



Landlord and Tenant (War Damage) (Amendment) Act 1941

1941 CHAPTER 41 4 and 5 Geo 6

Miscellaneous

10 Application of principal Act to ground leases.

- (1) The principal Act shall apply to ground leases in like manner as it applies to other leases, and accordingly sections thirteen and fourteen of that Act shall cease to have effect.
- (2) A notice of disclaimer, a notice of retention, or a notice to elect may be served under section four of the principal Act in respect of war damage to land comprised in a ground lease, whether the damage occurred before or after the passing of this Act.
- (3) The following provisions shall apply with respect to notices served before, or proceedings pending at, the passing of this Act:—
 - (a) a notice of disclaimer, a notice of retention or a notice to elect served before the passing of this Act in relation to any lease shall not be deemed to be of no effect on the ground that the lease is a ground lease, unless the court has so determined before the passing of this Act under section fourteen of the principal Act, or the parties have so agreed (whether expressly or impliedly) before the passing of this Act, and in that case the serving of the said notice shall be without prejudice to the serving of a new notice;
 - (b) where proceedings under section thirteen or section fourteen of the principal Act are pending at the passing of this Act they shall be discontinued upon such terms as the court thinks just, and, in the case of proceedings under the said section fourteen relating to a notice of disclaimer or a notice to elect, the court may extend the period allowed under the principal Act within which a notice to avoid disclaimer may be served by the landlord, or, as the case may be, the notice to elect is to be complied with by the tenant, to such date as the court may fix;

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but nothing in this section shall affect any order of the court made before the passing of this Act under section thirteen of the principal Act, and the court shall not exercise its powers under paragraph (a) of subsection (1) of section nine of the principal Act—

- (i) in a case where a notice of disclaimer in respect of a lease which the court is satisfied is a ground lease has been served before the passing of this Act, so as to make the surrender of the lease, or of any sub-lease derived out of the term created by the lease, take effect on a date earlier than the date when the notice was served; or
- (ii) in a case where a notice of disclaimer is served after the passing of this Act in respect of such a lease as aforesaid, so as to make the surrender of the lease or of any such sub-lease take effect on a date prior to the passing of this Act.

11 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.

12 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.

13 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 the principal Act (which relates to the effect of a notice of disclaimer); or
- (b) the rent payable under any lease ceases to be payable for any period by virtue of section ten or section eleven of the principal Act (which relate to the effect of a notice of retention and a notice to avoid disclaimer respectively), or, in

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the case of a short tenancy to which section one 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.

14 Determination of disputes as to whether premises have 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.

15 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 under the principal Act;
- (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 the principal 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, whether under the ^{M1}Fires Prevention (Metropolis) Act 1774 or otherwise, 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.

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Marginal Citations

M1 1774 c. 78.

16 Proceedings transferred to High Court to be assigned to special judges.

Where any proceedings under this Act or under the principal Act are transferred into the High Court, they shall, so far as is practicable and subject to rules of court and to any power of transfer from one judge to another, be heard and determined in the first instance by one of the judges nominated under section ninety-four of the ^{M2}War Damage Act 1941.

Marginal Citations

M2 1941 c. 12.

17 Interpretation.

- (1) In this Act the expression “the principal Act” means the ^{M3}Landlord and Tenant (War Damage) Act 1939.
- (2) In this Act and in the principal Act the expression “war damage” shall have the meaning assigned to it by subsections (1) and (2) of section eighty of the ^{M4}War Damage Act 1941 and subsection (3) of that section shall apply for the purposes of this Act and the principal Act as it applies for the purposes of the War Damage Act 1941; and the definition of the said expression in the principal Act shall cease to have effect.
- (3) It is hereby declared for the removal of doubt that the expression “landlord”, as defined by section twenty-four of the principal Act includes, in relation to any lease, a mortgagee of the lessor’s interest who is in possession of that interest or has appointed a receiver of the rents and profits thereof.
- (4) In subsection (2) of section ten of the principal Act (which defines the expression “rent”), for the words “any periodical sum payable by the tenant in connection with the occupation of the land comprised in the lease” there shall be substituted the words “any periodical sum payable by the tenant to the landlord in connection with his tenancy”, and the references to the definition of the said expression in sections eleven and twelve of the principal Act shall be construed accordingly.
- (5) Where the land comprised in a lease as respects which a conditional notice of retention is served is part of a hereditament within the meaning of Part I of the ^{M5}War Damage Act 1941, any reference in this Act to a payment made under Part I of that Act in respect of the war damage to the land shall be construed as a reference to so much of any payment made in respect of the war damage to the hereditament as is attributable to the war damage to the land.
- (6) References in this Act to buildings or works on land shall be construed as including references to buildings or works under and over land.

Marginal Citations

M3 1939 c. 72.

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- M4** 1941 c. 12.
- M5** 1941 c. 12.

18 ^{F1}

Textual Amendments

- F1** S. 18 repealed by Northern Ireland Constitution Act 1973 (c. 36), Sch. 6 Pt. I

19 Citation and construction.

This Act may be cited as the Landlord and Tenant (War Damage) (Amendment) Act 1941, and shall be construed as one with the principal Act, and this Act and that Act may be cited together as the Landlord and Tenant (War Damage) Acts 1939 and 1941.

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