

LANDLORD AND TENANT
(AMENDMENT) ACT.

Act No. 33, 1935.

George V.
No. 33, 1935. An act to amend in certain respects the law relating to landlord and tenant; to amend the Landlord and Tenant (Amendment) Act, 1932, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 11th April, 1935.]

BE

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

No. 33, 1935.

1. (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1935." Short title.

(2) This Act shall be read with the Landlord and Tenant (Amendment) Act, 1932, which Act is in this Act referred to as the Principal Act. Citation.

(3) The Principal Act, as amended by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1932-1935.

2. The Principal Act is amended—

Amendment of Act No. 67, 1932.

(a) by omitting from section twenty-eight the word "thirty-five" and by inserting in lieu thereof the word "thirty-six";

Sec. 28.
(Duration of Parts II and III.)

(b) by inserting in section thirteen in the definition of "Lease" after the word "deed" the words "and every agreement for such a letting and any tenancy whether at will or otherwise";

Sec. 13.
(Interpretation.)

(c) by inserting at the end of subsection two of section fourteen the following words and subsection:—

Sec. 14 (2).
(Application of Act.)

The following leases shall for the purposes of this Part of this Act be deemed to be leases subsisting on the thirtieth day of June, one thousand nine hundred and thirty:—

(a) a lease granted after the thirtieth day of June, one thousand nine hundred and thirty, pursuant to an agreement made prior to that date whether or not such agreement was put in writing and signed by the parties so making the same or their agents thereunto lawfully authorised by writing;

(b) a lease granted after the thirtieth day of June, one thousand nine hundred and thirty, whereby there is expressed to be created a term commencing as from a day prior to that date.

(2A)

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(2A) In the case of any lease brought within the operation of this Part of this Act by the amendment made by section two of the Landlord and Tenant (Amendment) Act, 1935, this Part of this Act shall apply only where the lease is one of the class referred to in subsection two of this section and was subsisting at the commencement of the Landlord and Tenant (Amendment) Act, 1935, and where the lessee under such lease has not transferred or assigned his interest thereunder.

Sec. 15.
(Reduction
of rents.)

(d) by inserting at the end of section fifteen the following new subsection:—

(6) In its application to leases brought within the operation of this Part of this Act by the amendment made by section two of the Landlord and Tenant (Amendment) Act, 1935, the reduction effected by this section shall date from the commencement of Part III of this Act, and the amount by which the rent is so reduced for the period prior to the commencement of the Landlord and Tenant (Amendment) Act, 1935, may be deducted by the lessee from any rent due or accruing due under the lease or may be set off pro tanto against the amount payable under any judgment recovered by the lessor against the lessee for rent expressed to be payable under the lease, but where the full amount of the rent expressed to be payable under the lease has, for or on account of such period, been paid, the amount by which the amount so paid exceeds the reduced rent for such period shall not be otherwise recoverable.

Sec. 16.
(Determina-
tion of rent
by court.)

(e) by inserting at the end of section sixteen the following new subsection:—

(6) In the case of a lease brought within the operation of this Part of this Act by the amendments made by section two of the Landlord and Tenant (Amendment) Act, 1935—

(a) an application under this section shall be made within three months of the commencement of that Act: and any order made on such application shall take

take effect on a date to be fixed by the order, but such date shall not be later than the first day of April, one thousand nine hundred and thirty-three, or earlier than the thirty-first day of December, one thousand nine and thirty-two;

- (b) where an order is made by the court determining the rent at a rate lower than that provided for in subsection one of section fifteen the amount by which the rent is so reduced for the period prior to the date upon which such order was made may be deducted by the lessee from any rent due or accruing due under the lease or may be set off pro tanto against the amount payable under any judgment recovered prior to the date upon which such order was made by the lessor against the lessee for rent under the lease, but where the full amount of the rent payable under the lease prior to the date upon which such order was made has, for or on account of such period, been paid, the amount by which the amount so paid exceeds the reduced rent for such period shall not be otherwise recoverable.

3. The Landlord and Tenant (Amendment) Act, 1932, is amended by inserting next after section twenty-six the following new section:—

Further amend-
ment of Act
No. 67, 1932.
New sec. 26A.

26A. (1) This section shall apply in the case of any lease subsisting at the commencement of the Landlord and Tenant (Amendment) Act, 1935, where—

Rates in
certain
cases.

- (a) the lease was originally granted or expressed to be granted for a term of not less than ninety-nine years or is a sub-lease granted out of or under any such lease; and
- (b) the lease does not contain any covenant or stipulation enforceable by the owner
of

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of the land for the payment of rates, and where the lease is a sublease of the nature referred to in paragraph (a) of this subsection neither the head lease nor any such sublease contains any such covenant or stipulation; and

- (c) the obligation to pay rates is imposed upon the owner of the land by or under any Act which commenced after the date upon which the lease was granted; and
- (d) such obligation was not at the date upon which the lease was granted, imposed upon the owner of the land.

(2) In the case of every lease to which this section applies, there shall be implied a covenant by the lessee to pay rates.

(3) The covenant implied by subsection two of this section shall be enforceable by the owner of the land against the lessee under any lease to which this section applies as though the same were expressly included in the lease.

(4) Where any lessee makes any payment on account of rates, either to the authority imposing the rates or to the owner of the land or to any prior lessee, he may recover from any lessee under him such proportion of the amount of any such payment as is paid in respect of the land comprised in the lease of such lastmentioned lessee.

(5) Nothing in this section shall—

- (a) be construed to affect any express covenant or stipulation relating to the payment of rates; or
- (b) entitle an owner of the land to recover more than the amount due or paid in respect of any rates.

(6) In this section the expression "owner" has the meaning ascribed thereto by section four of the Metropolitan Water, Sewerage, and Drainage Act, 1924-1935, and the expression "rates" includes any rate made and levied and any tax, impost or charge imposed by or under the Local Government Act, 1919, as amended by subsequent Acts, the Metropolitan Water, Sewerage, and Drainage Act,

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1924-1935, or the Sydney Corporation Act, 1932-1934, the Sydney Harbour Bridge Act, 1922, as amended by subsequent Acts, the Main Roads Act, 1924-1931, or by or under any Act amending any such Act, or by or under any Act repealed by any of those Acts or by any Act passed after the commencement of the Landlord and Tenant (Amendment) Act, 1935, replacing any of those Acts, but does not include any rate or charge levied under any Act relating to the sale of liquor.

(7) This section shall be deemed to have commenced on the first day of April, one thousand nine hundred and thirty-five.
