

# CHAPTER L4 - LANDLORD AND TENANT LAW

## ARRANGEMENT OF SECTIONS

### PART I

#### *Relationship of Landlord and Tenant*

#### SECTION

1. Application.
2. Nature of tenancy.
3. Subject matter of tenancy.
4. How tenancy may be created.

### PART II

#### *Who may Create a Tenancy*

5. Holder of right of occupancy.
6. Tenants in general.
7. Yearly tenants.
8. Tenants at will.
9. Tenants at sufferance.
10. Holders of powers of attorney.
11. Vesting and assignment of powers.
12. Power to create tenancy in possession or in reversion.
13. Joint owners.
14. Infants.
15. Property owners before mortgage.
16. Right to create tenancy of the mortgage property.
17. Agents.

### PART III

### *Who may be Granted a Tenancy*

- 18. Any person may be a tenant.
- 19. Infants.
- 20. Joint tenants.
- 21. Partnerships.
- 22. Lunatics.
- 23. Enemy aliens.

## **PART IV**

### *Contract to Create a Tenancy*

- 24. Definitions.
- 25. Essential requirements.
- 26. Part performance.
- 27. Oral rescission.
- 28. Registration of contract for a sub-lease.
- 29. Remedies for breach of contract for a sub-lease.
- 30. Conditions implied to a contract from a sub-lease.

### *Possession Based on Contract or Void Sub-lease*

- 31. Possession by virtue of contract for a sub-lease.
- 32. Possession by virtue of void sub-lease.
- 33. Contract for sub-lease implies usual covenants.
- 34. Usual covenants.
- 35. Essential requirements of a sub-lease.

### *Sub-leases and other Tenancies*

- 36. Tenancy for three years or less.
- 37. Tenancy for more than three years.

- 38. Anything of the essence of property sub-let passes with it.
- 39. Execution of sub-lease.

#### *Void and Voidable Tenancies*

- 40. Tenancy agreement obtained by fraud.
- 41. Tenancy for unlawful purpose.
- 42. Money paid under void tenancy.
- 43. Where purpose may be carried out in legal or illegal manner.
- 44. Mistake as to tenant's identity.
- 45. Sub-lease may be void if altered.
- 46. Rectification of error in tenancy.
- 47. Rescission for fraud, etc.
- 48. Rescission for innocent misrepresentation.
- 49. Rescission for mistake.

### PART V

#### *Types of Tenancy*

- 50. Tenancy for a term of years.
- 51. Tenancy from year to year.
- 52. Yearly tenancy by operation of law.
- 53. Tenancy for less than a year.

#### *Tenancy at Will*

- 54. Tenancy at will defined.
- 55. How tenancy at will arises.
- 56. Express creation of tenancy at will.
- 57. Tenancy at will by operation of law.
- 58. Consent of landlord essential.

## SECTION

- 59. Determination of tenancy at will.
- 60. Demand by landlord.
- 61. Rights of parties at end of tenancy at will.

### *Tenancy on Sufferance*

- 62. Tenancy on sufferance defined.
- 63. Position of tenant on sufferance.

### *Rent*

- 64. Rent defined.
- 65. Premium.
- 66. Rent payable as due.
- 67. Reservation of rent.
- 68. Whole tenancy void if any part unlawful.
- 69. Commencement of rent.
- 70. "Net rent".
- 71. Rent must be reserved to the landlord.
- 72. Rent etc., to run despite death of landlord or tenant.
- 73. Power to grant tenancy at any rent.
- 74. Liquidated damages.
- 75. When rent becomes due.
- 76. When rent may be demanded or recovered.
- 77. Payment in advance.
- 78. Person to whom rent is payable.
- 79. Effect of payment of rent.
- 80. Payment by assignee.

- 81. Payment by a third party.
- 82. Deductions and refunds by mistake of law.
- 83. Agreement to reduce rent.
- 84. Rent to be paid in lawful currency.
- 85. Payment to landlord in person.
- 86. Payment of ground rent by tenant.

#### *Apportionment of Rent*

- 87. When rent is apportioned.
- 88. Eviction of tenant and apportionment.
- 89. Apportionment of rent in respect of time.
- 90. Enforcement of apportioned rent.

#### *Continuance of Tenant's Liability for Rent*

- 91. Liability of tenant for rent after assignment of tenancy.
- 92. Liability of tenant for rent after quitting possession.
- 93. Liability after destruction of property.

### SECTION

- 94. Rent suspended when tenant evicted.
- 95. No rent where tenancy is for illegal purposes.

#### *Recovery of Rent by Action*

- 96. Who may be parties.
- 97. Action by or against representatives or assigns.
- 98. Joint and several liability for rent.
- 99. Personal representatives of landlord and tenant.
- 100. Tenant's defences.

#### *Payment for Use and Occupation*

- 101. Use of occupation implies promise to pay.
- 102. Who is liable for payment for use and occupation.
- 103. Who is entitled to payment for use and occupation.
- 104. Amount payable for use and occupation.
- 105. Action for use and occupation.
- 106. Where reversion is surrendered.
- 107. Apportionment of conditions on severance.
- 108. Rent and benefit of sub-lessee's covenants to run with the reversion.
- 109. Obligation of landlord's covenants to run with reversion.

#### *Licences*

- 110. Effect of licences granted to sub-lessees.
- 111. No fine to be exacted for licence to assign.

#### *Miscellaneous*

- 112. Sub-lessee to give notice of ejectment to sub-lessor.
- 113. Restrictions on and relief against forfeiture of sub-leases and sub-underleases.
- 114. Waiver of covenant in a sub-lease.
- 115. Abolition of interests termini, and as to reversionary sub-leases and sub-leases for lives.
- 116. Surrender of a sub-lease without prejudice to sub-underlease with a view to the grant of new sub-lease.
- 117. Provision as to attornments by tenants.
- 118. Sub-lease invalidated by reason of non-compliance with terms of powers under which they are granted.

#### *Rights and Liabilities on Determination of Tenancy*

- 119. Duty of tenant to give up possession.
- 120. Duty of tenant to eject sub-tenant.
- 121. Tenant's liability by holding over.
- 122. Repeal and savings.
- 123. Definitions.
- 124. Citation.

## LANDLORD AND TENANT LAW

**A Law to regulate the relationship of landlords and tenants generally and matters connected therewith.**

[KWS 25 of 1991.]

[Date of commencement: *15<sup>th</sup> June*, 1989]

### PART I

#### *Relationship of Landlord and Tenant*

##### **1. Application**

(1) This part of this Law shall apply to all tenancies, other than tenancies created under Customary Law or Islamic Law, in respect of property situated in the State.

(2) For the purpose of this section, a tenancy is created under Customary or Islamic Law where the right or other interest of the landlord in the property concerned is founded upon Customary or Islamic Law and there is no intention, express or implied on the part of the parties, that the tenancy shall be governed otherwise than by Customary or Islamic Law.

(3) In deciding whether or not the parties to a tenancy intend that such tenancy shall be governed otherwise than by Customary or Islamic Law, regard shall be had to all

the circumstances of the transaction including the parties to it, the nature of the property which is the subject matter of the tenancy, the manner in which the tenancy is created, and, where it is created in writing, the form of words used.

(4) For avoidance of doubt, this Law shall apply to every tenancy by which a building or part thereof is let to any person for dwelling purposes, whether or not any part of such building is also used for other purposes than dwelling.

(5) This Law shall, subject to the Land Use Act and any other written law in force in the State, apply to the State.

(6) This Law shall, except where otherwise expressly provided, apply to tenancies created before or after the commencement of this Law.

## **2. Nature of tenancy**

(1) Subject to this Law or any other written law in force in the State, there shall exist a relationship of landlord and tenant where an interest in property is created in favour of a person out of an interest vested in another person in the same property.

(2) An interest created under subsection (1) of this section is called "**tenancy**"; the person out of whose interest a tenancy is created is called "**landlord**"; the person in whose favour a tenancy is created is called "**tenant**"; and the duration of a tenancy is called "**term**".

(3) Where a tenancy is created by deed out of a right of occupancy for a determinate term, with or without option for renewal, it is called a "sub-lease" or "demise"; the person who creates it is called a "sub-lessor" and the person in whose favour it is created is called a "**sub-lessee**" or "**underlessee**"; also the document creating it is called a "**sub-lease**" or an "**underlease**".

(4) Where a tenancy is created by deed out of an existing sub-lease and is for a determinate term, with or without option for renewal, it is called a "**subunderlease**" or "**subdemise**"; the person who creates it is called the "**sub-underlessor**" and the person in



whose favour it is created is called the "**sub-underlessee**"; also the document creating it is called a "**sub-underlease**".

### 3. **Subject matter of tenancy**

(1) Subject to any written law in force in the State—

(a) a tenancy may be created of any land or building thereof, and such tenancy shall carry with it a right of exclusive possession of the thing let;

(b) a tenancy may be created of an interest in land or building so that the tenant thereby acquires a right to some specified use of or benefit from or privilege incident to such land or building without acquiring a right of exclusive possession of the land or building concerned.

(2) For the purposes of this section—

"**building**" means any structure attached to land or any part of such structure, whether the division is vertical, horizontal or in any other way;

"**land**" means the surface of the earth and all successive strata below it but does not include minerals; and

"**tenancy**" includes a subtenancy.

### 4. **How tenancy may be created**

(1) A tenancy may be created by act of parties or may arise by operation of law.

(2) Subject to this Law and any other written law now or hereafter in force in the State, a tenancy may be created orally, or in writing under hand, or by deed.

## PART II

### *Who may Create a Tenancy*

### 5. **Holder of right of occupancy**

The holder of a right of occupancy may, subject to this Law and any other law in force in the State, create a tenancy thereof for any term and subject to any conditions and covenants he thinks fit.

## **6. Tenants in general**

(1) In the absence of an agreement to the contrary, and subject to the landlord's consent being first obtained, a tenant other than a tenant at will or at sufferance may, out of his tenancy and as an incident thereto create a tenancy of lesser duration in favour of third party. A tenancy so created is called a subtenancy.

(2) Where a tenant purports to create in favour of a third party a subtenancy which is of the same duration as the residue of his own tenancy, he shall be deemed to assign his tenancy to such third party who shall thereafter be a tenant of the assignor's landlord.

## **7. Yearly tenants**

(1) Notwithstanding subsection (2) of the last foregoing subsection but subject to any contrary agreement in his tenancy the landlord's consent being first obtained, a tenant who holds a yearly tenancy may create in the same property the subject matter of his own tenancy—

(a) by deed, a tenancy of one or more years certain; or

(b) by deed or otherwise, a yearly tenancy.

(2) A tenancy created under subsection (1) of this section shall be deemed to be a subtenancy and shall co-exist with the yearly tenancy of the person creating it.

## **8. Tenants at will**

(1) A person occupying property as a tenant at will cannot create any subtenancy out of such tenancy and any subtenancy purported to be created by him shall be void as regards his landlord.

(2) Where a person occupying property as a tenant at will purports to create a

subtenancy out of such tenancy and gives actual possession to the purported subtenant, he shall thereafter be estopped from denying the existence of that subtenancy which shall be deemed to exist as between him and the purported subtenant; but this shall be without prejudice to the right of the original landlord to recover the property.

#### **9. Tenants at sufferance**

The provisions of the last foregoing section shall apply mutatis mutandis to a tenant at sufferance.

#### **10. Holders of powers of attorney**

(1) A beneficial owner of property or interest therein may by a power of attorney, will or otherwise confer upon another person the right to create a tenancy of such property or interest in favour of another person.

(2) A holder of a power given under the last foregoing subsection may, within the limits authorised and subject to the conditions or other stipulations imposed by such power, create a tenancy of property the subject matter of such power:

Provided that where a person holding a power creates a tenancy in excess of the term authorised by the power, such tenancy shall if it would otherwise be valid, be valid for the authorised period and void as to the excess period.

(3) A holder of a power may create a tenancy for a term which is less than that authorised by the power, and may create a term for the full authorised period determinable by notice or otherwise.

(4) Where under a power a tenancy is created with a covenant to renew at the end of the term so created such covenant shall, in the absence of a contrary provision in the power itself, be enforceable against the person creating the tenancy or the reversioner if it stipulates that renewal shall be at the best rent obtainable at the time of renewal.

#### **11. Vesting and assignment of powers**

Where power to create tenancies is given to a donee and he assigns such power in the absence of a contrary intention in the document creating it, it—

- (a) may be exercised by the donee as often as it shall be necessary to do so; and
- (b) shall run with the property the subject matter of such power; and
- (c) shall vest in the donee's personal representative or assignee and every successive personal representative or assignee of the latter.

## **12. Power to create tenancy in possession or in reversion**

(1) A general power given to a donee to create tenancies without saying whether tenancies in reversion as well as those in possession may be created authorises the donee to create tenancies in possession only.

(2) Where a donee is given power expressly to create tenancies in possession and part of the property the subject matter of the power is in possession while part is in reversion, the donee may immediately create a tenancy in possession both of the part in possession and of the part in reversion.

## **13. Joint owners**

(1) Where a property or interest therein is owned by two or more persons jointly, a tenancy of such property or interest may be created if, but only if, it is created or concurred in by all the joint owners.

Provided however that where one of several joint owners is an infant or is otherwise incapable of acting for himself, his parent, guardian or committee or, failing these, the High Court may act on his behalf in creating or concurring in the creation of a tenancy.

(2) Nothing in the foregoing subsection shall affect the provisions of any written law now or hereafter in force in the State regarding trusts for sale and powers of trustees for sale.

#### **14. Infants**

An infant cannot create a tenancy but his parent or guardian or failing these the High Court may do so on his behalf.

#### **15. Property owners before mortgage**

Where the owner of property or interest therein creates a tenancy of such property or interest in favour of one person and thereafter mortgages the same to another person then in the absence of agreement to the contrary in the mortgage instrument—

- (a)* such a tenancy shall be and remain valid against the mortgages;
- (b)* the mortgagor shall have a right to demand and receive rents from the tenant and a receipt issued by him shall be effective discharge of the tenant's duty to pay rent in respect of the period covered by such receipt;
- (c)* the mortgagee may at any time during the continuance of the mortgage terminate the mortgagor's right to receive such rents by giving notice of the mortgage to the tenant and demanding that rents be thereafter paid to him;
- (d)* on giving such notice the mortgagee becomes entitled to all subsequent rents as well as all arrears of rent due and unpaid in respect of the tenancy since the commencement of the mortgage and may recover the same from the tenant in an action for use and occupation of the property;
- (e)* where the tenancy commenced before the mortgagor acquired the property concerned and his acquisition of such property occurred at the same time as the execution of the mortgage deed, then the title or other interest of the mortgagor shall be deemed for all purposes to

commence prior to the commencement of the mortgage term;

- (f) if by the terms of the mortgage deed the mortgagor is prohibited from creating tenancies of the property concerned, any tenancy he created previously shall if at the time the mortgage is executed the tenant has not gone into possession, become void as against the mortgagee.

#### **16. Right to create tenancy of the mortgage property**

(1) The rights of parties to a mortgage to create tenancies of the mortgage property after the execution of such mortgage shall be governed by any written law now or hereafter in force in the State concerning mortgages or where such law is validly excluded by the parties by the express intention of such parties.

(2) Where a mortgagor lawfully creates or agrees to create a tenancy of the mortgage property after the mortgage has been executed the person in whose favour such a tenancy is or is about to be created has a right to redeem the mortgage.

(3) Subject to any law in force in the State and in the absence of an agreement to the Contrary—

- (a) where a mortgagor in possession creates a tenancy of the mortgage property after the mortgage has been executed, the tenant shall be entitled to pay rents to the mortgagor and otherwise regard him as landlord whether or not he has notice of the existing mortgage and shall also be estopped from denying the mortgagor's the right to create such tenancy;
- (b) where a tenancy is created as in paragraph (a) of this subsection the mortgagee may, on the mortgage debt becoming due and unpaid, give notice of the mortgage to the tenant and demand that thereafter all rents and profits shall be paid to him or at his direction;

- (c) on a mortgagee giving notice to the tenant under the last foregoing paragraph, and not before, he shall become for all purposes the landlord of such tenant and shall therefore be entitled to all rights and remedies and subject to all duties and liabilities of a landlord in law and equity *vis-a-vis* such tenant;
- (d) for the purpose of ascertaining the appropriate period of notice to quit when a mortgagee has become a landlord under the last foregoing paragraph, the tenancy concerned shall be deemed to have commenced at the same time as the tenancy granted by mortgagor;
- (e) where a mortgagor, before or after the execution of a mortgage lets a house or other premises with furniture he shall after the mortgagee has given notice to the tenant under (b) be entitled to a reasonable rent for such furniture and may recover it by action out of any rents due to be paid by the tenant;
- (f) a mortgagee shall have no right to create a tenancy of the mortgage property unless and until he shall have foreclosed the mortgage.

## 17. Agents

(1) An agent may, if and to the extent he is duly authorised by his principal, make an agreement to create a tenancy or himself create a tenancy in the name and on behalf of his principal. An agreement so made or tenancy so created shall bind the principal. Whether or not a person is an agent or an agent who is duly authorised are questions of fact to be determined by evidence having regard to all relevant circumstances.

(2) For the purpose of this section, an agent has no power to create a tenancy by deed unless he was appointed agent by deed.

(3) A principal may adopt and ratify a tenancy or an agreement to create a

tenancy made by his agent without any or sufficient authority or made in the name of the agent alone.

(4) Tenancy or agreement adopted and ratified under subsection (3) shall bind both the principal and the tenant or intended tenant; also, where an agent without sufficient authority creates a tenancy by deed, adoption and ratification may be done by the principal delivering the deed to the tenant or doing any act which is tantamount to redelivery; and in other cases, adoption and ratification may be done by the principal giving a clear indication by word or action that he approves of the tenancy of agreement so made.

(0) The Law from time to time in force in the State regarding warranties and representations by agents shall apply to transactions carried out by an agent under this section.

### PART III

#### *Who may be Granted a Tenancy*

#### **18. Any person may be a tenant**

Subject to this Law and any other written law in force in the State any person may be granted a tenancy of any property situated in the State.

#### **19. Infants**

(1) An infant shall be incapable of holding a legal interest under a deed of sub-lease or subunderlease.

(2) Where a deed of sub-lease or subunderlease is executed by a sub-lessor in favour of an infant for his own benefit, such instrument shall not operate to transfer any legal interest to the infant but shall operate as an agreement for valuable consideration to execute a sub-lease or subunderlease as the case may be in the name of one or more adults on trust for the infant, and the sub-lessor or subunderlessor as the case may be shall



meanwhile hold the legal interest intended to be created in trust for the infant.

Provided that nothing in the foregoing subsections of this section shall affect any beneficial interest in the property the subject matter of the sub-lease or subunderlease intended to be thereby created for the infant.

(3) Where a sub-lease of sub-underlease is executed in favour of an infant jointly with another person of full age such instrument shall operate to vest any legal interest intended to be transferred thereby to that other person on trust for himself and the infant but not so as to sever the joint tenancy in any beneficial interest arising from such transaction.

(4) Where a sub-lease or subunderlease is executed in favour of an infant jointly with another person of full age on any trust, such instrument shall be read as if the name of the infant were omitted but without prejudice to any beneficial interest in the property the subject matter of sub-lease or subunderlease intended to be thereby provided for the infant.

## **20. Joint tenants**

(1) Property may be let to two or more persons as joint tenants.

(2) Where one joint tenant dies the survivor shall become entitled to the residue of such tenancy to the exclusion of the personal representatives of the deceased joint tenant.

(3) Where under the terms of a joint tenancy, the liability of the tenants is both joint and several, the personal representatives of a deceased joint tenant shall not be liable at the suit of any person for any breach of covenant or other claim arising after the death of that joint tenant.

(4) Where under the terms of a joint tenancy, the liability of the tenants is merely joint but not also several, liability of a deceased joint tenant shall continue for the duration of such tenancy and shall pass to his personal representatives.

(5) Subject to this section, one joint tenant is entitled to contribution from the

other in respect of claims or liabilities with regard to their joint tenancy.

## **21. Partnerships**

Where property is let to a partnership all those partners who are parties to the tenancy transaction shall hold the property as joint tenants in trust for the partnership, and the beneficial interest in the property shall belong to all the partners jointly.

## **22. Lunatics**

A person of unsound mind may be granted a tenancy, but he shall not be sued directly or indirectly upon a tenancy or agreement for a tenancy unless the same is necessary for him.

## **23. Enemy aliens**

Any enemy alien shall not be capable of taking a tenancy:

Provided that nothing in this section shall affect the validity of or liability for rent arising under a tenancy which was created before a tenant became an enemy alien.

# **PART IV**

## *Contract to Create a Tenancy*

## **24. Definitions**

- (a)* a contract to create a tenancy is a legally enforceable agreement whereby one party agrees to create a tenancy in favour of the other and that other agrees to accept such tenancy;
- (b)* where a contract is to create a sub-lease, it is called a contract for a sub-lease.

## **25. Essential requirements**

- (1)* No contract for a sub-lease may be enforced in any court of law unless such

contract or some memorandum or note thereof is in writing and signed by the party to be charged or his agent and contains all essential particulars.

(2) A contract for a sub-lease shall be deemed to contain all essential particulars where such contract or a memorandum or note of it contains—

- (a) the name of the sub-lessor or his agent;
- (b) the name of the sub-lessee or his agent;
- (c) the name or other sufficient description of the property to be sub-let;
- (d) the term to be created; and
- (e) the time when the sub-lease is to commence, or sufficient information from which such time can be determined; and
- (f) the rent to be paid or the manner in which such rent is to be determined.

(3) A contract for a sub-lease or a memorandum or note of it may be contained in one document, or in any number of documents provided these have sufficient reference one to the other and, when read together, show a clear intention by the parties to make such a contract.

(4) Nothing in this section shall prevent parties to a contract for a sub-lease from including other lawful terms and covenants in such contract.

## **26. Part performance**

Notwithstanding the provisions of subsection (1) of the last foregoing section, where a contract for a sub-lease or a memorandum or note of it is in writing and is duly signed but does not contain all the essential particulars required by subsection (2) of the said section, such contract may nevertheless be enforced if by virtue of it the intended sub-lessee has made payment to the intended sub-lessor by way of rent or premium or has taken possession of all or part of the property to be sub-let.

## **27. Oral rescission**

A contract for a sub-lease may be wholly but not partially, rescinded by a subsequent contract which is not in writing, and when so rescinded shall cease to be enforceable in any court of law.

## **28. Registration of contract for a sub-lease**

(1) A contract for a sub-lease may be registered under any written law in force in the state requiring or permitting registration of instruments affecting land or prescribed by the Law under which it is done.

(2) This section shall apply to any contract for assignment or for renewal of a sub-lease or subunderlease.

## **29. Remedies for breach of contract for a sub-lease**

(1) Where a party to a contract for a sub-lease fails to perform his obligations under it, he shall, provided he signed the contract or a memorandum or note of it, be liable to pay damages to the other party for such breach, or he may be compelled to perform such obligations.

(2) Subject to any law in force in the State regarding damages and specific performance, a party may be ordered both to perform his obligations under a contract for a sub-lease and to pay damages for loss caused by his delay in performing such obligations.

(3) Where a party is ordered to perform his obligations under a contract for a sub-lease and he fails to do so within a reasonable time, the other party may ask for and obtain an order rescinding the contract; and in such a case the party who thus obtains rescission shall not be awarded damages as well.

(4) An intending tenant who has made advance payment of rent or premium by virtue of a contract for a sub-lease shall have a right to recover such payment if the contract is broken; but this shall not affect the right of the other party to make any claim,

counterclaim or set-off to which he may be otherwise entitled.

**30. Conditions implied to a contract from a sub-lease**

(1) Where parties make a contract for a sub-lease, the intended landlord shall be deemed to agree to create a valid sub-lease, and the intended tenant shall be deemed to agree to accept such sub-lease.

(2) A party who makes a contract to create a sub-lease shall be deemed to warrant that he has title to create such sub-lease, and shall be liable for damages for breach of that warranty if in fact he does not have such title.

(3) Subject to any express agreement to the contrary, a contract for a sub-lease shall be deemed to contain an agreement by the intending landlord to create and by the intending tenant to accept a sub-lease with vacant possession of the property concerned.

*Possession Based on Contract or Void Sub-lease*

**31. Possession by virtue of contract for a sub-lease**

Where an intending tenant under a contract for a sub-lease by virtue of such contract goes into possession of the property concerned, he shall, if specific performance of such contract would lawfully be ordered, be deemed to be a tenant under the same terms as if the sub-lease had been duly created.

**32. Possession by virtue of void sub-lease**

A document which is duly executed as a sub-lease and which would be valid if made by deed but is made under hand shall nevertheless be deemed to contain a legally enforceable contract to create a sub-lease on the terms contained in it, and specific performance of such contract may be ordered.

**33. Contract for sub-lease implies usual covenants**

(1) Where parties make a contract for a sub-lease they shall be deemed to agree, subject to express provisions to the contrary, that the sub-lease to be created shall contain

covenants and that these shall be covenants which are usual for the type of sub-lease contemplated and in the area where the property concerned is situated, and that such sub-lease shall not be subject to any existing covenants which are not usual as aforesaid.

(2) The question what covenants are unusual and whether a particular covenant is usual shall be questions of fact to be determined with regard to all the circumstances of the case including the practice of legal practitioners, the nature of the sub-lease to be created, the character of the property concerned and the place in which it is situated, the term to be created and any express provisions made in the contract for the sub-lease.

### **34. Usual covenants**

(1) Subject to this Law and any express agreement to the contrary, the following covenants shall be usual covenants—

- (a) a covenant by the tenant to pay rent, and a proviso for re-entry for nonpayment of rent;
- (b) a covenant by the tenant to keep and deliver up the property in good repair but this shall not apply to a monthly tenancy;
- (c) a covenant by the tenant to pay taxes except such as are usually payable by landlords but this shall not apply to monthly tenancies;
- (d) a covenant by the tenant to use the property only for the purpose for which the sub-lease is created; and
- (e) a covenant by the landlord that the tenant paying his rents and performing and observing conditions and covenants to be performed or observed by him under the sub-lease, shall enjoy quiet possession of the property.

(2) A tenant holding for life or lives or for years, or from year to year or for any other period, by deed or otherwise, shall be liable for waste unless a contrary intention shall

appear from the deed or other instrument in writing which creates the tenancy.

**35. Essential requirements of a sub-lease**

(1) A sub-lease shall satisfy the following requirements, otherwise it shall be void—

- (a) it shall contain the name of the sub-lessor who shall be a person capable of creating such sub-lease;
- (b) it shall contain the name of the lessee who shall be a person capable of taking such lease;
- (c) it shall contain the name of or other description sufficient to identify the property sub-let which shall be property capable of being thus sub-let;
- (d) it shall contain an express intention, on the part of the sub-lessor to sub-let, and on the part of the sub-lessee, to take a sub-lease of the property concerned;
- (e) the term granted shall be sufficiently defined to be certain or ascertainable as regards its commencement and duration; and
- (f) where any law in force in the state at the time of its creation requires that a sub-lease of that type shall be by deed or executed in a particular manner, it shall be by deed or executed in the particular manner, as the case may be.

(2) A sub-lease may be created to commence on the occurrence of a contingent event.

(3) A thing shall not be regarded as omitted or uncertain in a sub-lease if the sub-lease contains sufficient facts or materials from which it can reasonably be supplied or ascertained.

### *Sub-leases and other Tenancies*

#### **36. Tenancy for three years or less**

A tenancy for a term of three years or less at the best rent that can reasonably be obtained without taking a premium may, at the option of the parties, be created in writing or orally, whether or not it contains an agreement for renewal.

#### **37. Tenancy for more than three years**

A tenancy for a term of more than three years from the date of its creation shall be created by deed and if not so created shall be void; and it is immaterial whether or not such tenancy may under its provisions, terminate within three years of its creation.

#### **38. Anything of the essence of property sub-let passes with it**

(1) Where a tenancy is created, all things which are of the essence, being essential to the reasonable use and enjoyment of the property the subject matter of the tenancy shall be deemed to form part of such property and to be sub-let with it, even if it is not actually attached to it at the time the tenancy is created.

(2) Notwithstanding the generality of the foregoing subsection if the property the subject matter of the tenancy is a building or part of a building—

(a) all doors and windows with their respective components shall be deemed to be in their proper places and to pass with the property demised to the tenant even if at the time the tenancy is created they are not actually in place; and

(b) all passages, staircases, conveniences, forecourts, grounds and other things which are necessarily or normally used with such property shall be deemed to form part of it and to pass with it to the tenant even if at the time the tenancy is created such things or some of them are not actually being used with it.



(3) Where two or more tenants occupy different parts of a building and it is not expressed or is otherwise not possible to determine which of the things mentioned in paragraph (b) of subsection (2) attach to what parts of the building, and various tenants shall have equal right to the use and enjoyment of such things.

### **39. Execution of sub-lease**

(1) Where a sub-lease is created by deed it shall be executed, sealed and delivered by the respective parties to it.

Provided that where a party is illiterate or otherwise cannot sign his name, such party may execute by placing his mark or thumb impression on the sub-lease.

Provided also that a corporation shall be deemed to execute a sub-lease if its common seal is affixed thereto in the presence of, and is attested by, an officer having authority so to do.

(2) A sub-lease created by deed may be executed, sealed and delivered on behalf of a party by an agent appointed by deed to do so provided there is a clear indication on the instrument that the agent is acting on behalf of a named principal.

(3) Subject to this Law and to any law in force in the state regarding part-performance, no person shall be liable under a sub-lease unless it is signed by him or on his behalf by a duly appointed agent.

## *Void and Voidable Tenancies*

### **40. Tenancy agreement obtained by fraud**

(1) An Agreement to create a tenancy shall be void if the tenant—

(a) procures it by fraud; or

(b) intends to use the property concerned for a purpose which is

unlawful or against public policy.

(2) Where a party makes an agreement for a tenancy with another by representing that the property concerned will be used for a lawful purpose and eventually uses it for a purpose which is unlawful or against public policy, he shall be deemed to procure the agreement by fraud, and the other party shall be entitled to have the tenancy set aside.

(3) The provisions of this section shall apply to any agreement to assign a sub-lease.

#### **41. Tenancy for unlawful purpose**

(1) Where property the subject matter of a tenancy is, to the knowledge of the parties to such tenancy, to be used for a purpose that is illegal or against public policy, such tenancy, whether it is created orally or in writing shall be void.

(2) Where property is let to a tenant who, unknown to the landlord, intends to use it for a purpose that is unlawful or against public policy, the tenancy so created, whether it is oral or in writing, shall be void *ab initio*.

Provided that where a tenant uses property for such a purpose from the time he enters into possession, this shall be conclusive evidence that at the time the tenancy is created he intends to use the property concerned for such purpose.

(3) Where property is let for a lawful purpose but is subsequently put to a use that is unlawful or against public policy, the tenancy so created, whether it is oral or in writing, shall be void from the moment the property is put into such other use but without prejudice to any right of action existing against the tenant at the time the contract was valid.

(3) The provisions of this section shall apply to any assignment of a tenancy.

Provided that in the case of subsection (3) the right to recover possession of the

property concerned shall vest in the landlord, that is, the party who let the property to the assignor, and not in the assignor himself.

**42. Money paid under void tenancy**

Money or other payment made in connection with a tenancy which is void under the two foregoing sections shall not be recoverable in any court of law.

**43. Where purpose may be carried out in legal or illegal manner**

Where property is let for a purpose which may be carried out in either a legal or illegal manner, the landlord shall be entitled in the absence of any information to the contrary, to assume that the purpose shall be carried out in a legal manner and the tenancy shall be valid.

Provided that if the purpose of the tenancy is in fact carried out in an illegal manner and the landlord knows or ought reasonably to know that it is being so carried out, the provisions of the last three foregoing sections shall apply.

**44. Mistake as to tenant's identity**

Where a tenancy is created but the landlord is mistaken as to the identity of the tenant and the circumstances are such that the person of such tenant is an important factor, such tenancy shall be voidable at the instance of the landlord.

**45. Sub-lease may be void if altered**

Where a tenancy is in writing whether or not under seal any alteration of it in material particular after it has been executed shall make it void if such alteration is not agreed upon by the parties to the tenancy or their authorised agents.

**46. Rectification of error in tenancy**

(1) Where the terms of a tenancy as written down and executed or signed materially differ from the terms which the parties intended, and such difference is due to a mistake of fact by both parties to the tenancy, the tenancy may be altered so as to give effect

to the true intention of the parties and oral evidence of such intention shall be admissible.

(2) A clerical error occurring in a written tenancy may be corrected and effect given to the true intentions of the parties.

**47. Rescission for fraud, etc.**

A tenancy which is procured by fraud or by concealment or misrepresentation (not being innocent misrepresentation) of a material fact by one of the parties may, subject to any law now or hereafter in force in the State, be set aside at the instance of the other party.

**48. Rescission for innocent misrepresentation**

(1) Where a party to an agreement for a sub-lease is induced to make such agreement by a misrepresentation made innocently by the other party, the party so induced may rescind such agreement.

(2) A sub-lease shall not, after execution, be rescinded merely on the ground that it is induced by innocent misrepresentation.

**49. Rescission for mistake**

A tenancy may be set aside if both parties to it are induced to create it by a mistake as to a fact, but this section shall not apply where the mistake in question is one as to law.

## PART V

### *Types of Tenancy*

**50. Tenancy for a term of years**

(1) A tenancy for a term of years may be created for any period of time short of perpetuity.

(2) No tenancy for a term of years shall be valid unless it is certain, that is, unless it has a certain beginning and a certain ending.

(3) A tenancy for a term of years may be created to take effect immediately, from

a past or a future date or on the occurrence of a future event.

(4) No tenancy which is created to take effect at a future date or on the occurrence of a future event shall be valid unless created by deed.

(5) A tenancy for a term of years may be created to subsist and run concurrently with an existing tenancy of the same property, in which case it shall operate as an assignment of the reversion during such time as the two tenancies run concurrently.

#### **51. Tenancy from year to year**

(1) A tenancy from year to year is a tenancy created for a term of one year with an agreement, express or implied, that unless it is determined by notice at the end of the year it will subsist for another year and if not determined by notice at the end of that other year, it will subsist for another year and so on.

(2) A tenancy from year to year may be created by express grant or may arise by implication or by operation of law.

(3) Subject to an express agreement to the contrary a tenancy from year to year may commence on any day of the year, whether or not such a day corresponds to the beginning of any of the usual four quarters of the year.

(4) A tenancy from year to year shall not be affected by the death of either the landlord or the tenant.

#### **52. Yearly tenancy by operation of law**

(1) Subject to this Law or any other law now or hereafter in force in the State, and in the absence of any agreement to the contrary—

(a) where a tenancy is created in writing and the term for which it is to run is not expressed but the rent payable is expressed as an annual rent, such tenancy shall be deemed to be a tenancy from year to year; and it shall be immaterial whether the rent is also expressed to be

payable monthly or at any other intervals;

- (b) where a tenancy is created orally and the term for which it is to run is not stated but the rent payable is stated as annual rent or is actually paid as an annual rent such tenancy shall be deemed to be a yearly tenancy;
- (c) where a tenant for a term of one year or more holds over and pays rent at the rate reserved under the expired tenancy he shall be deemed to be a tenant from year to year on the same terms as the expired tenancy in so far as such terms are applicable to and are not inconsistent with a tenancy from year to year;
- (d) where a person is let into possession of a property under an agreement for a sub-lease and pays rent for a year at a time, or if the sub-lease agreed to be created reserved an annual rent and that person pays any part of it, a tenancy from year to year shall be deemed to be created between the parties; and such tenancy shall be on the terms of the intended lease so far as such terms are applicable to and are not inconsistent with a tenancy from year to year.

(2) The provisions of the last foregoing paragraph shall apply where a person is let into possession of a void sub-lease and pays rent for a year at a time.

(3) Where a tenant at will or a tenant at sufferance pays rent for one year at a time, he shall be deemed to be a tenant from year to year at that rent; and this provision shall also apply where such a tenant agrees expressly with landlord to pay a rent expressed as annual rent, whether or not such rent is also expressed to be payable by monthly or other periodic instalments.

### **53. Tenancy for less than a year**

(1) Subject to this Law or any other law for the time being in force in the State, where a tenancy of a building or part of a building is created and the terms for which it is to run are not stated but the rent to be paid is stated as a quarterly, monthly or weekly rent or is actually paid as a quarterly, monthly or weekly rent, the tenancy so created shall be deemed to be a quarterly, monthly or weekly tenancy, as the case may be.

(2) Where a person is let into possession of a building or part of a building by the owner and it is agreed between them that the person given possession will pay a quarterly, monthly or weekly rent for such possession, a quarterly, monthly or weekly tenancy, as the case may be, shall be presumed to be thereby created; and this provision shall also apply where a tenant at will or at sufferance agrees with the landlord to pay a quarterly, monthly or weekly rent as the case may be.

Provided that nothing in this subsection shall prevent a party from showing that there was no intention to create any tenancy at all but to grant a licence for lodging accommodation.

(3) Where a tenant for any term holds over after the expiration of his tenancy and agrees with the landlord to pay or actually pays rent for a quarter, month or week he shall be deemed to be a quarterly, monthly or weekly tenant as the case may be on the same terms and conditions as the expired tenancy in so far as these are applicable to and are not inconsistent with a quarterly, monthly or weekly tenancy as the case may be.

### *Tenancy at Will*

#### **54. Tenancy at will defined**

A tenant at will is a person who is in lawful possession of another person's property and whose possession of such property is determinable at the pleasure of either party. The interest which such a possessor has in that property is called tenancy at will.

#### **55. How tenancy at will arises**

Tenancy at will may be created by the express agreement or stipulation of the parties to it or may arise by operation of law.

**56. Express creation of tenancy at will**

A tenancy at will shall be deemed to be created where the owner of property gives possession of it to another person and such possession is expressed to be determinable at the pleasure of either or both of the parties whether or not any rent is agreed to be payable.

**57. Tenancy at will by operation of law**

A tenancy at will shall, subject to this Law and any other law now or hereafter in force in the State and in the absence of circumstances which clearly negative an intention to create a tenancy, arise by operation of law in any of the following circumstances—

- (a) where one person is in possession of the property of another person with his consent but there are no agreed terms or conditions under which such possession is held;
- (b) where one person lets property to another and no certain or determinate interest is expressly limited.

Provided that the foregoing paragraphs shall not apply where possession of property is given by way of lodging or hotel accommodation only;

- (c) where a person lets a building or flat to another person and reserves the right to use a specific room in such house or flat when he pleases, in which case, the person to whom the house or flat is so let shall be a tenant at will in respect of the room with regard to which such reservation is made;
- (d) where a person is in possession of a right of occupancy by virtue of a transaction which is not in writing, or being in writing is not under seal, he shall be a tenant at will with regard to such right;
- (e) where a person is in possession of property by virtue of an agreement or a



sub-lease, he shall, until he has made his first payment of rent under the agreement, be a tenant at will of such property;

- (f) where a tenant for any term continues in possession with the consent of the landlord after the expiration of his term he shall, in the absence of payment of any rent, be a tenant at will of the property concerned, holding under such of the terms of the expired tenancy as are not inconsistent with a tenancy at will;
- (g) where a person is given possession of property pending a treaty to purchase it he shall be a tenant at will of such property;
- (h) where one person holds property as a tenant from year to year and another person holds the same property or part of it as his subtenant, then if the yearly tenancy is merged with the right of occupancy of such property, the subtenant shall become a tenant at will in respect of the property or that part of it in respect of which he was a subtenant;
- (i) where a person takes possession of property by virtue of a void sub-lease, he shall, until he pays rent, be a tenant at will under the terms of the expired sub-lease in all respects except the duration of the tenancy;
- (j) where an official of a body which is in possession of property by virtue of his being such official and is later removed from or otherwise ceases to hold such office he shall become a tenant at will of that property.

#### **58. Consent of landlord essential**

Nothing in the foregoing section shall be construed to give rise to a tenancy at will unless the landlord consented or can reasonably be presumed to have consented to the tenant occupying the property concerned as a tenant.

#### **59. Determination of tenancy at will**

A tenancy at will shall terminate in any of the following circumstances—

- (a) when the landlord or the tenant dies.

Provided that where a tenancy at will is created by joint owners or in favour of joint tenants, the death of any of the joint owners or of the joint tenants shall not affect the tenancy as long as there are survivors on both sides;

- (b) on demand for possession made by the landlord;
- (c) on notice of intention to quit given by the tenant;
- (d) by any act of ownership or possession exercised by the landlord which is inconsistent with the tenant's continued possession of the property concerned;
- (e) by alienation by the landlord of the reversion or of the property itself, by mortgage or otherwise, with notice thereof to the tenant;
- (f) by the tenant transferring or attempting to transfer his interest in the property concerned to another person, or otherwise doing an act inconsistent with a tenancy at will.  
  
Provided that the landlord shall not be prejudicially affected by any alienation or attempted alienation unless he is given notice of it;
- (g) by the tenant committing waste of the property concerned;
- (h) by the tenant going out of possession, with or without notice to the landlord;
- (i) by the landlord creating a tenancy of the property concerned in favour of another person.

#### **60. Demand by landlord**

- (1) The landlord may demand possession of property held by a tenant at will at

any time he pleases, and such demand may be oral or in writing, and may be given through a third party provided the tenant has notice of it.

(2) Where the landlord stipulates in his demand the time when a tenancy at will is to cease such tenancy shall cease at the time stipulated, but where no time is stipulated such tenancy shall terminate on demand.

(3) A tenant at will shall not be entitled to reasonable or any period of notice to quit, nor shall he be obliged to give a reasonable or any period of notice of his intention to quit.

#### **61. Rights of parties at end of tenancy at will**

(1) Where a tenant at will has crops on land the subject matter of the tenancy or on land used in connection with such land, he shall be entitled to a reasonable time after the determination of his tenancy within which he may enter and reap his crops.

(2) Where a tenancy at will is determined by the landlord, the tenant shall be entitled to a reasonable time within which he may enter and remove his property.

(3) Where a tenant at will pays rent on monthly, quarterly, half-yearly or yearly basis and determines the tenancy after a new month, quarter, half-year or year, as the case may be, has commenced, he shall nevertheless be liable to pay rent for such month, quarter, half-year or year.

Provided that nothing in this subsection shall be construed to make a tenant at will liable to pay any rent where the tenancy is determined by the landlord.

### *Tenancy on Sufferance*

#### **62. Tenancy on sufferance defined**

A tenant on sufferance is a person who entered into possession of property by virtue of a lawful title and wrongfully continues in possession without the assent or dissent of the

person next entitled to such property or reversion, as the case may be, and the interest which such a possessor has in that property is called tenancy on sufferance.

**63. Position of tenant on sufferance**

(1) A tenant on sufferance shall be liable for ejectment at the suit of the landlord whether or not the landlord has made any demand for possession.

Provided that nothing in this subsection shall be construed to prevent such a tenant from maintaining an action for assault and battery if he is forcibly ejected.

(2) A tenant on sufferance has no transferable interest in the property the subject matter of his tenancy.

*Rent*

**64. Rent defined**

Rent is a certain profit issuing at regular periods and paid for the use or occupation of property in money or money's worth reserved or issuing out of or charged upon property, but does not include mortgage interest.

**65. Premium**

(1) A premium is a sum paid by a tenant to a landlord for the granting or renewal of sub-lease and independently of any rent payable, such payment being made as one lump sum or by instalments; and a fine has the same meaning.

(2) Where a premium is payable by instalments, the obligation to complete payment of it is not affected by the determination of the tenancy itself while the instalments are still running.

**66. Rent payable as due**

Subject to any written law now or hereafter in force in the State, rent shall be recoverable by court action as soon as it becomes due according to the terms of the tenancy.

**67. Reservation of rent**

(1) Rent may be reserved as part of a transaction creating a tenancy, but no rent shall be validly reserved unless it is certain, or ascertainable, as to its amount and the time when it is payable.

(2) Rent may be reserved so as to commence at any time before or after the tenant goes or is due to go into possession.

**68. Whole tenancy void if any part unlawful**

Where several properties, whether situated in the same or in different places, are let at a single rent but any of such properties cannot lawfully be let by the person who purports to let it, the whole tenancy shall be void.

Provided that this section shall not apply where separate rents are also stated as an aggregate rent payable.

**69. Commencement of rent**

Where rent is stated to be payable per year or per month or at any other periodic intervals but no date is given as the date when such rent is to commence running, the rent shall commence to run from the day on which the tenancy is created, or where the tenancy is expressed to commence on a day other than a day on which it is created, on the day the tenancy is expressed to commence.

**70. "Net rent"**

Where "net rent" is reserved, the sum payable shall be such as is left to the landlord after all dues regarding the property concerned have been paid.

**71. Rent must be reserved to the landlord**

(1) Rent shall be reserved to the owner of property the subject matter of a tenancy, and a tenancy shall be void if the rent therein reserved is in favour of anyone else.

Provided that a periodic payment may validly be reserved in a tenancy in favour of a

person other than the landlord if it is clear that such reservation is not by way of rent.

(2) Where rent is reserved but the person in whose favour it is reserved is not expressed, it shall be deemed to be reserved in favour of the owner of the property the subject matter of the tenancy.

## **72. Rent etc., to run despite death of landlord or tenant**

(1) Rent payable to a landlord shall be deemed to be payable to him and, after his death, the owner of the reversion on the property concerned, and rent payable by a tenant shall be deemed to be payable by him and, after his death, his successor in title to such tenancy; and therefore in the absence of an express agreement to the contrary, any rent reserved or otherwise payable shall continue to be due and payable so long as the tenancy subsists, the death of the landlord or the tenant or both notwithstanding.

(2) Where performance of any covenants or conditions in a tenancy or agreement for a tenancy is secured with a bond or penalty, with or without sureties, such security shall attach—

- (a) to the reversion as an incident to it, and may be enforced by the reversioner or assignee of the reversion; and
- (b) to the tenancy, and may be enforced against the assignee or successor in title of the tenant to such tenancy.

## **73. Power to grant tenancy at any rent**

Power given to any person to create a tenancy at any rent he thinks proper shall be deemed to include power to create such tenancy without charging any rent at all.

## **74. Liquidated damages**

(1) Parties to a tenancy may agree on a sum that shall be paid by the tenant as increased or additional rent for breach of any particular covenant or condition of the tenancy, a sum so fixed is called liquidated damages and payment of it may be enforced by

the landlord when the breach provided for occurs.

Provided it is a reasonable pre-estimation of damage expected to arise from such breach.

(2) Nothing in the foregoing subsection shall apply to any sum stipulated in a tenancy where that sum, by whatever name called, is in the nature of a penalty for a breach of a covenant or condition; a sum shall be construed as a penalty where it is disproportionately large having regard to the greatest loss that could in the normal course of events flow directly from a breach of the covenant concerned, or where a large sum is made payable for non-payment of a small rent or other dues.

**75. When rent becomes due**

(1) Rent becomes due in the morning of the day appointed by the parties to a tenancy for payment thereof; if no specific day is appointed, rent becomes due on the last day of the period for which it is payable, so that rent payable annually becomes due on the last day of the year in respect of which it is payable; rent payable monthly becomes due on the last day of the month, and so on.

(2) Rent is in arrears immediately after midnight of the day on which it is due under the foregoing subsection.

**76. When rent may be demanded or recovered**

Rent may be demanded or recovered at any time after it is in arrear, but not until then, and subject to any written law now or hereafter in force in the State regarding payment of rent due to the State or the Federal Government, no steps or proceedings in court or otherwise may be taken to enforce payment of rent until it is in arrear and a demand has thereafter been made for payment.

**77. Payment in advance**

(1) A tenant may if he so desires, and shall if he is so required under the terms of

the tenancy, pay rent at any time before the day when it is due in accordance with this Law and such payment shall when received by the landlord or his agent, be effective satisfaction of the tenant's obligation to pay on the due date.

(2) Where the landlord terminates the tenancy, or the tenant is forced by an act or default of the landlord to give up possession before the expiration of the period for which rent has thus been paid, the landlord shall refund to the tenant such part of the rent as represents the unexpired period.

(3) Where a tenant has noticed that the property concerned has been sold or otherwise transferred to a third party, any payment, excepting arrears of rent, which he thereafter makes to the landlord or his agent in respect of such property without the express consent of that third party shall not be payment of rent.

#### **78. Person to whom rent is payable**

(1) Rent shall be payable to the landlord or his agent, provided that a person who usually collects rent for a landlord shall be presumed to be his agent unless the tenant has notice to the contrary.

(2) Where the landlord sells or otherwise transfers his reversion to a third party, such party shall in the absence of an express agreement to the contrary become entitled to rent payable under the tenancy; and the tenant, as soon as he has notice of the sale or transfer is under an obligation to pay all subsequent rents to that third party as the landlord.

(3) Payment to a person other than a landlord (which expression includes a person to whom the reversion has been transferred) shall not be payment of rent and shall not prevent the landlord from claiming rent from the tenant, unless such payment is made with the express consent, direction or authority of the landlord.

Provided that payment to an agent of the landlord shall be payment to the landlord.



**79. Effect of payment of rent**

(1) Payment of rent is an acknowledgement of tenancy, and so—

(a) a person who pays rent to another person as his landlord shall not thereafter be heard to deny such other person's title to the reversion or to the rent; and

(b) a person who accepts rent from another as a tenant shall not thereafter deny that other person his rights as a tenant.

(2) Nothing in the foregoing subsection shall preclude a tenant who pays rent by mistake, fraud or misrepresentation to a person who is not entitled from denying that other person's title to the reversion or showing that he is not entitled to the rent.

(3) Rent paid by mistake, fraud or misrepresentation to a person not entitled to it shall be recoverable from such person.

**80. Payment by assignee**

Where a tenancy has been lawfully assigned, payment of rent by the assignee *shall pro tanto* be a discharge for the tenant–assignor.

**81. Payment by a third party**

Any person may pay rent on behalf of a tenant and such payment shall *pro tanto* be a discharge for the tenant.

**82. Deductions and refunds by mistake of law**

Where a landlord or his agent by reason of a mistake of law—

(a) allows a deduction to be made by the tenant from rent; or

(b) refunds rent to the tenant in part or in full, the amount so deducted or refunded shall not thereafter be recovered from the tenant.

**83. Agreement to reduce rent**

A landlord who, whether or not for consideration agrees to accept and, on the basis

of such agreement does accept rent at a reduced rate than hitherto shall be estopped from going back on such agreement.

**84. Rent to be paid in lawful currency**

In the absence of an express agreement to the contrary rent shall be paid in lawful currency, and payment made by cheque or bill shall be deemed to be so made when the bill or cheque is duly honoured by the Bank on which it is drawn.

**85. Payment to landlord in person**

Rent shall be paid to the landlord or his agent in person, or as otherwise directed by the landlord.

**86. Payment of ground rent by tenant**

(1) Where a ground rent payable by landlord to a ground landlord is demanded by the ground landlord from and paid by a tenant of the mesne landlord, the amount of such payment may be deducted by the tenant from any rent payable by him to the mesne landlord.

(2) Where a tenant is induced by threat of legal proceedings or ejectment to pay property tax or any other money due on the property concerned and payable by his landlord he shall be entitled to deduct the amount of such payment from any rent payable by him to such landlord, any stipulations in the tenancy to the contrary notwithstanding.

*Apportionment of Rent*

**87. When rent is apportioned**

(1) Where property which is let at an entire rent is subsequently divided among two or more persons any rent payable for that letting shall be apportioned among such persons in proportion to their respective interests.

(2) Where a tenant transfers part of his interest to a third party, a portion of the rent payable by that tenant prior to the transfer becomes payable by the third party, such

portion being proportionate to the interest transferred to him.

Provided that nothing in this subsection be construed as relieving the tenant of his obligation to pay the entire rent payable under the original tenancy and so, the landlord may proceed to recover from the tenant the entire rent or from both the tenant and the third party the respective portions due from them.

#### **88. Eviction of tenant and apportionment**

(1) Where a tenant is evicted by title paramount from part of the property let to him, rent payable by him thereafter for the part he retains shall be such portion of the original rent as is proportionate to the part he retains.

(2) Where a tenant is unable despite diligent efforts to obtain possession of part of the property let to him by reason that it is held by a person claiming adversely to the landlord no rent shall be payable by the tenant upon any agreement he may have entered into to pay rent.

(3) Where a tenant is, through no fault of his, evicted from part of the property let to him, he shall not thereafter be under obligation to pay any rent in respect of such tenancy unless he is restored to full possession.

(4) Where a land or building or part thereof is let with moveable property to a tenant at an entire rent, and the tenant is evicted from such land or building, he shall not be liable thereafter to make any payment in respect of the moveable property.

#### **89. Apportionment of rent in respect of time**

(1) All rents, whether payable under an agreement made in writing or otherwise may in appropriate cases be considered as accruing from day to day, and may be apportioned in respect of time accordingly.

(2) Notwithstanding the generality of the foregoing subsection—

(a) where a change in the ownership of the reversion or in the person

entitled to rent payable, on a tenancy occurs at any time before the completion of a current rent period, rent shall accrue and shall be considered as accruing from day to day from the commencement of that uncompleted rent period to the day the said change occurs and the rent that thus accrues shall, in the absence of any agreement to the contrary, be apportionable as between the person entitled to rent before and after such change:

Provided that rent which thus accrues shall not become payable until the rent period is completed;

- (b) where a tenancy is determined at any time before the completion of a current rent period rent shall accrue and shall be considered as accruing from day to day from the commencement of that uncompleted rent period to the day the tenancy is determined and shall in the absence of any agreement to the contrary be payable:

Provided that rent which thus accrues shall not become payable until the tenancy terminates;

- (c) where a tenancy is lawfully determined and the tenant thereafter retains possession of the property let, mesne profits which shall be at the same rate as the rent payable under the tenancy shall accrue and shall be regarded as accruing and payable from day to day and may at the option of the landlord, be claimed from the day the tenancy was determined or the day when court proceedings to recover them are commenced;

- (d) where rent is made to vary with the amount of benefit or profit which the tenant obtains from the property let such rent shall be regarded as

accruing from day to day and may be apportioned accordingly.

(3) Nothing in this section shall be construed as applying to any rent which has already accrued whether such rent is payable in advance or otherwise.

**90. Enforcement of apportioned rent**

A person entitled to any part of an apportionable rent shall have the same remedies for recovering that part as he would if he were entitled to the whole rent and such part shall be liable to proportionate deductions, counter-claims or set-off where the whole rent would be so liable.

Provided that no steps by court proceedings or otherwise to recover any part of an apportionable rent shall be taken until such part has become payable under the last foregoing section.

*Continuance of Tenant's Liability for Rent*

**91. Liability of tenant for rent after assignment of tenancy**

(1) A sub-lease shall create privity of contract and privity of estate between the sub-lessor and the sub-lessee.

(2) Where a sub-lessee lawfully assigns the sub-lease to a third party, privity of estate shall cease to exist between him and the sub-lessor, and shall arise between the third party and the sub-lessor.

(3) Assignment by a lessee to a third party shall not affect the existence of privity of contract between such sub-lessee and the sub-lessor and accordingly, the sub-lessee shall continue to be liable to pay rent under the sub-lease notwithstanding that the sub-lease has been assigned and the privity of estate no longer exists between the sub-lessee and the sub-lessor.

(4) Where a sub-lease is assigned by the sub-lessee the sub-lessor shall have a right to recover the rent payable under that sub-lease from either the sub-lessee or the

assignee or partly from the sub-lessee and partly from the assignee notwithstanding the assignment and notwithstanding that the sub-lessor may have consented to the assignment.

Provided that nothing in this subsection shall be construed as enabling the sub-lessor to recover more than the full value of such rent.

**92. Liability of tenant for rent after quitting possession**

Subject to any agreement to the contrary, where any tenant quits possession of the property concerned, without due notice agreed or as by law required, he shall be liable for rent as follows—

- (a)* if he quits possession at the end of a rent period he shall pay rent for one rent period thereafter;
- (b)* if he quits possession before the end of a rent period, he shall nevertheless pay rent for the whole of that rent period thereafter;
- (c)* if before the expiration of the current rent period or of the next succeeding rent period, as the case may be, the landlord accepts surrender of such tenancy (other than accrued rent), or actually lets the property to another tenant or occupies it himself, the liability of the tenant to pay rent under this subsection shall cease with effect from the day on which the landlord accepts surrender of the tenancy or lets the property to another tenant or occupies it himself, as the case may be, but without prejudice to accrued rents;
- (d)* where he has given notice of his intention to quit premises held by him and shall not deliver up possession thereof at the time stated in such notice, the tenant, his executors or administrators shall thereafter pay to the landlord rent for the rent of the period of notice plus rent for the period held over plus any other damage occasioned

by the holding over.

**93. Liability after destruction of property**

(1) In the absence of an agreement to the contrary, where a sub-lease is executed for a term certain, with or without option for renewal, the liability of the sub-lessee to pay rent under the sub-lease shall not be affected by the destruction of or damage to the property concerned by fire or otherwise.

(2) In the absence of an agreement to the contrary, where a sub-lessee for a term holds over after the term granted has expired, he shall be liable, notwithstanding any damage to or destruction of the property concerned, to pay rent as follows—

- (a) as a tenant for year to year if he has paid any rent on a yearly basis after the expiration of the term granted;
- (b) as a monthly or other periodic tenant, if he has paid rent on a monthly or other periodic basis after the expiration of the term granted.

(3) Nothing in this section shall be construed to apply to a tenant other than a tenant under a sub-lease for a term certain or a tenant under a holding over on the expiration of a sub-lease for a term certain.

**94. Rent suspended when tenant evicted**

(1) Where a landlord or any one claiming through him enters into possession of any part of the property concerned and such entry is not by virtue of a power on re-entry contained in a sub-lease for a breach of covenant, liability of the tenant to pay rent shall be suspended forthwith and shall not re-commence unless and until the tenant is restored to full possession of the property concerned.

(2) Notwithstanding anything to the contrary contained in any sub-lease or tenancy agreement, a right of re-entry shall not include a right to physical entry without an

order of court.

(3) Where a tenant is evicted by title paramount his liability to pay rent shall be suspended forthwith and shall not re-commence unless and until he is restored to full possession of the property concerned.

(4) Nothing in this section shall apply where a tenant is evicted or possession of the property concerned is taken in part or in whole by any person claiming through the landlord or a title paramount.

(5) Nothing in this section shall apply to allow a landlord to exercise any power of distress for rent except in execution of the judgement of a court and in accordance with the Sheriffs and Civil Process Law.

**95. No rent where tenancy is for illegal purposes**

No rent shall be payable for a tenancy where the landlord knows or ought reasonably to know that the property concerned is to be used or is being used for an illegal purpose or for a purpose which is contrary to morality or public policy.

*Recovery of Rent by Action*

**96. Who may be parties**

A person may take an immediate or other interest in land or other property or the benefit of any condition, right of entry, covenant or agreement over or respecting land or other property although he may not be named as a party to the transfer or other instrument; and such person may in appropriate cases be a party to an action for rent.

**97. Action by or against representatives or assigns**

(1) An action for rent, including an action for breach of a covenant to pay rent, may be maintained by or against the parties to a tenancy or their personal representatives.

(2) An action for rent may be maintained against an assignee of a tenancy or



against the assignor himself and rent may be recovered in full from the assignor:

Provided that not more than the full value of the rent payable in respect of any rent period may be recovered for that period.

**98. Joint and several liability for rent**

(1) Where rent is payable by two or more persons jointly, any action to recover such rent shall be brought against both or all of such persons.

(2) Where rent is payable by two or more persons severally, action to recover such rent may be brought against any of them or all of them.

(3) Where rent is payable by two or more persons jointly and severally action to recover such rent may be brought against all or any of them.

(4) Where judgement for rent is obtained against two or more persons jointly or jointly and severally execution may be levied against any or all of them.

Provided that where execution is levied against one or some of such persons he or they shall be entitled to contribution from the others.

(5) The provisions of the foregoing subsections shall apply *mutatis mutandis* to the personal representatives of persons entitled to or liable for rent.

(6) Nothing in this section shall be construed as enabling a person to recover in respect of any rent period more than the full value of rent payable for the period.

**99. Personal representatives of landlord and tenant**

(1) The personal representatives of the landlord or other persons entitled to rent may recover by action any rent due before or after the death of such landlord or person entitled.

(2) The personal representatives of a tenant may to the extent of the assets of the estate be liable for any rent due before or after the death of the tenant.

(3) On the death of a joint tenant the whole tenancy shall vest in the survivor

who shall thereafter become liable for rent to the exclusion of the estate of the deceased joint tenant.

#### **100. Tenant's defences**

(1) A tenant shall be entitled to all defences in an action for rent which would be open to him in an action under an ordinary contract.

(2) Without prejudice to the generality of the foregoing subsection, the following defences shall be open to a tenant in an action for rent—

(a) that the landlord's title to the property or the rent has ceased since the creation of the tenancy;

(b) that the tenant has been evicted by the landlord or a person claiming under him from the property or part of it.

Provided that this defence shall not avail a tenant in an action for arrears of rent;

(c) that the landlord or a person claiming under him has taken possession of any part of the property concerned with intent to exclude the tenant from such part;

(d) that the tenant has been evicted by a title paramount or has lawfully been evicted by a stranger;

(e) that the tenant has paid or tendered the rent due before action is brought;

(f) that the claim for rent has been barred under this Law or any written law in force in the State;

(g) that the tenancy is illegal being contrary to a written law in force in the State or to public policy or morality; or

(h) that the tenancy is otherwise void.

(3) For the purposes of subsection (2) (e)—

(a) no payment or tender shall be a defence unless it is made in legal currency and brought to the notice of the landlord or his agent;

(b) payment into the landlord's bank, account with notice to the landlord shall be sufficient tender.

(4) A tenant against whom an action is brought for rent may make a counterclaim or set-off against such claim.

### *Payment for Use and Occupation*

#### **101. Use of occupation implies promise to pay**

(1) Subject to this Law and any other written law in force in the State and in the absence of an express subsisting tenancy, where one person uses or occupies property of another person by his permission or sufferance, there shall be implied a promise to the user or occupier to make a reasonable payment for such use or occupation:

Provided that no such promise shall be implied where the circumstances clearly negative it.

(2) Nothing in this section shall apply where a person uses or occupies a property without the knowledge of the owner or as a trespasser, or otherwise against the will of the owner.

#### **102. Who is liable for payment for use and occupation**

(1) Notwithstanding the generality of the foregoing section, the following persons shall be liable to pay for use and occupation of property—

(a) any person who actually uses or occupies property of another person by his permission or sufferance;

(b) any person who enters and takes possession of a property as a tenant

of any type and subsequently transfers possession or use of such property to another person and ceases to be in actual use or possession.

Provided that in such a case his liability shall continue only for so long as the transferee continues such possession or use;

- (c) a tenant who, with intent to continue as a tenant retains possession of the property concerned after his tenancy has expired or been duly terminated;
- (d) a tenant whose subtenant continues in possession of the property concerned after his tenancy has expired or been duly terminated even if such subtenant retains possession against his will;
- (e) a tenant who is substituted for another tenant with the mutual consent of all parties;
- (f) a person who is in possession of a property—
  - (i) under an agreement for a lease which was never granted; or
  - (ii) pending an agreement for occupation which was never effected.
- (g) a person let into possession of a property which he intends to purchase but who remains in possession after he has become aware that the proposed sale to him will not take place.

Provided that such a person shall not be liable for use and occupation in respect of the period during which he was unaware that the proposed sale will not take place;

- (h) the personal representative of a person liable to pay for use and occupation under this section.

### **103. Who is entitled to payment for use and occupation**

(1) The person entitled to payment for use or occupation of a property is the owner thereof, who for this purpose shall be the person who, immediately before the person using or occupying the property went into possession, had the right of possession over that property.

(2) Where two or more persons are jointly entitled to payment for use and occupation under the foregoing subsection and one of them dies, the survivor shall be entitled to such payment in respect of use and occupation occurring both before and after the death of the deceased joint owner.

(3) Notwithstanding the provisions of subsection (1) of this section, where a tenant sub-lets his whole term to a third party at a rent he shall nevertheless be entitled to payment for use and occupation of the property concerned by such third party and in such a case the quantum of payment recoverable shall be the rent agreed upon between the tenant and the third party.

(4) The personal representative of a person entitled to payment for use and occupation of property under this section shall have a right to such payment.

### **104. Amount payable for use and occupation**

(1) Where the owner of a property used or occupied by another person is entitled to payment for such use or occupation, then in the absence of an agreed rent the owner shall be entitled to an amount equal to what he would obtain as rent for the same property over the same period of time or, where it is not possible to assess such rent a reasonable amount, as compensation for his loss of use and occupation.

(2) Where rent has been agreed upon by the parties, such rent shall be the proper measure or payment due for use and occupation notwithstanding that such rent relates to a void tenancy or is contained in a void agreement for a lease.

#### **105. Action for use and occupation**

Where an implied promise to pay for use and occupation of property arises under this Law it shall be enforceable by action to be known as action for use and occupation.

#### **106. Where reversion is surrendered**

Where a reversion expectant on a sub-lease of land is surrendered or merged, the legal interest which as against the sub-lessee for the time being confers the next vested right to the land, shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there been no surrender or merger thereof.

#### **107. Apportionment of conditions on severance**

(1) Notwithstanding the severance by transfer, surrender or otherwise of the reversionary interest in any land comprised in a sub-lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a sub-lease as to part only of the land comprised therein, every condition or right of re-entry and every other condition contained in the sub-lease shall be apportioned and shall remain annexed to the severed parts of the reversionary interest as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the sub-lease.

(2) In this section "**right of re-entry**" includes a right to determine the sub-lease by notice to quit or otherwise; but where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land sub-let, the sub-lessee may within one month determine the sub-lease in regard to the rest of the land by

giving to the owner of the reversionary interest therein a counter notice expiring at the same time as the original notice.

(3) This section applies to sub-leases made before or after the commencement of this Law and whether the severance of the reversionary interest or partial avoidance or cesser of the term was effected before or after such commencement.

Provided that, where the sub-lease was made before the first day of January, nine-teen hundred, nothing in this section shall affect the operation of a severance of the reversionary estate or partial avoidance or cesser of the term which was effected before the commencement of this Law.

#### **108. Rent and benefit of sub-lessee's covenants to run with the reversion**

(1) Rent reserved by a sub-lease and the benefit of every covenant or provision therein contained having reference to the subject matter thereof, and on the sub-lessee's part to be observed performed and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary interest in the land or in any part thereof, immediately expectant on the term granted by the sub-lease notwithstanding severance of that reversionary interest, and without prejudice to any liability affecting a covenantor or his interest.

(2) Any such rent, covenant or provision shall be capable of being recovered, received, enforced and take advantage of by the person from time to time entitled subject to the term, to the income of the whole or any part as the case may require, of the land sub-let.

(3) Where that person becomes entitled by transfer or otherwise, such rent, covenant or provision may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable other conditions waived before such person becomes entitled as aforesaid.

(4) This section applies to sub-leases made before or after the commencement of this Law, but does not affect operation of—

- (a) any severance of the reversionary interest; or
- (b) an acquisition by transfer or otherwise or provision effected before the commencement of this Law.

#### **109. Obligation of landlord's covenants to run with reversion**

(1) The obligation under a condition or a covenant entered into by a sub-lessor with reference to the subject matter of the sub-lease shall, if, and as far as the sub-lessor has power to bind the reversionary interest immediately expectant on the term granted by the sub-lease, be annexed and incident to and shall go with that reversionary interest, or the several parts thereof notwithstanding severance of that reversionary interest and may be taken advantage of and enforced by the person in whom the term is from time to time vested by transfer, devolution in law or otherwise and if and as far as the sub-lessor has power to bind the person from time to time entitled to that reversionary interest the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2) This section applies to a sub-lease made before or after the commencement of this Law whether the severance of the reversionary interest was effected before or after such commencement.

(3) This section takes effect without prejudice to any liability affecting a covenantor or his estate.

### *Licences*

#### **110. Effect of licences granted to sub-lessees**

(1) Where a licence is granted to do any act, the licence unless otherwise expressed extends only—



- (a)* to the permission actually given; or
- (b)* to the specific breach of any provision or covenant referred to; or
- (c)* to any other matter thereby specifically authorised to be done, and the licence does not prevent any proceeding for any subsequent breach unless otherwise specified in the licence.

(2) Notwithstanding any such licence—

- (a)* all rights under covenants and powers of re-entry contained in the sub-lease remain in full force and are available as against any subsequent breach of covenant, condition or other matter not specifically authorised or waived, in the same manner as if no licence had been granted; and
- (b)* the condition or right of entry remains in force in all respects as if the licence had not been granted save in respect of the particular matter authorised to be done.

(3) Where in any sub-lease there is power or condition of re-entry on the sub-lessee assigning, sub-letting or doing any other specified act without a licence and a licence is granted—

- (a)* to any one of two or more sub-lessees to do any act, or to deal with his equitable share or interest; or
- (b)* to any sub-lessee or to any one of two or more sub-lessees to assign or underlet part only of the property or to do any act in respect of part only of the property, the licence does not operate to extinguish the right of entry in case of any breach of covenant or condition by the sub-lessee or sub-lessees of the rest of the property (as the case may be) in respect of such shares or interests or remaining property,

but the right of entry remains in force in respect of the shares, interest or property not the subject of the licence.

(4) Subsection (3) does not authorise the grant after the commencement of this Law, of a licence to create an undivided share in a legal interest.

**111. No fine to be exacted for licence to assign**

In all sub-leases containing a covenant, condition agreement against assigning, under letting or parting with the possession, or disposing of the land or property subject without licence or consent, such covenant, condition or agreement shall, unless the sub-lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent, but this proviso does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent.

*Miscellaneous*

**112. Sub-lessee to give notice of ejectment to sub-lessor**

Every sub-lessee to whom there is delivered any writ for the recovery of premises demised to or held by him or to whose knowledge any such writ comes shall forthwith give notice thereof to his sub-lessor or his bailiff or receiver and if he fails so to do he shall be liable to forfeit to the person of whom he holds the premises an amount equal to the value of three years rent of the premises, to be recovered by action in any court having jurisdiction in respect of claims for such an amount.

**113. Restrictions on and relief against forfeiture of sub-leases and subunder leases**

(1) A right of re-entry or forfeiture under any proviso or stipulation in a sub-lease for a breach of any covenant or condition in the sub-lease shall not be enforceable by

action or otherwise unless and until the sub-lessor serves on the sub-lessee a notice—

- (a) specifying the particular breach complained of; and
- (b) if the breach is capable of remedy requiring the sub-lessee to remedy the breach; and
- (c) in any case requiring the lessee to make compensation in money for the breach,

and the sub-lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the sub-lessor for the breach.

(2) Where a sub-lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture, the sub-lessee may in the sub-lessor's action if any or in any action brought by himself, apply to the court for relief and the court may grant or refuse relief as the court having regard to the proceedings and conduct of the parties under the foregoing provisions of this section and to all the other circumstances thinks fit, and in case of relief may grant it on such terms, if any as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future as the court, in the circumstances of each case thinks fit.

(3) A sub-lessor shall be entitled to recover as a debt due to him from a sub-lessee and in addition to damages (if any), all reasonable costs and expenses properly incurred by the sub-lessor in the employment of a solicitor and surveyor or valuer or otherwise in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the sub-lessee is waived by the sub-lessor or from which the sub-lessee is relieved under the provisions of this Law.

(4) Where a sub-lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a sub-lease or for

nonpayment of a rent, the court may on application by any person claiming as subunderlessee any interest in the property comprised in the sub-lease or any part thereof either in the sub-lessor's action (if any) or in any action brought by such person for that purpose make an order vesting for the whole term of the sub-lease or any part thereof in any person entitled as subunderlessee to any interest in such property upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise as the court in the circumstances of each case may think fit; but in no case shall any such subunderlessee be entitled to require a sub-lease to be granted to him for any longer term than he had under his original subunderlease.

(5) For the purposes of this section—

- (a) "lease" includes an original or derivative subunderlease, also an agreement for a sub-lease where the sub-lessee has become entitled to have the same granted, also a grant securing a rent by condition;
- (b) "sub-lease" includes an original or derivative subunderlease, and the persons deriving title under a subunderlessee also a grantee under any such grant as aforesaid and the person deriving a title under him;
- (c) "sub-lessor", includes an original or derivative subunderlessor; also a person making such grant as aforesaid and the person deriving title under him;
- (d) "underlease" with its grammatical derivatives has the same meaning as "sub-lease".

(6) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the sub-lease in pursuance of the directions of any enactment.

(7) For the purposes of this section a sub-lease limited to continue as long only

as the sub-lessee abstains from committing a breach of covenant shall be and take effect as a sub-lease to continue for any longer term for which it could subsist but determinable by a proviso for re-entry on such a breach.

(8) This section does not extend to a covenant or condition against assigning, underletting, parting with the possession or disposing of the land sub-let where the breach occurred before the commencement of this Law.

(9) Where a condition of forfeiture on taking in execution of the sub-lessee's interest is contained in any sub-lease, then—

- (a) if the sub-lessee's interest is sold within a year from taking in execution this section applies to the forfeiture conditions aforesaid;
- (b) if the sub-lessee's interest is not sold before the expiration of that year this section only applies to the forfeiture condition aforesaid during the first year from the date of the taking in execution.

(10) This section does not, save as otherwise mentioned affect the Law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(11) This section has effect notwithstanding any stipulation to the contrary.

#### **114. Waiver of covenant in a sub-lease**

(1) Where any actual waiver by a sub-lessor, or the persons deriving title under him, of the benefit of any covenant or condition in any sub-lease is proved to have taken place in any particular instance, such waiver shall not be deemed to extend to any instance or to any breach of covenant or condition save that to which such waiver specially relates, nor operates as a general waiver of the benefit of any such covenant or condition.

(2) This section applies unless a contrary intention appears, and extends to waivers effected before or after the commencement of this Law.

**115. Abolition of interestes termini, and as to reversionary sub-leases and sub-leases for lives**

(1) The doctrine of interestes termini is hereby abolished.

(2) As from the commencement of this Law, all terms of years absolute shall, whether the interest is created before or after such commencement be capable of taking effect at law or in equity according to the interest or powers of the grantor, from the date fixed for commencement of the term, without actual entry.

(3) A term at a rent, limited, after the commencement of this Law, to take effect more than twenty-one years from the date of the instrument purporting to create it, shall be void, and any contract made after such commencement to create such a term shall likewise be void; but this subsection does not apply to any term taking effect in equity under an equitable power of mortgage, indemnity or other like purposes.

(4) Nothing in subsections (1) and (2) of this section prejudicially affects the right of any person to recover any rent or to enforce or take advantage of any covenants or conditions or, as restrictions or interests, or created before the commencement of this Law, operates to vary any statutory or other obligations imposed in respect of such terms or interests.

(5) Nothing in this Law affects the rule of law that a legal term, whether or not being a mortgage term, can be created to take effect in reversion expectant on a longer term, which rule is hereby confirmed.

(6) Any sub-lease or subunderlease at a rent for life or lives or for any term of years determined with life or lives, or on the marriage of the sub-lessee or any contract therefor made before or after the commencement of this Law shall take effect as the sub-lease, subunderlease or contract therefor for a term of ninety years determinable after the death or marriage (as the case may be) of the original sub-lessee or of the survivor of the

original sub-lessees by at least three months' notice in writing given to determine the same either by the sub-lessor or the persons deriving title under him, to the person entitled to the sub-leasehold interest, or if no such person is in existence, by affixing the same to the premises, or by the sub-lessee or other persons in whom the sub-leasehold interest is vested to the sub-lessor or the persons deriving title under him.

Provided that if the sub-lease, subunderlease or contract therefor is made determinable on the dropping of the lives of persons other than or besides the sub-lessee, then the notice shall be capable of being served after the death of any person or of the survivor of any persons (whether or not including the sub-lessee) on the cesser of whose life or lives the sub-lease, subunderlease or contract is made determinable instead of after the death of the original sub-lessee or of the survivor or of the original sub-lessee.

**116. Surrender of a sub-lease without prejudice to subunderlease with a view to the grant of new sub-lease**

(1) A sub-lease may be surrendered with a view to the acceptance of a new sub-lease in place thereof without a surrender of any subunderlease derived thereout.

(2) A new sub-lease may be granted and accepted in place of any sub-lease so surrendered without any such surrender of a subunderlease as aforesaid, and the new sub-lease operates as if all subunderleases derived out of the surrendered sub-lease had been surrendered before the surrender of that sub-lease was effected.

(3) The sub-lessee under the new sub-lease and any person deriving title under him is entitled to the same rights and remedies in respect of the rent reserved by and the covenants, agreements and conditions contained in any subunderlease as if the original sub-lease had not been surrendered but was or remained vested in him.

(4) Each subunderlessee and any person deriving title under him is entitled to hold and enjoy the land comprised in his subunderlease (subject to the payment of any rent

reserved by and to the observance of the covenants, agreements and conditions contained in the subunderlease) as if the sub-lease out of which the subunderlease was derived had not been surrendered.

(5) The sub-lessor granting the new sub-lease and any person deriving title under him is entitled to the same remedies by entry in and upon the land comprised in any such sub-underlease for rent reserved by or for breach of any covenant as the rents reserved by or the covenants, agreements or conditions contained in the new sub-lease (so far only as the rents reserved by or the covenants, agreements or conditions contained in the new sub-lease do not exceed or impose greater burdens than those reserved by or contained in the original sub-lease out of which the subunderlease is derived) as he would have had—

- (a) if the original sub-lease had remained in force; or
- (b) if a new subunderlease derived out of the new sub-lease had been granted to the subunderlessee or a person deriving title under him as the case may require.

(6) This section does not affect the powers of the court to give relief against forfeiture.

#### **117. Provision as to attornments by tenants**

(1) Where land is subject to a sub-lease the transfer of a reversion in the land expectant on the determination of the sub-lease shall be valid without any attornment of the sub-lessee—

Nothing in this subsection—

- (a) affects the validity of any payment of rent by the sub-lessee to the person making the transfer or grant before notice of the transfer or grant is given to him by the person entitled thereunder; or



(b) renders the sub-lessee liable for any breach of covenant to pay rent on account of his failure to pay rent to the person entitled under the transfer or grant before such notice is given to the sub-lessee.

(2) An attornment by the sub-lessee in respect of any land to a person claiming to be entitled to the interest in the land of the sub-lessor, if made without the consent of the sub-lessor shall be void—

This subsection does not apply to an attornment—

- (a) made pursuant to a judgment of a court of competent jurisdiction; or
- (b) to a mortgagee by a sub-lessee holding under a sub-lease from the mortgagor where the right of redemption is barred; or
- (c) to any other person rightfully deriving title under the sub-lessor.

**118. Sub-lease invalidated by reason of non-compliance with terms of powers under which they are granted**

(1) Where in the intended exercise of any power of sub-letting, whether conferred by any enactment or any other instrument, a sub-lease (in this section referred to as an invalid sub-lease) is granted, which by reason of any failure to comply with the terms of the power is invalid, then—

- (a) as against the person entitled after the determination of the interest of the grantor to the reversion; or
- (b) as against any other person who subject to any sub-lease properly granted under the power would have been entitled to the land comprised in the sub-lease,

the sub-lease if it was made in good faith, and the sub-lessee has entered thereunder shall take effect in equity as a contract for the grant at the request of the sub-lessee of a valid sub-lease under the power of like effect as the invalid sub-lease subject to such variations

as may be necessary in order to comply with the terms of the power:

Provided that a sub-lessee under an invalid sub-lease shall not by virtue of any such implied contract be entitled to obtain a variation of the sub-lease if the other persons who would have been bound by the contract are willing and able to confirm the sub-lease without variation.

(2) Where a sub-lease granted in the intended exercise of such a power is invalid by reason of the grantor not having power to grant the sub-lease at the date thereof but the grantor's interest in the land comprised therein continues after the time when he might, in the exercise of the power, have properly granted a sub-lease in the like terms, the sub-lease shall take effect as a valid sub-lease in the like manner as if it had been granted at that time.

(3) Where during the continuance of the possession taken under an invalid sub-lease the person for the time being entitled, subject to such possession of the land comprised therein or to the rents and profits thereof, is able to confirm the sub-lease without variation by the sub-lessee or other person who would have been bound by the sub-lease had it been valid, shall, at the request of the person so able to confirm the sub-lease, be bound to accept a confirmation thereof and thereupon the sub-lease shall have effect and be deemed to have had effect as a valid sub-lease from the grant thereof.

(4) Confirmation under subsection (3) may be by a memorandum in writing signed by or on behalf of the persons respectively confirming or accepting the confirmation of the sub-lease.

(5) Where a receipt or a memorandum in writing confirming an invalid sub-lease is upon or before the acceptance of rent thereunder signed by or on behalf of the person accepting the rent that acceptance shall as against that person be deemed to be a confirmation of the sub-lease.

- (6) The foregoing provisions of this section do not affect prejudicially—
- (a) any right of action or other right or remedy to which, but for those provisions or any enactment replaced by those provisions, the sub-lessee named in an invalid sub-lease would or might have been entitled under any covenant on the part of the grantor for title or quiet enjoyment contained therein or implied thereby; or
  - (b) any right of re-entry or other right or remedy to which, but for those provisions or any enactment replaced thereby, the grantor or other person for the time being entitled to the reversion expectant on the termination of the sub-lease would or might have been entitled by reason of any breach of the covenants, conditions or provisions contained in the sub-lease and binding on the sub-lessee.

(7) Where a valid power of sub-letting is vested in or may be exercised by a person who grants a sub-lease which by reason of the determination of the interest of the grantor or otherwise cannot have effect and continuance according to the terms thereof independently of the power, the sub-lease shall for the purposes of this section be deemed to have been granted in the intended exercise of the power although the power is not referred to in the sub-lease.

(8) This section does not apply to a sub-lease of land held on charitable, ecclesiastical or public trusts.

(9) This section takes effect without prejudice to the provisions in this Law on the grant of sub-leases in the name and on behalf of the holder of the right of occupancy in the land affected.

#### *Rights and Liabilities on Determination of Tenancy*

#### **119. Duty of tenant to give up possession**

Subject to this Law or any other written Law in force in the State the tenant shall on expiration or sooner determination of his tenancy deliver up to his landlord the peaceful and quiet possession of the premises sub-let and all parts thereof, including any part he may have sub-let to a subtenant together with all the erections, buildings, improvements and fixtures which he is not entitled to remove.

**120. Duty of tenant to eject subtenant**

(1) Where the tenant has let the whole or any part of the premises to a subtenant who is in possession at the time of the expiration or determination of the term, the tenant shall get such subtenant out so that the landlord shall have complete possession of the premises to which he is entitled.

(2) When the tenant fails to get the subtenant out of the premises or otherwise deliver up complete possession, the landlord may maintain an action against him for failure to quit and deliver up possession at the end of the term.

(3) In any such action, the landlord shall recover against the tenant reasonable damages and costs sustained by him by reason of the tenant's failure to deliver up complete possession of the premises.

(4) Where, however, a tenant of a dwelling-house had during the tenancy lawfully sub-let a portion of the premises and he afterwards gives the landlord proper notice to determine the tenancy and also gives the subtenant proper notice to quit so as to determine the subtenancy at the same time as the tenancy was terminated, the fact that the sub-tenant holds over and refuses to quit shall not render the tenant, if he has done everything legally possible to give the landlord vacant possession, liable to the landlord for rent use and occupation or for damages.

Provided that this subsection shall not apply where the sub-letting was originally in breach of a covenant unless the breach has been waived by the landlord.

### **121. Tenant's liability by holding over**

(1) Subject to subsection (4) of the last foregoing section, a tenant shall be liable for failure to give up complete possession of the premises at the end of the tenancy; and even where a subtenant wrongfully holds over and refuses to quit, the tenant is liable for the period of such holding over.

Provided that nothing in this section shall prevent a landlord from accepting a sub-tenant as his own tenant, in which case the tenant shall be discharged from liability under this section.

(2) If premises are let to two persons for a term at the end of which one holds over with the assent of the other, both shall be liable for the time the one actually occupies; but the one who did not actually occupy shall not be liable if the holding over was without his assent.

(3) Where a tenancy from year to year has been determined by notice to quit, the mere accidental detention of the key by the tenant (who has quit the premises and removed his goods) for two to seven days beyond the expiration of the term does not amount to any evidence of use or occupation so as to make him liable.

### **122. Repeal and savings**

(1) Subject to the provisions of this section, the Rent Control and Recovery of Premises Law, 1977 shall, on the commencement of this Law, be repealed.

(2) Nothing in the Law shall affect any existing rights or obligation of any person under the repealed Law.

(3) Nothing in this Law shall affect anything done by any person or authority under or pursuant to the repealed Law, and anything done under the said Law shall be deemed to have been validly done and where uncompleted, may be proceeded with and

finally disposed of after the commencement of this Law as if this Law had not come into force.

### 123. Definitions

In this Law, unless the contrary is expressed or the context otherwise requires, the following expressions have the meanings assigned to them in this section, namely—

**"agent"** means a person lawfully authorised by another person to do an act for or on behalf of that other person;

**"contract for a sub-lease"** includes a contract to create a subunderlease;

**"create"** with regard to tenancy includes presumed to create;

**"deed"** means a writing which is signed, sealed and delivered by the parties;

**"donee"** of a power means a person who is given power to create tenancies;

**"estate"** means the sum total of interests which a person has in any land or tenement;

**"infant"** means a person under the age of eighteen years; **"person"** includes a body corporate or unincorporated;

**"possession"** includes right of possession, receipt of rents and profits, and right to receive rents and profits;

**"power"** includes a power of attorney;

**"premium"** means a sum of money, other than rent paid by a tenant to the landlord on the creation of a tenancy;

**"property"** includes land and buildings and interests in them;

**"property concerned"** means property the subject matter of a tenancy, and **"property let"** has the same meaning;

**"rent period"** means the period of time with reference to which a rent is fixed or payable under a given tenancy, such as a year in a tenancy from year to year, a

month in a monthly tenancy;

**"reversion"** means the interest which remains vested in the landlord during the currency of a tenancy and includes the interest which reverts in him at the end of the tenancy;

**"reversioner"** means the owner of the reversion;

**"right of occupancy"** has the meaning assigned to it in the Land Use Act;  
**"State"** means the Kwara State of Nigeria;

**"sub-lease"** means a term created out of, and coming next in hierarchy to, a right of occupancy also the term so created;

**"sub-lessee"** means the holder of a sub-lease;

**"sub-lessor"** means the person who creates a sub-lease;

**"subunderlease"** means a term of years created out of an underlease;

**"tenancy"** includes a subtenancy;

**"term of years"** means a tenancy for any period of time short of perpetuity; not being dependent directly or indirectly on the existence of a life;

**"title paramount"** means a title which is superior to the titles both of a landlord and of a tenant and against which neither is enabled to make a valid defence; it also means the owner of such a title;

**"underlease"** has the same meaning as sub-lease;

**"underlessee"** and **"underlessor"** have the same meanings as sub-lessee and sub-lessor respectively.

#### 124. Citation

This Law may be cited as the Landlord and Tenant Law.

## LANDLORD AND TENANT LAW

### SUBSIDIARY LEGISLATION

*No Subsidiary Legislation*