



Landlord and Tenant (War Damage) Act (Northern Ireland) 1941

1941 CHAPTER 9

NOTICES OF RETENTION AND NOTICES TO AVOID DISCLAIMER

10 Effect of notice of retention.

(1) Where a notice of retention is served or is deemed to have been served in respect of a lease, then, unless the notice of retention is of no effect under this Part of this Act or the notice to elect by virtue whereof the notice of retention is deemed to have been served is of no effect under this Part of this Act, the lease shall have effect subject to the following modifications:—

- (a) there shall be implied in the lease, notwithstanding anything in Part I of this Act, a covenant by the tenant with the landlord that the land comprised in the lease shall be rendered fit as soon as is reasonably practicable after the date when the notice was served or is deemed to have been served:

Provided that where before that date any person has guaranteed the performance of the covenants in the lease, the guarantee shall be deemed not to extend to the covenant implied in the lease by virtue of this paragraph;

- (b) subject to the powers of the court under the following provisions of this subsection, no rent shall be payable by the tenant under the lease in respect of the period beginning with the date when the notice was served or is deemed to have been served and ending with the date on which the land is rendered fit;
- (c) where the court is satisfied, on the application of the landlord made at any time before the land has been rendered fit, that part of the land is capable of beneficial occupation, the court may direct that there shall be payable by the tenant such rent, at such times and in respect of such period as the court may fix:

Provided that the amount of the rent fixed by the court under this paragraph shall not exceed such proportion of—

- (i) the annual value at the time of the application of so much of the land as is at that time capable of beneficial occupation; or

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(ii) the full annual rent reserved by the lease;

whichever is the less, as the period in respect of which the rent is payable bears to a year;

(d) where the court is satisfied, on the application of the landlord made at any time, that there has been unreasonable delay on the part of the tenant in rendering the land fit, the court may direct that there shall be payable by the tenant such rent (not exceeding the rent reserved by the lease) at such times and in respect of such period as the court may fix.

(2) In this section the expression “rent,” in relation to a lease, includes any periodical sum payable by the tenant to the landlord in connection with his tenancy, whether for services, lighting, heating, board, use of furniture or otherwise, and references to rent reserved by a lease include references to any such sum contracted to be paid by any agreement.

11 Effect of notice to avoid disclaimer.

(1) Where a notice to avoid disclaimer is served in respect of a notice of disclaimer, the notice of disclaimer shall be of no effect and, unless the notice of disclaimer is of no effect by reason of some other provision of this Part of this Act, the lease to which it relates shall have effect subject to the following modifications:—

(a) there shall be implied in the lease, notwithstanding anything in Part I of this Act, a covenant by the landlord with the tenant that the land comprised in the lease shall be rendered fit as soon as is reasonably practicable after the service of the notice to avoid disclaimer:

Provided that where before the service of the said notice any person has guaranteed the performance of the covenants in the lease, the guarantee shall be deemed not to extend to the covenant implied in the lease by virtue of this paragraph;

(b) subject to the powers of the court under the next following paragraph, no rent shall be payable by the tenant under the lease in respect of the period beginning with the date of the service of the notice of disclaimer and ending with the date on which the land is rendered fit;

(c) where the court is satisfied, on the application of the landlord made at any time before the land has been rendered fit, that any part of the land is capable of beneficial occupation, the court shall have the same powers as it has under paragraph (c) of sub-section (1) of the last foregoing section.

(2) In this section the expression “rent” has the same meaning as in the last foregoing section.

12 Recurrence of war damage after service of notice.

(1) Where land comprised in a lease has been rendered unfit by war damage, and further war damage occurs to the land before it has been rendered fit and after notice of retention has been or is deemed to have been served, or notice to avoid disclaimer has been served, in respect of the lease, the tenant or the landlord, as the case may be, may apply to the court for leave to withdraw the notice.

(2) On any such application the court shall grant leave to withdraw the notice if it is satisfied that the liability of the tenant or the landlord, as the case may be, in respect

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of repairs under the lease as modified in pursuance of the notice has been materially increased by the further war damage.

- (3) As from the date on which the notice is withdrawn—
- (a) any notice to elect served on the tenant or notice of disclaimer served on the landlord before that date shall be of no effect; and
 - (b) the lease shall have effect as if the notice withdrawn had never been served, or been deemed to have been served:

Provided that nothing in this sub-section shall, unless the court having regard to all the circumstances of the case otherwise determines, impose on the tenant a liability for rent under the lease in respect of any period before that date.

- (4) In this section the expression “rent” has the same meaning as it has in the two last foregoing sections.

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