2) In subsection (1) the expression “the landlord” means the person opposing an application for the grant of a new tenancy, and the expression “the tenant” means the person to whom the grant of a new tenancy was refused.

## **22 Penalties for fraud or the wilful concealment of material facts.**

- (1) Any person who fraudulently or by the wilful concealment of material facts induces the Lands Tribunal to grant, or to refuse to grant, a new tenancy under this Part shall, without prejudice to the provisions of the [<sup>F4</sup> Perjury (Northern Ireland) Order 1979 ], be guilty of an offence and shall be liable—
- (a) on summary conviction, to a fine not exceeding[<sup>F5</sup> level 3 on the standard scale] or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment;
  - (b) on indictment, to[<sup>F5</sup> an unlimited fine] or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.
- (2) For the purposes of any proceedings under this section, a certificate under the hand of a member of the Lands Tribunal that, in any proceedings of the Lands Tribunal heard before him (whether sitting alone or otherwise), a statement of material facts as set out in the certificate was made to the Tribunal or that any material facts as set out in the certificate were not disclosed to the Tribunal, shall, until the contrary is shown, be accepted as proof that such statement was made, or, as the case may be, that such facts were not disclosed to the Tribunal.

**F4** 1979 NI 19

**F5** 1984 NI 3

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