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A BILL FOR A LAW TO REFORM THE LAW RELATING TO RESIDENTIAL TENANCIES; TO DEFINE THE RIGHTS AND OBLIGATIONS OF LANDLORDS AND TENANTS OF RESIDENTIAL PREMISES; TO PROVIDE FOR A COMMISSIONER TO DETERMINE EXPEDITIOUSLY DISPUTES ARISING BETWEEN SUCH LANDLORDS AND TENANTS; TO REPEAL THE LANDLORD AND TENANT LAW (1998 REVISION); AND FOR INCIDENTAL AND CONNECTED PURPOSES

MEMORANDUM OF OBJECTS AND REASONS

In October 2005 the Law Reform Commission was asked by the Government to review the law governing the relationship between landlords and tenants. The Government made such request because of the many social problems which had arisen in this area of the Law as a result of Hurricane Ivan in September 2004.

This Bill seeks to give effect to the changes proposed by the Commission in its review of the relevant legislation which is the Registered Land Law (2004 Revision) and the Landlord and Tenant Law (1998 Revision).

Preliminary

Clause 1 provides the short title.

Clause 2 is the definition clause.

Part I

Application of this Law

Clause 3 provides that this legislation binds the Crown.

Clause 4 provides that this legislation relates to residential tenancies.

Clause 5 specifies the cases in which the Law does not apply such as where the premises are commercial premises, premises which form part of a hospital or other institution for the sick and premises where the tenant is sharing with the landlord or with a member of the landlord's family.

Clause 6 provides that nothing in clause 5 shall prevent the parties to a tenancy that would otherwise be excluded from this legislation by virtue of any of the provisions of that clause, from agreeing in writing that all or any of the provisions of this legislation shall apply in respect of the tenancy, either without modification or with such modifications as they may so agree.

Clause 7 provides that where, in any proceedings before the Residential Tenancies Commissioner (appointed under clause 9) or any court, any party contends that this legislation does not apply in respect of any tenancy of any residential premises, it shall be for that party to establish the facts upon which it is contended that this legislation does not apply.

Clause 8 provides that the provisions of this legislation shall apply generally despite an agreement purporting to exclude such provisions unless the exclusion, inconsistency etc is expressly permitted by the legislation or the Residential Tenancies Commissioner is of the opinion that it should be permitted. A landlord may however waive voluntarily any of his rights or powers under the legislation. Any purported waiver by a tenant of any right or power conferred upon tenants by this legislation shall be of no effect.

PART II- Residential Tenancies Commissioner

Clause 9 provides for the appointment by the Governor of a Residential Tenancies Commissioner. The Residential Tenancies Commissioner (“the Commissioner”) will be a public officer.

Clause 10 provides that the Commissioner shall have power to determine in accordance with this legislation disputes arising between landlords and tenants in relation to any tenancy to which this legislation applies or to which this legislation did apply at any material time.

The Commissioner shall have jurisdiction to do the following things-

- (a) to determine whether any premises are or are not, or were or were not at any material time, residential premises to which this Law applies;
- (b) to determine whether there is or is not, or was or was not at any material time, a tenancy agreement to which this Law applies in force in respect of any residential premises, and to determine the terms of and the parties to any such agreement;
- (c) to determine whether any tenancy is or is not, or was or was not at any material time, a service tenancy;
- (d) to determine, after a landlord has increased the rent under an agreement, whether that increase has been made in accordance with the provisions of section 25 or is justified under section 26;
- (e) where any rent is, was, or will be required wholly or partly in a form other than money, to determine in monetary terms the value of the rent so required;
- (f) to order the landlord or the tenant under any tenancy agreement to which this Law applies to do anything necessary to remedy the breach by that party of any express or implied provision of the tenancy agreement or any provision of this Law, or to do anything that that party is required to do by any such provision;
- (g) to order the landlord or the tenant under any tenancy agreement to which this Law applies to refrain from doing anything if the doing of that thing by that party would constitute a contravention

or (as the case may require) a further contravention of any express or implied provision of the tenancy agreement or any provision of this Law; and

- (h) to make orders of a consequential or ancillary nature necessary to exercise or perfect the exercise of any of his jurisdiction.

The Commissioner shall endeavour, by all reasonable and equitable means, to resolve by conciliation a complaint that is the subject of a proceeding. He shall also take all steps that he considers reasonable and equitable in the circumstances to effect an amicable settlement of a dispute that is the subject of a proceeding and may adjourn a proceeding at any stage to enable parties to negotiate for that purpose.

In order to facilitate amicable settlements the Commissioner need not follow, if he thinks it necessary, strict rules of evidence governing civil proceedings.

Clause 11 provides that the Commissioner may determine a dispute by making such order as he thinks fit and that order may be made on any terms and conditions as the Commissioner thinks fit. The Commissioner has the power to order any party to a dispute-

- (a) to perform or refrain from performing any act; and
- (b) to undertake or refrain from undertaking any obligation.

The Commissioner must give reasons for his decision. A party who fails to comply with a determination or order of the Commissioner commits an offence and is liable on summary conviction to a fine of \$4000.

Clause 12 deals with how applications to the Commissioner will be dealt. The First Schedule sets out most of the procedures to be followed.

Clause 13 gives a landlord or a tenant a right to appeal a decision of the Commissioner to a court of summary jurisdiction.

PART III- Tenancy agreements

Clause 14 provides that every tenancy agreement shall be in writing and signed by both the landlord and the tenant.

Clause 15 sets out the contents of a tenancy agreement. Such an agreement should include-

- (a) the full name and contact address of the landlord;

- (b) the full name and contact address (where that is different from the address of the premises to which the agreement relates) of the tenant;
- (c) the address of the premises;
- (d) the date of the tenancy agreement;
- (e) the date of commencement of the tenancy (where that is different from the date of the tenancy agreement);
- (f) the landlord's address for service;
- (g) the tenant's address for service;
- (h) the amount of any security deposit;
- (i) the amount of the rent payable;
- (j) the frequency of the rent payments;
- (k) the place or bank account number where the rent is to be paid;
- (l) a statement (if applicable) that the tenant shall pay any fee or other charge for services rendered by any attorney-at-law or real estate agent relating to the grant or assignment of the tenancy;
- (m) a list of any chattels provided by the landlord; and
- (n) if the tenancy is a fixed-term tenancy, the date on which the tenancy will terminate.

Clause 16 provides that every variation of a tenancy agreement, and every renewal of a tenancy agreement, shall be in writing and signed by both the landlord and the tenant.

Clause 17 provides that where the name and contact address, or address for service, of any person has been notified to the other party to the tenancy in accordance with this Law and that name or address subsequently changes (otherwise than in circumstances to which clause 42 applies), the person shall, within 10 working days thereafter, cause notice of the new particulars to be given to the other party to the tenancy.

Clause 18 deals with the duration of tenancies. Where the period of a tenancy is expressed as commencing on a particular day, that day is excluded in computing that period. Where no day of commencement is named, the period commences on the date of execution of the tenancy agreement, and that day is excluded in computing that period. Where the period is a year or a number of years, in the absence of an express agreement to the contrary, the tenancy agreement shall last during the whole anniversary of the day on which such period commences.

Clause 19 provides that a landlord shall not charge, demand, receive or collect from a tenant of residential premises a security deposit of any amount or value exceeding-

- (a) one month's rent, in the case of a tenancy other than a weekly tenancy; or
- (b) one week's rent, in the case of a weekly tenancy.

A landlord shall not give a tenant notice to vacate residential premises or refuse to renew a tenancy agreement for the sole purpose of increasing the security deposit for those premises.

Clause 20 provides that a security deposit shall be held by the landlord in trust.

Clause 21 provides that a landlord shall invest the security deposit in an interest bearing account at a Class "A" bank in the Islands;

Clause 22 provides that a landlord shall, at the termination of the tenancy agreement, pay to the tenant interest on the security deposit at the applicable market rate calculated from the date on which the landlord receives the full amount of the security deposit.

Clause 23 provides that a security deposit held by a landlord for a tenant is not attachable under any garnishee proceedings or receiving order, or exigible under a writ of execution. A landlord shall not assert a claim against a tenant or the security deposit –

- (a) for damages to the premises or any defective conditions that pre-existed the tenancy;
- (b) for ordinary wear and tear or the effects thereof whether the wear and tear pre-existed the tenancy or occurred during the tenancy; or
- (c) for the cumulative effects of ordinary wear and tear occurring during one or more tenancies.

Clause 23 further provides that at the termination of the tenancy agreement the landlord shall inspect the premises and compile a comprehensive and detailed list of any damage to the premises which is the basis for any charge against the security deposit and the estimated dollar cost of repairing such damage. The tenant shall have the right to inspect the premises to ascertain the accuracy of the list. A tenant who disputes the accuracy of the final damage list may apply to the Commissioner for a determination of such list; and the tenant's claim shall be limited to those items from which the tenant specifically dissented. If the tenant fails to sign the list or to specify his dissent he shall not be entitled to recover any part of the deposit disputed by him.

Clause 24 deals with when the security deposit should be returned. A deposit should be returned within 14 days after the termination of the tenancy (excluding Saturdays, Sundays and holidays). Where the landlord intends to keep the deposit

or a portion of the deposit in order to pay for damages or rent due and the tenant objects either the tenant or the landlord may apply to the court or the Commissioner for a determination of the matter.

Clause 25 sets out the conditions which must be followed in order for a landlord to effect a rent increase. A landlord must give the tenant a notice in writing of the increase. The other conditions are that –

- (a) that notice shall specify the amount of the increased rent and the day upon which the increased rent shall become payable;
- (b) the day upon which the increased rent shall become payable shall be not less than 60 days after the date on which that notice is given;
- (c) the rent shall not be increased within 180 days after the date on which the last increase took effect;
- (d) in the case of a tenancy which is not subject to annual rent adjustment, the rent shall not be increased within 180 days after the date of the commencement of the tenancy;
- (e) in the case of a tenancy which is subject to annual rent adjustment, no rent increase shall take effect—
 - (i) less than 60 days after the notice required by paragraph (a) is given; and
 - (ii) other than on the specified date in any year or with effect on the next day on which any rent is to be paid within 28 days after the specified date in any year;
- (f) a landlord under a fixed-term tenancy shall not increase the rent otherwise than as permitted by the agreement; and
- (g) where the Commissioner has made an order under clause 26 and that order is still in force, the rent shall not be increased to an amount in excess of the amount specified in the order.

Clause 26 provides that notwithstanding anything in clause 25 where, during any tenancy, the landlord—

- (a) effects substantial improvements to the premises, or provides more or better facilities or services for the tenant, with the consent of the tenant; or
- (b) incurs in respect of the premises expenses of a nature or an amount that could not reasonably have been foreseen when the rent was last fixed,

the Commissioner may, on application by the landlord, make an order for the increase of the rent to or by such amount as the Commissioner thinks fit. In making a determination under this clause the Commissioner may take into account any submissions or representations made by the tenant in respect of the application.

Clause 27 provides that landlords must provide receipts for rent paid to them. It further provides that a landlord shall upon request provide the tenant with a written statement of the period to which any payment of rent relates.

Clause 28 directs the landlord to keep proper business records relating to rental agreements.

Clause 29 provides that rent payable under a tenancy agreement shall accrue from day to day. Upon termination of the tenancy, the rent shall be apportioned accordingly, and the appropriate amount shall be payable or recoverable forthwith.

Clause 30 provides that any provision in a tenancy agreement to the effect that, on breach by the tenant of any term of the agreement or of any of the provisions of this Law or of any other enactment, the tenant shall be liable to pay—

- (a) the whole or any part of the rent remaining payable under the agreement;
- (b) rent of an increased amount; or
- (c) a sum specified in the agreement by way of damages or penalty,

shall be of no effect.

Any provision in a tenancy agreement to the effect that, if the tenant does not breach any term of the agreement or any of the provisions of this Law or of any other enactment, the rent shall or may be reduced or the tenant shall or may be granted or paid a rebate, refund, or other benefit, shall be construed as entitling the tenant to that reduction, rebate, refund, or other benefit in any event.

Clause 31 provides that the landlord shall not be entitled to seize or dispose of any of the tenant's goods—

- (a) as security for or in payment of any amount owing by way of rent; or
- (b) for any other reason arising from the tenancy.

A landlord who seizes or disposes of any goods in contravention of this provision commits an unlawful act.

Clause 32 provides that a landlord shall take all reasonable steps to ensure that, at the commencement of the tenancy, there is no legal impediment to the occupation of the premises for residential purposes.

Clause 33 provides that a tenant shall have vacant possession of the premises on the date on which, in accordance with the tenancy agreement, the tenant is entitled to enter into occupation of the premises.

Clause 34 provides that a tenant shall be entitled to have quiet enjoyment of the premises without interruption by the landlord or any person claiming by, through, or under the landlord or having superior title to that of the landlord. A landlord shall not cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant.

Clause 35 provides that subject to subclauses (2) and (3) thereof, all outgoings (including garbage fees, rates, strata fees, and insurance premiums) from time to time payable in respect of the premises shall, as between the landlord and the tenant, be payable by the landlord.

Where the parties do not agree otherwise, a tenant shall be liable under a tenancy agreement to pay-

- (a) all charges for electricity or gas supplied to the premises;
- (b) water charges in respect of the premises (including the cost of charges for standard meter readings) if-
 - (i) the premises have a separate water meter;
 - (ii) the tenancy agreement stated, at the commencement of the tenancy, that the tenant shall pay for any metered water provided to the premises; and
 - (iii) the water supplier charges for water provided to the premises on the basis of metered usage;
- (c) all charges in respect of any telephone or television connected to the premises.

Clause 36 specifies the other obligations of a tenant under a tenancy agreement. A tenant shall, among other things-

- (a) pay the rent as and when it is due and payable under the tenancy agreement;
- (b) ensure that the premises are occupied principally for residential purposes;
- (c) keep the premises reasonably clean and reasonably tidy;
- (d) notify the landlord, as soon as possible after discovery, of any damage to the premises, or of the need for any repairs; and
- (e) on the termination of the tenancy-
 - (i) quit the premises;
 - (ii) remove all his goods from the premises;

- (iii) leave the premises in a reasonably clean and reasonably tidy condition, and remove or arrange for the removal from the premises of all rubbish;
- (iv) return to the landlord all keys, and security or pass cards or other such devices, provided by the landlord for the use of the tenant; and
- (v) leave in or at the premises all other chattels provided by the landlord for the use of the tenant.

Clause 37 provides that a tenant shall be responsible for anything done or omitted to be done by any person (other than the landlord or any person acting on the landlord's behalf or with the landlord's authority) who is in the premises with the tenant's permission if the act or omission would have constituted a breach of the tenancy agreement had it been the act or omission of the tenant.

Clause 38 provides for how a tenant may deal with fixtures on the premises.

Clause 39 deals with the disposition of a landlord's interests in the premises and how the tenant must be dealt with in those circumstances.

Clause 40 provides that there may be included in a tenancy agreement a provision that expressly and unconditionally prohibits the tenant from assigning, subletting, or parting with possession of the premises during the term of the tenancy. In the absence of such a provision the tenant may at any time during the tenancy assign, sublet, or part with possession of the premises with the prior written consent of the landlord and in accordance with any conditions attached to that consent by the landlord. The landlord shall not withhold that consent unreasonably, nor attach any unreasonable conditions to it.

Clause 41 sets out the responsibilities of a landlord. The clause provides that, among other things, the landlord must, at the commencement of the tenancy, provide the tenant with premises which are in a reasonable state of cleanliness and fit for human habitation. In determining for the purposes of this legislation whether premises are fit for human habitation regard shall be had to their condition in respect of the following matters-

- (a) repair;
- (b) freedom from damp and mould;
- (c) natural lighting;
- (d) water supply;
- (e) stability;
- (f) ventilation;
- (g) drainage and sanitary conveniences;

- (h) facilities for the preparation and cooking of food and for the disposal of waste water,

and premises shall be considered unfit if they are so far defective in one or more of those matters that they are not reasonably suitable for occupation in that condition.

The clause also provides that a landlord shall, during the tenancy, comply with all requirements in respect of the structure of buildings, health, and safety under any enactment so far as they apply to the premises. Further, a landlord shall compensate the tenant for any reasonable expenses incurred by the tenant in repairing the premises where-

- (a) the state of disrepair has arisen otherwise than as a result of a breach of the tenancy agreement by the tenant and is likely to cause injury to persons or property or is otherwise serious and urgent; and
- (b) the tenant has made a reasonable attempt to give the landlord notice of the state of disrepair.

Where the landlord does not compensate the tenant within 1 month of the tenant incurring such expenses the tenant may deduct the expenses from the next due rent or rents as the case may be.

Clause 42 provides that a landlord shall provide and maintain such locks and other similar devices as are necessary to ensure that premises are reasonably secure.

Clause 43 provides that if, at any time after entering into a tenancy agreement, the landlord puts the premises on the market for the purposes of sale or other disposition, the landlord shall forthwith give written notice of that fact to the tenant. When a landlord is offering residential premises as available for letting, the landlord shall inform prospective tenants if the premises are on the market for the purposes of sale or other disposition.

Clause 44 specifies the circumstances under which, and times when, the landlord may enter the premises.

Clause 45 provides that where any party to a tenancy agreement breaches any of the provisions of the agreement or of this legislation, the other party shall take all reasonable steps to limit the damage or loss arising from that breach, in accordance with the rules of law relating to mitigation of loss or damage upon breach of contract.

PART IV –Termination of tenancies

Clause 46 sets out the scope of this Part of the legislation.

Clause 47 provides that, subject to this Part, a tenancy agreement shall only be terminated in accordance with this Part.

Clause 48 provides that a fixed-term tenancy agreement terminates without notice when that term expires and a tenancy agreement which is terminable on notice by either party terminates on the expiration of notice duly given.

Clause 49 deals with the surrender of a tenancy agreement.

Clause 50 provides that a notice to terminate a tenancy shall be in writing and may, but need not be in the form set out in Part I of the Second Schedule. It further provides that subject to any agreement in writing providing for a different manner of service, a notice to terminate shall be served in the manner set out in Part II of the Second Schedule.

Clause 51 sets out the length of notice required to terminate different tenancies. It is provided that-

- (a) a tenancy from year to year shall be terminated by not less than 3 months previous notice given at any time after the end of the first year of the tenancy;
- (b) a tenancy for successive rental periods of more than a month and less than a year shall be terminated by notice not shorter than the rental period given at any time after the end of the first rental period; and
- (c) a tenancy for successive rental periods of a month or less shall be terminated at the end of a rental period by not less than one month's previous notice.

Clause 52 sets out the circumstances in which a landlord may apply to the court for an order to terminate a tenancy. He may do so where-

- (a) the tenant is in breach of an obligation under the tenancy agreement;
- (b) the tenancy agreement is terminable by its terms in the event of the bankruptcy or liquidation of the tenant and that event has occurred; or
- (c) the tenancy agreement is terminable by its terms on the occurrence of any other event and that event has occurred.

A tenancy agreement continues, and the rights and obligations of the parties remain enforceable, unless and until the court makes an order under this clause. When dealing with an application the court shall have regard to all the circumstances, and particular shall consider whether—

- (a) the landlord acted reasonably in instituting proceedings, and in particular whether he informed the tenant of the breach;
- (b) the tenant has had a reasonable opportunity or has taken reasonable steps to remedy the breach (if capable of remedy); and
- (c) the tenant during the currency of the proceedings has continued to observe his obligations under the tenancy agreement.

If it is made to appear to the court that the tenant is in breach of his obligation to pay rent, and has been in arrears repeatedly, the court may if it sees fit order termination of the tenancy agreement. This order may be made notwithstanding the payment by the tenant to the landlord or into court before the hearing, of all arrears of rent and costs, provided that upon accepting payment of all arrears of rent and costs or upon withdrawal of such arrears and costs from the court, the landlord has informed the tenant in writing that action will not thereby abate.

The court may, if it sees fit, stay execution upon an order for termination of a tenancy agreement or set aside such order, subject to such conditions as it thinks fit.

Clause 53 provides that tenant shall be entitled to apply for a stay of proceedings commenced by the landlord under clause 52 on the ground that continuance of the proceedings (for the time being) would be oppressive because-

- (a) he has taken or is taking steps to remedy the breach;
- (b) the damage to the reversion is or would be trivial; or
- (c) in all the circumstances it would be unreasonable to order termination of the tenancy agreement.

Clause 54 deals with the making of interim orders by the court pending the final determination of an application made under clause 52.

Clause 55 provides that a landlord shall give notice of proceedings commenced by him under clause 52. A landlord shall give notice of the proceedings to-

- (a) any person in occupation of the premises or any part thereof, either by name or by description as "Occupier" followed by a description of the premises or the part thereof occupied by him;
- (b) any person who has an interest as sub-tenant; and
- (c) any other person specified by the court.

The landlord shall also give notice to the tenant of the persons to whom the landlord has given notice. The tenant shall, within 12 days after the service of the writ or summons on him, give notice to the landlord of any person not specified in the notice given to him by the landlord, who, on the date of service of the writ or summons was in occupation of the premises or was a sub-tenant. Thereafter the landlord shall give notice of the proceedings to any person specified in the notice given to him by the tenant.

Clause 56 provides that where the court orders termination of the tenancy agreement under clause 52 all interests derived out of that tenancy agreement or any sub-tenancy shall thereupon cease, subject to the grant of relief under clause 57.

Clause 57 provides that where an application is made under clause 52, any person claiming an interest as sub-tenant may apply to the court for an order vesting in him, for the whole sub-term of years or any less term, the premises held by the tenant, or any part thereof. However if the landlord has offered the sub-tenant of part of the premises a new tenancy agreement for that part on the same terms as those on which he previously held as sub-tenant, the court shall not vest the whole of the premises held by the tenant in the sub-tenant.

In making a vesting order the court may impose such terms and conditions with respect to the tenancy as it thinks fit, and, in the case of an order in respect of part of the premises held by the tenant, may vest in the sub-tenant any ancillary rights previously enjoyed by the sub-tenant which it considers necessary for the reasonable use and enjoyment of that part.

When a vesting order is made in favour of a sub-tenant who is a mortgagee of a term of years, it shall vest in the mortgagee a term free from any right in the mortgagor to redeem, subject to such ancillary provisions as may be set forth in the order.

This clause applies only to persons whose interests were created before the service of the writ or summons under clause 52.

Clause 58 provides that a tenant may apply to the court for an order to terminate a tenancy agreement where the landlord is in breach of an obligation under a tenancy agreement.

PART V- Recovery of possession and mesne profits

Clause 59 provides that a landlord shall be entitled to compensation for the use and occupation of premises after the tenancy has expired or been terminated in

accordance with Part IV and the tenant has neglected or refused to give up possession of the premises. Acceptance by a landlord of arrears of rent or compensation-

- (a) after the expiration of the tenancy;
- (b) after notice of termination of a tenancy has been duly given in accordance with Part IV; or
- (c) after an order for the termination of the tenancy has been made under clause 52,

does not operate as a waiver of the notice or as a reinstatement of the tenancy or as the creation of a new tenancy unless the parties so agree.

Clause 60 provides that where a tenant, after his tenancy has expired or has been terminated in accordance with Part IV, does not go out of possession of the premises held by him, the landlord may apply to the court for an order for possession.

Clause 61 provides that an application for an order of possession may also include a claim for arrears of rent and for compensation for use and occupation of the premises by the tenant after the expiration or termination of the tenancy.

Clause 62 specifies the types of judgments which may be made by the court upon the hearing of an application for an order of possession.

Clause 63 provides that an order granting possession-

- (a) shall direct the tenant to deliver up possession of the premises to the landlord by a specified date or within a specified time after service of the order on the tenant; and
- (b) shall state that if the order is not obeyed by the specified date or within the specified time a warrant of possession will issue under clause 68 without any further order.

Clause 64 provides that where an order for possession under paragraph (a) of clause 63(1) is not obeyed by the date or within the time therein specified, upon proof of service of the order the landlord shall be entitled, without any further order, to sue out a warrant directing the bailiff to evict the tenant from the premises.

Clause 65 provides that proceedings in respect of a claim for arrears of rent or compensation may continue to judgment notwithstanding that the tenant delivers up possession of or vacates the premises.

PART VI- Registration of certain tenancy agreements

Clause 66 provides that a fixed- term tenancy for a specified period of two years or more, or for the life of the landlord or of the tenant, or a tenancy which contains an option whereby the tenant may require the landlord to grant him a further term or terms which, together with the original term, exceed one year, shall be registered by the Registrar in accordance with the provisions of the Registered Land Law (2004 Revision) and the provisions of that Law as they relate to registration shall apply with the necessary changes.

Clause 67 provides that upon the registration of a tenancy agreement containing an agreement, express or implied, by the tenant that he will not transfer, sub-let, charge or part with possession of the premises or any part thereof without the written consent of the landlord, the agreement shall be noted in the register of the tenancy agreement and no dealing with the tenancy agreement shall be registered until the consent of the landlord, verified in accordance with section 107 of the Registered Land Law (2004 Revision), has been produced to the Registrar.

Clause 68 provides that where any premises is subject to a charge, no lease of such premises shall be registered without the previous consent in writing of the proprietor of the charge, verified in accordance with section 107 of the Registered Land Law (2004 Revision), unless the charge expressly dispenses with the necessity for such consent.

Clause 69 provides that a tenancy may be made for a period to commence on a future date, not being later than twenty-one years from the date on which the tenancy agreement is executed but shall be of no effect unless it is registered. Any instrument purporting to create a tenancy to commence on a date more than twenty-one years after the date of the instrument, or to take effect on the fulfilment of any condition, is void.

Clause 70 provides for the voluntary registration of tenancy agreements.

Part VI- General

Clause 71 provides that where, otherwise than as a result of a breach of the tenancy agreement, the premises are destroyed, or are so seriously damaged as to be uninhabitable-

- (a) the rent shall abate accordingly; and
- (b) either party may give notice to the other terminating the tenancy.

It is further provided that where, otherwise than as a result of a breach of the tenancy agreement, the premises are partially destroyed, or part of the premises is so seriously damaged as to be uninhabitable-

- (a) the rent shall abate accordingly; and
- (b) either party may apply to the Commissioner for an order terminating the tenancy, and the Commissioner may make such an order if he is satisfied that it would be unreasonable to require the landlord to reinstate the property or (as the case may require) to require the tenant to continue with the tenancy albeit at a reduced rent.

Clause 72 provides that on the application of a landlord, the Commissioner may make an order terminating a tenancy where he is satisfied that the tenant has abandoned the premises and the rent is in arrears.

Clause 73 provides that a person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person commits an offence where-

- (a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and
- (b) the person using or threatening the violence knows that that is the case.

The penalty is imprisonment for four years and a fine of \$4000.

Clause 74 provides that a landlord or a tenant, may apply to the court for an order requiring any other person to pay to the applicant an amount in the nature of exemplary damages on the ground that that other person has committed an unlawful act.

If, on such an application, the court is satisfied that the person against whom the order is sought committed the unlawful act intentionally, and that, having regard to-

- (a) the intent of that person in committing the unlawful act;
- (b) the effect of the unlawful act;
- (c) the interests of the landlord or the tenant against whom the unlawful act was committed; and
- (d) the public interest,

it would be just to require the person against whom the order is sought to pay a sum in the nature of exemplary damages, the court may make an order accordingly.

Clause 75 empowers the Governor in Cabinet to make regulations in order to give effect to any provision of this legislation.

Clause 76 provides that the Chief Justice may make rules for regulating pleading, practice and procedure in respect of the conduct of any matter before the court arising under this legislation.

Clause 77 provides applies where a dispute is referred to the Commissioner and any party to the proceedings subsequently commences legal proceedings in any court against any other party to the dispute in respect of any of the matters which are the subject of the dispute. Where this occurs, any party to legal proceedings may at any time after acknowledgment of service and before delivering any pleadings or taking any other step in the proceedings, apply to the court to stay the proceedings. On an application the court may make an order staying the proceedings if it is satisfied-

- (a) that there is no sufficient reason why the matter should not be dealt with by the Commissioner; and
- (b) that the applicant was at the time when the legal proceedings were commenced and still remains ready and willing to do all things necessary to the resolve the dispute.

Clause 78 provides that an agreement or arrangement that is inconsistent with this Law or that purports to exclude, modify or restrict the operation of this Law, is (unless the inconsistency, exclusion, modification or restriction is expressly permitted under this Law) to that extent void. A person who enters into an agreement or arrangement to defeat, evade or prevent the operation of this Law directly or indirectly is guilty of an offence and is liable on summary conviction to a fine of \$5000.

Clause 79 is a transitional clause.

Clause 80 provides for the repeal of the Landlord and Tenant Law (1997 Revision) and section 84 of the Penal Code (2006 Revision) which deals with violent entry.

The First Schedule contains provisions regulating the procedure of any hearing by the Commissioner.

The Second Schedule contains the forms of notice required to be served by a landlord and by a tenant in accordance with clause 51.

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FIRST SCHEDULE- Dispute resolution by the Residential Tenancies Commissioner

SECOND SCHEDULE- Forms of notices; Service of notices

CAYMAN ISLANDS

DRAFT OF MONDAY 2ND OCTOBER, 2006

A BILL FOR A LAW TO REFORM THE LAW RELATING TO RESIDENTIAL TENANCIES; TO DEFINE THE RIGHTS AND OBLIGATIONS OF LANDLORDS AND TENANTS OF RESIDENTIAL PREMISES; TO PROVIDE FOR A COMMISSIONER TO DETERMINE EXPEDITIOUSLY DISPUTES ARISING BETWEEN SUCH LANDLORDS AND TENANTS; TO REPEAL THE LANDLORD AND TENANTS LAW (1998 REVISION); AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Preliminary

1. This Law may be cited as the Residential Tenancies Law, 2006.

Short title

2. In this Law, unless the context otherwise requires-

Interpretation

“agent” in relation to any person who is a landlord or a tenant, means an agent of that person in that person’s capacity as landlord or tenant; and includes an employee of that person in that person’s capacity as landlord or tenant;

“application” in relation to the Residential Tenancies Commissioner, includes-

- (a) an application made jointly by the landlord and the tenant of any premises;
- (b) any complaint by the landlord against the tenant or by

- the tenant against the landlord;
- (c) any claim by the landlord against the tenant or by the tenant against the landlord; and
- (d) any other application that may be made to the Commissioner by virtue of any of the provisions of this Law or of any regulations made under this Law;

Class “A” bank means a bank which is licensed under the Banks and Trust Companies Law (2003 Revision) to carry out banking business within and outside of the Islands;

“commercial premises” means premises that are not residential premises;

“Commissioner” means the Residential Tenancies Commissioner appointed under section 9;

“court” means a court of summary jurisdiction;

“facilities” in relation to a tenancy agreement, includes all facilities provided by the landlord for the use and enjoyment of the tenant, otherwise than as part of the premises that are the subject of the agreement, such as the following-

- (a) any land or buildings intended for use for storage space or for the parking of motor vehicles;
- (b) laundry facilities;
- (c) lifts and stairways;
- (d) rubbish storage and rubbish disposal facilities;
- (e) appliances for heating or cooling premises;
- (f) communication facilities;
- (g) recreational areas; and
- (h) lawns, gardens, and outhouses;

“fixed-term tenancy” means a tenancy for a fixed term; but does not include such a tenancy that is terminable by notice;

“fixtures” means all appurtenances, furniture, furnishings, equipment, fixtures, services and facilities supplied or to be supplied by a landlord to a tenant under a tenancy agreement;

“land” includes land covered with water, all things growing on land and buildings and other things permanently affixed to land;

“landlord” means a person who grants to a person the exclusive right of tenancy of residential premises and includes-

- (a) an agent or a personal or legal representative of, or any other person acting on behalf of, a landlord;
- (b) a person to whom a landlord assigns a tenancy agreement;
- (c) a trustee in bankruptcy, liquidator, receiver or committee appointed by any court or by law in respect of the property of a landlord;
- (d) the purchaser at a judicial sale of the residential premises of a landlord;
- (e) a mortgagee of the residential premises of a landlord who acquires title thereto by foreclosure or pursuant to a judicial sale thereof, or who enters into possession of the residential premises, and the assigns of such mortgagee;
- (f) any person who becomes the owner of property on which residential premises are situated, or that consists of residential premises, with respect to which at the time the person becomes the owner there are subsisting tenancy agreements;

“member of the landlord’s family” means any of the following-

- (a) the landlord’s spouse;
- (b) any person with whom the landlord has entered into a relationship in the nature of marriage;
- (c) any child of the landlord or of any person referred to in paragraph (a) or paragraph (b);
- (d) any other child who is being, or is to be, cared for on a continuous basis by the landlord or any person referred to in paragraph (a) or paragraph (b);
- (e) any parent of the landlord or of any person referred to in paragraph (a) or paragraph (b);
- (f) any other person who is related (whether by blood or marriage) to the landlord or to any person referred to in paragraph (a) or paragraph (b) and is residing, or is to reside, in the landlord’s premises in accordance with an arrangement between that person and the landlord of a predominantly domestic or family nature rather than a predominantly commercial nature;

“periodic tenancy” means a tenancy from year to year, half year to half year, quarter to quarter, month to month, week to week or the like;

“personal representative” means executor of the will or administrator of the estate;

“premises” includes-

- (a) any part of any premises;

- (b) any land and appurtenances, other than facilities; and
- (c) any mobile home, caravan, or other means of shelter placed or erected upon any land and intended for occupation on that land;

“prescribed” means prescribed by this Law or by regulations made under this Law;

“prospective tenant” means a person to whom any other person has offered to grant a tenancy, or with whom any other person has entered into negotiations for the granting of a tenancy to that person;

“Registrar” means the Registrar of Lands appointed under section 5 of the Registered Land Law (2004 Revision);

“rent” means any money, goods, services, or other valuable consideration in the nature of rent to be paid or supplied under a tenancy agreement by the tenant; but does not include any sum of money payable or paid by way of bond;

“residential premises” means any premises used or intended for occupation by any person as a place of residence;

“security deposit” means a deposit paid by a tenant to the landlord or the landlord’s agent to be held by the landlord or his agent for all or a part of the term of the tenancy agreement to secure performance of any obligation of the tenant under the tenancy agreement but which is refundable to the tenant on condition of delivery of the premises by the tenant in a condition as required under the tenancy agreement or in accordance with this Law;

“service tenancy” means a tenancy granted pursuant to a term of, or otherwise as an incident of, a contract of service between the landlord as employer and the tenant as employee whether or not a separate tenancy agreement is concluded in writing between the parties, and whether or not any rent is payable for the tenancy; and includes-

- (a) any such tenancy granted pursuant to or in accordance with any enactment; and
- (b) any such tenancy granted by one company to an employee of an associated company (within the meaning of subsection (2)).

“tenancy” in relation to any residential premises, means the right to occupy the premises in consideration for rent; and includes any tenancy of residential premises implied or created by any enactment; and, where appropriate, also includes a former tenancy;

“tenancy agreement” in relation to any residential premises, means any express or implied agreement under which any person, for rent, grants or agrees to grant to any other person a tenancy of the premises; and, where appropriate, includes a former tenancy agreement and any variation of a tenancy agreement;

“tenant” in relation to any residential premises that are the subject of a tenancy agreement, means the grantee of a tenancy of the premises under the agreement; and, where appropriate, includes-

- (a) a prospective tenant;
- (b) a former tenant;
- (c) a lawful successor in title of a tenant to the premises;
- (d) the personal representative of a deceased tenant; and
- (e) an agent of a tenant.

(2) For the purposes of paragraph (b) of the definition of the term “service tenancy” in subsection (1), two companies are associated if one is the wholly or partly owned subsidiary of the other.

(3) For the purposes of this Law, where any premises that are subject to a legal or an equitable tenancy are used for both commercial and residential purposes, the premises shall be deemed to be residential premises unless it is proved that the premises were let principally for purposes other than residential purposes.

PART I

Application of this Law

- | | |
|--|---|
| 3. This Law binds the Crown. | Binding of the Crown |
| 4. Except as otherwise provided by this Part this Law applies to every tenancy for residential purposes. | Law to apply generally to all residential tenancies |
| 5. This Law does not apply in the following cases- | Exclusion of this Law in certain cases |
| (a) where the premises are commercial premises; | |
| (b) where the whole or a substantial part of the tenant’s income is derived from the use of the premises for agricultural, pastoral, horticultural, or other similar purposes; | |
| (c) where a tenancy at will is created on or immediately after the determination or expiry of a tenancy; | |
| (d) where the premises constitute part of any hospital, home, or other institution for the care of sick, disabled, or aged persons; | |

- (e) where the premises constitute any barracks or hostel conducted by an employer for the accommodation of employees of that employer or (where the employer is a company) for the accommodation of employees of any associated company (within the meaning of section 2(2));
- (f) where the premises continue to be used, during the tenancy, principally as a place of residence by the landlord or by any member of the landlord's family and where the tenant does not otherwise have exclusive possession;
- (g) where the tenant is the purchaser of the premises under an agreement for sale and purchase with the landlord as vendor, not being an agreement that is revocable at will by the vendor;
- (h) where the tenancy agreement, not being in the nature of a domestic or family arrangement, expressly provides that the tenant will not occupy the premises personally but will sublet the premises either for commercial gain or to provide accommodation for any of the tenant's employees, and the tenancy is granted and taken genuinely for that purpose and not for the purpose of evading all or any of the provisions of this Law; or
- (i) where the premises comprise bare land (with or without facilities) on which the tenant has the right under the tenancy agreement to place or erect a mobile home, caravan, or other means of shelter.

Parties to excluded tenancies may agree that Law shall apply

6. Nothing in section 5 shall prevent the parties to a tenancy that would otherwise be excluded from this Law by virtue of any of the provisions of that section, being a tenancy of any premises used or intended to be used for residential premises, from agreeing in writing that all or any of the provisions of this Law shall apply in respect of the tenancy, either without modification or with such modifications as they may so agree.

Onus of proof

7. Where, in any proceedings before the Commissioner or any court, any party contends that this Law does not apply in respect of any tenancy of any residential premises, it shall be for that party to establish the facts upon which it is contended that this Law does not apply.

Law generally to apply despite contrary provisions

8. (1) Any agreement or arrangement, or any provision of any agreement or arrangement, entered into in respect of a tenancy to which this Law applies, that is inconsistent with any of the provisions of this Law, or that purports to exclude, modify, or restrict the operation of any such provision, shall be of no effect unless the inconsistency, exclusion, modification, or restriction is expressly permitted by this Law.

(2) Subsection (1) shall not prevent a landlord from waiving voluntarily all or any of the rights and powers conferred on landlords by this Law or from voluntarily incurring more extensive obligations than those that are imposed on landlords by this Law.

(3) Any purported waiver by a tenant of any right or power conferred upon tenants by this Law shall be of no effect.

PART II

Residential Tenancies Commissioner

9. (1) The Governor shall appoint a person to be known as the Residential Tenancies Commissioner to carry out the functions specified in this Law.

Appointment of
Residential Tenancies
Commissioner

(2) The Commissioner shall be a public officer and shall have such qualifications as are necessary for the performance of his functions under this Law.

(3) The Commissioner shall be assisted in the discharge of his duties by such persons as the Governor may appoint.

10. (1) A party to a tenancy agreement may apply, in accordance with this Law, to the Commissioner to determine a dispute which arises under a tenancy agreement to which this Law does or did apply and the Commissioner shall hear and determine such dispute.

Functions, duties and
powers of the
Residential Tenancies
Commissioner

(2) Without limiting the generality of subsection (1), the Commissioner shall have jurisdiction to do the following -

- (a) to determine whether any premises are or are not, or were or were not at any material time, residential premises to which this Law applies;
- (b) to determine whether there is or is not, or was or was not at any material time, a tenancy agreement to which this Law applies in force in respect of any residential premises, and to determine the terms of and the parties to any such agreement;
- (c) to determine whether any tenancy is or is not, or was or was not at any material time, a service tenancy;
- (d) to determine, after a landlord has increased the rent under an agreement, whether that increase has been made in accordance with the provisions of section 25 or is justified under section 26;

- (e) where any rent is, was, or will be required wholly or partly in a form other than money, to determine in monetary terms the value of the rent so required;
- (f) to order the landlord or the tenant under any tenancy agreement to which this Law applies to do anything necessary to remedy the breach by that party of any express or implied provision of the tenancy agreement or any provision of this Law, or to do anything that that party is required to do by any such provision;
- (g) to order the landlord or the tenant under any tenancy agreement to which this Law applies to refrain from doing anything if the doing of that thing by that party would constitute a contravention or (as the case may require) a further contravention of any express or implied provision of the tenancy agreement or any provision of this Law; and
- (h) to make orders of a consequential or ancillary nature necessary to exercise or perfect the exercise of any of his jurisdiction.

(3) The Commissioner –

- (a) shall endeavour, by all reasonable and equitable means, to resolve by conciliation a complaint that is the subject of a proceeding; and
- (b) shall take all steps that he considers reasonable and equitable in the circumstances to effect an amicable settlement of a dispute that is the subject of a proceeding and may adjourn a proceeding at any stage to enable parties to negotiate for that purpose.

(4) The Commissioner shall determine a dispute according to the substantial merits and justice of the case and in doing so must have regard to this Law and to the principles of natural justice but the procedure followed by the Commissioner shall not be vitiated by reason of any failure to observe strict rules of evidence.

(5) The Commissioner has such other functions and duties as are provided in this Law or under any other Law.

(6) Without limiting any other provision of this Law, the Commissioner has all the powers that are reasonably necessary or expedient to enable the Commissioner to carry out his functions.

(7) The Arbitration Law (2001 Revision) does not apply to the Commissioner or to disputes referred to the Commissioner under this Law.

11. (1) The Commissioner may determine a dispute by making such order as he thinks fit and that order may be made on any terms and conditions as the Commissioner thinks fit.

Decisions of the
Commissioner

- (2) The Commissioner has the power to order any party to a dispute-
 - (a) to perform or refrain from performing any act; and
 - (b) to undertake or refrain from undertaking any obligation.
- (3) The Commissioner shall give reasons for his decision.

(4) A party who fails to comply with a determination or order of the Commissioner commits an offence and is liable on summary conviction to a fine of \$4000.

12. (1) A landlord or tenant may apply to the Commissioner in respect of any matter which may be dealt with by the Commissioner pursuant to this Law by notice in writing addressed to the Commissioner and such notice shall-

Conduct of applications
to the Commissioner

- (a) set out the reasons for the application and whether or not the applicant wishes to be heard personally or by a representative; and
- (b) be accompanied by the prescribed fee, if any.

(2) The Commissioner may upon receipt of a notice request such further information or documents as he considers necessary in the circumstances.

(3) On receipt of the notice, the Commissioner shall, if the applicant has applied to be heard personally or by a representative, decide whether he shall be so heard and, if it is so decided, fix a time and a date for such hearing and notify the applicant and the other relevant parties to the application.

(4) Representatives appearing on behalf of any party need not be persons having legal qualifications.

(6) The First Schedule applies to the hearing of applications by the Commissioner.

13. A landlord or a tenant who is aggrieved by any decision made by the Commissioner under section 12 may appeal to the court in such manner and within such time as may be prescribed by rules made under section 76 and on any such appeal the court shall hear the matter de novo.

Right of appeal from
decisions of the
Commissioner

PART III

Tenancy agreements

Preliminary matters

Tenancy agreement to be in writing

14. (1) Every tenancy agreement shall be in writing and signed by both the landlord (or his agent) and the tenant.

(2) The landlord shall, before the tenancy commences, provide the tenant with a copy of the tenancy agreement.

Contents of tenancy agreement

15. Every tenancy agreement shall include the following minimum information-

- (a) the full name and contact address of the landlord;
- (b) the full name and contact address (where that is different from the address of the premises to which the agreement relates) of the tenant;
- (c) the address of the premises;
- (d) the date of the tenancy agreement;
- (e) the date of commencement of the tenancy (where that is different from the date of the tenancy agreement);
- (f) the landlord's address for service;
- (g) the tenant's address for service;
- (h) the amount of any security deposit;
- (i) the amount of the rent payable;
- (j) the frequency of the rent payments;
- (k) the place or bank account number where the rent is to be paid;
- (l) a statement (if applicable) that the tenant shall pay any fee or other charge for services rendered by any attorney-at-law or real estate agent relating to the grant or assignment of the tenancy;
- (m) a list of any chattels, if any, provided by the landlord; and
- (n) if the tenancy is a fixed-term tenancy, the date on which the tenancy will terminate.

Variations and renewals of tenancy agreements

16. (1) Every variation of a tenancy agreement, and every renewal of a tenancy agreement, shall be in writing and signed by both the landlord (or his agent) and the tenant.

(2) The landlord shall, before the date on which the variation or renewal of the tenancy is to take effect, provide the tenant with a copy of the variation or renewal.

17. Where the name and contact address, or address for service, of any person has been notified to the other party to the tenancy in accordance with this Law and that name or address subsequently changes (otherwise than in circumstances to which section 39 applies), the person shall, within 10 working days thereafter, cause notice of the new particulars to be given to the other party to the tenancy.

18. (1) Where the period of a tenancy is expressed as commencing on a particular day, that day is excluded in computing that period.

Duration of tenancy

(2) Where no day of commencement is named, the period commences on the date of execution of the tenancy agreement, and that day is excluded in computing that period.

(3) Where the period is a year or a number of years, in the absence of an express agreement to the contrary, the tenancy agreement shall last during the whole anniversary of the day on which such period commences.

Security deposits and rent

19. (1) A landlord shall not charge, demand, receive or collect from a tenant of residential premises a security deposit of any amount or value exceeding-

Amount of security deposit

- (a) one month's rent, in the case of a tenancy other than a weekly tenancy; or
- (b) one week's rent, in the case of a weekly tenancy.

(2) A landlord shall not give a tenant notice to vacate residential premises or refuse to renew a tenancy agreement for the sole purpose of increasing the security deposit for those premises.

20. Every security deposit paid to the landlord with respect to residential premises shall held by the landlord in trust for the tenant who paid the deposit, subject to this Law.

Security deposits to be held in trust

21. (1) A landlord shall invest a tenant's security deposit in an interest-bearing account at a Class "A" Bank in the Islands.

Investment of security deposits

(2) A landlord who rents 3 premises or more shall not commingle such security deposits with his other funds.

(3) The landlord shall, within 14 days of receipt of the security deposit, notify the tenant in writing of the location of the account and the rate of interest on the account.

(4) Subsequent to providing a notice under subsection (3) if the landlord changes the manner and the location in which he is holding the security deposit he shall notify the tenant within 30 days of such change.

(5) A landlord who fails to notify a tenant in accordance with this section commits an offence and is liable on summary conviction to a fine of \$2000.

Interest on security deposits

22. A landlord shall, at the termination of the tenancy agreement, pay to the tenant interest on the security deposit at the applicable market rate calculated from the date on which the landlord receives the full amount of the security deposit.

Security deposits not attachable, etc.

23. (1) A security deposit held by a landlord for a tenant is not attachable under any garnishee proceedings or receiving order, or exigible under a writ of execution.

(2) A landlord shall not assert a claim against a tenant or the security deposit –

- (a) for damages to the premises or any defective conditions that pre-existed the tenancy;
- (b) for ordinary wear and tear or the effects thereof whether the wear and tear pre-existed the tenancy or occurred during the tenancy; or
- (c) for the cumulative effects of ordinary wear and tear occurring during one or more tenancies.

(3) At the termination of the tenancy agreement the landlord shall inspect the premises and compile a comprehensive and detailed list of any damage to the premises which is the basis for any charge against the security deposit and the estimated dollar cost of repairing such damage; and the tenant shall have the right to inspect the premises to ascertain the accuracy of the list.

(4) The landlord and the tenant shall sign the list, which signatures shall be conclusive evidence of the accuracy of such list and if the tenant refuses to sign the list he shall specify in writing the items on the list to which he dissents and shall sign such statement of dissent.

(5) A landlord shall not be entitled to retain any portion of a security deposit if the security deposit was not deposited in an account as required by section 20 and if he fails to provide the tenant with a damage list.

(6) A tenant who disputes the accuracy of the final damage list given pursuant to subsection (3) may apply to the Commissioner for a determination of

such list; and the tenant's claim shall be limited to those items from which the tenant specifically dissented in accordance with the provisions of subsection (4); and if the tenant fails to sign the list or to specify his dissent he shall not be entitled to recover any part of his deposit under this section.

24. (1) Within 14 days, excluding Saturdays, Sundays and holidays, after the termination of a tenancy agreement, the landlord shall, unless the tenant agrees in writing at the termination of the tenancy that the landlord is entitled to retain all or a portion of the security deposit-

Return of security
deposit

- (a) pay to the tenant the security deposit and any accrued interest; or
- (b) where the landlord intends to retain all or a portion of the security deposit-
 - (i) notify the tenant in writing that he intends to impose a claim on the deposit and state the reason why he intends to impose a claim; and
 - (ii) pay to the tenant the portion of the security deposit that the landlord does not intend to retain and any accrued interest.

(2) If the tenant disputes the retention of the deposit or any portion thereof, the landlord may apply to the court or to the Commissioner for an order respecting the disposition of the security deposit.

(3) Where the landlord applies to the Commissioner he shall-

- (a) provide the Commissioner with the details respecting the claim as required by the Commissioner;
- (b) provide the Commissioner with the tenant's address or evidence of the landlord's attempts to obtain the tenant's address; and
- (c) pay the prescribed fee.

(4) A tenant who disputes the retention of the deposit or any part of the deposit by the landlord may apply either to the Court or to the Commissioner for a resolution and shall pay the prescribed fee and provide the Commissioner with such information as the Commissioner may require.

(5) Where the Commissioner receives an application, information and fee under this section he shall deal with the application in accordance with section 12.

(6) Where a tenant leaves and does not pay the last rent he is due to pay the landlord may, after 14 days, remove the deposit from the account and apply any such excess to the debt owing.

(7) Where a tenant leaves not owing rent and is owed a refund of the full deposit or a part thereof and where no action has been taken under this section, the landlord shall send a notice by registered post to the tenant at his last known address advising him of the amount of security deposit due to him and shall copy such notice to the Commissioner; and where the landlord does not receive a response from the tenant within 30 days of the date of the notice he shall so advise the Commissioner and the landlord shall remove the deposit and pay it into office of the Commissioner.

(8) Where a deposit is sent to the Commissioner under subsection (7) the Commissioner shall send a notice by registered post to the tenant at his last known address advising him that the deposit is being held by him and that it should be collected by the tenant or his representative no later than 180 days after the date of the notice.

(9) Where the Commissioner does not receive a response from the tenant within the time stated in subsection (8) he shall pay such deposit to the landlord who shall retain it free from any claim of the tenant or any person claiming it on his behalf.

Rent increases

25. (1) The rent payable in respect of any tenancy may be increased by the landlord provided all of the following conditions are complied with-

- (a) the landlord shall give the tenant notice in writing of the increase;
- (b) that notice shall specify the amount of the increased rent and the day upon which the increased rent shall become payable;
- (c) the day upon which the increased rent shall become payable shall be not less than 60 days after the date on which that notice is given;
- (d) the rent shall not be increased within 180 days after the date on which the last increase took effect;
- (e) in the case of a tenancy which is not subject to annual rent adjustment, the rent shall not be increased within 180 days after the date of the commencement of the tenancy;
- (f) in the case of a tenancy which is subject to annual rent adjustment, no rent increase shall take effect—
 - (i) less than 60 days after the notice required by paragraph (a) is given; and
 - (ii) other than on the specified date in any year or with effect on the next day on which any rent is to be paid within 28 days after the specified date in any year;
- (g) a landlord under a fixed-term tenancy shall not increase the rent otherwise than as permitted by the agreement; and

(h) where the Commissioner has made an order under section 26 and that order is still in force, the rent shall not be increased to an amount in excess of the amount specified in the order.

(2) For the purposes of subsection (1), a tenancy is subject to annual rent adjustment where-

- (a) it is the landlord's practice (the proof of which shall lie on the landlord)—
 - (i) to review the rent annually; and
 - (ii) to adjust the rent on a specified day in each year; and
- (b) provision to that effect is included in the tenancy agreement or the tenant is otherwise informed of the practice in writing before the commencement of the tenancy.

(3) A notice of an increase in rent lawfully given under this section shall, unless it is withdrawn by the landlord, have the effect of varying the tenancy agreement in accordance with the terms of the notice.

(4) Where a landlord has given a notice to increase the rent and subsequently realises that, because of-

- (a) some error in calculating the day on which the increased rent is to become payable or in the manner in which that day is expressed in the notice; or
- (b) some delay in serving the notice,—

the day fixed in the notice for the increased rent to become payable is in contravention of subsection (1), the landlord may, with the agreement of the tenant or (failing such agreement) with the consent of the Commissioner, give to the tenant a further notice varying the original notice so as to bring the terms of the original notice into accord with the provisions of that subsection.

(5) Every notice given under subsection (4) shall be in writing, specifying the amount of the increased rent and the day upon which the increased rent shall become payable.

(6) The Commissioner shall not give his consent under subsection (4) of this section unless he is satisfied-

- (a) that the error or the delay was inadvertent;
- (b) that the landlord has sought to correct the matter as soon as practicable; and
- (c) that it would not be unfair to the tenant to allow the original notice to be varied in the manner proposed.

Increase of rent where premises or facilities substantially improved

26. (1) Notwithstanding anything in section 25, where, during any tenancy, the landlord-

- (a) effects substantial improvements to the premises, or provides more or better facilities or services for the tenant, with the consent of the tenant; or
- (b) incurs, in respect of the premises, expenses of a nature or an amount that could not reasonably have been foreseen when the rent was last fixed,

the Commissioner may, on application by the landlord, make an order for the increase of the rent to or by such amount as the Commissioner thinks fit.

(2) The landlord shall give notice of the application under subsection (1) to the tenant no later than 2 working days of the date of the application.

(3) In making a determination under subsection (1) the Commissioner may take into account any submissions or representations made by the tenant in respect of the application.

(4) No order made under subsection (1) shall affect the date on which the rent payable for the tenancy could have been reviewed or increased if the order had not been made.

Receipts for rent

27. (1) Subject to subsection (3), every person who receives any rent payable under or in respect of any tenancy agreement shall give or cause to be given to the person paying the rent a written receipt bearing-

- (a) the address of the premises, or an appropriate code or reference to identify the premises to which the payment relates;
- (b) the amount and nature of the payment;
- (c) the date of the payment; and
- (d) the name (if known) of the person who made the payment.

(2) The receipt shall be given to the person paying the rent-

- (a) forthwith, where payment is made in cash; or
- (b) within 72 hours after payment, in any other case.

(3) On the written request of the tenant, the landlord shall also give to the tenant a written statement of the period to which any payment of rent relates.

(4) Nothing in subsection (1) shall apply-

- (a) to any rent paid out of a bank account in the name of the tenant by automatic payment through the bank or by way of a non-

negotiable personal cheque or other similar non-negotiable instrument drawn on that account; or

- (b) to any rent paid by the tenant into any account nominated by the landlord and operated by the landlord exclusively in respect of the tenancy, or exclusively in respect of the tenancy and any other tenancies of the landlord.

(5) A person who fails to give a receipt or written statement in accordance with this section commits an unlawful act.

28. (1) Every landlord shall keep or cause to be kept proper business records showing- Landlord to keep records

- (a) all payments of rent paid by or on behalf of the tenant, sufficient to enable the landlord to comply within a reasonable time with any request made by the tenant under section 27(3); and
- (b) any amount by way of security paid by or on behalf of the tenant on or after [2007.]

(2) A landlord who fails to keep records in accordance with this section commits an unlawful act.

29. (1) The rent payable under a tenancy agreement shall accrue from day to day. Apportionment of rent

(2) Upon termination of the tenancy, the rent shall be apportioned accordingly, and the appropriate amount shall be payable or recoverable forthwith.

30. (1) Any provision in a tenancy agreement to the effect that, on breach by the tenant of any term of the agreement or of any of the provisions of this Law or of any other enactment, the tenant shall be liable to pay- Accelerated rent or damages prohibited

- (a) the whole or any part of the rent remaining payable under the agreement;
- (b) rent of an increased amount; or
- (c) a sum specified in the agreement by way of damages or penalty,

shall be of no effect.

(2) Any provision in a tenancy agreement to the effect that, if the tenant does not breach any term of the agreement or any of the provisions of this Law or of any other enactment, the rent shall or may be reduced or the tenant shall or may be granted or paid a rebate, refund, or other benefit, shall be construed as entitling the tenant to that reduction, rebate, refund, or other benefit in any event.

Tenant's goods not to be seized

31. (1) A landlord shall not be entitled to seize or dispose of any of the tenant's goods-

- (a) as security for or in payment of any amount owing by way of rent; or
- (b) for any other reason arising from the tenancy.

(2) A landlord who seizes or disposes of any goods in contravention of subsection (1) commits an unlawful act.

(3) Nothing in this section shall limit or affect the way in which any order of the Commissioner, or of any court on appeal from the Commissioner, may be enforced.

(4) Nothing in this section applies to foodstuffs and other perishable goods if the landlord has reasonable cause to believe that the premises have been abandoned by the tenant.

Rights and obligations of parties

Legal impediments to occupation

32. (1) A landlord shall not lease any premises if he knows that the occupation of the premises for residential purposes is subject to a legal impediment.

(2) A landlord who contravenes subsection (1) commits an unlawful act.

Vacant possession

33. (1) A tenant shall have vacant possession of the premises on the date on which, in accordance with the tenancy agreement, the tenant is entitled to enter into occupation of the premises.

(2) In this section "premises" does not include facilities.

Quiet enjoyment of the tenant

34. (1) A tenant shall be entitled to have quiet enjoyment of the premises without interruption by the landlord or any person claiming by, through, or under the landlord or having superior title to that of the landlord.

(2) A landlord shall not cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant.

(3) A landlord who contravenes subsection (2) in circumstances that amount to harassment of the tenant is an unlawful act.

(4) In this section "premises" includes facilities.

35. (1) Subject to subsections (2) and (3), all outgoings (including garbage fees, rates, strata fees, and insurance premiums) from time to time payable in respect of the premises shall, as between the landlord and the tenant, be payable by the landlord. Outgoings

(2) Subject to subsection (3), the following outgoings incurred during the tenancy shall, as between the landlord and the tenant, be payable by the tenant-

- (a) all charges for electricity or gas supplied to the premises;
- (b) water charges in respect of the premises (including the cost of charges for standard meter readings) if-
 - (i) the premises have a separate water meter;
 - (ii) the tenancy agreement stated, at the commencement of the tenancy, that the tenant shall pay for any metered water provided to the premises; and
 - (iii) the water supplier charges for water provided to the premises on the basis of metered usage;
- (c) all charges in respect of any telephone or television connected to the premises.

(3) Subsections (2) and (3) do not apply in respect of any outgoing which the parties have agreed in writing (whether in the tenancy agreement or otherwise) shall, as between the landlord and the tenant, be payable by the landlord.

(4) In this section “standard meter readings” means all meter readings other than meter readings requested by the landlord.

(5) In this section “premises” includes facilities that are exclusively for the use of the tenant.

36. (1) The tenant shall- Tenant’s responsibilities

- (a) pay the rent as and when it is due and payable under the tenancy agreement;
- (b) ensure that the premises are occupied principally for residential purposes;
- (c) keep the premises reasonably clean and reasonably tidy;
- (d) notify the landlord, as soon as possible after discovery, of any damage to the premises, or of the need for any repairs; and
- (e) on the termination of the tenancy-
 - (i) quit the premises;
 - (ii) remove all his possessions from the premises;

- (iii) leave the premises in a reasonably clean and reasonably tidy condition, and remove or arrange for the removal from the premises of all rubbish;
- (iv) return to the landlord all keys, and security or pass cards or other such devices, provided by the landlord for the use of the tenant; and
- (v) leave in or at the premises all other chattels provided by the landlord for the use of the tenant.

(2) The tenant shall not-

- (a) intentionally or carelessly damage, or permit any other person to damage, the premises;
- (b) use the premises, or permit the premises to be used, for any unlawful purpose; or
- (c) cause or permit any interference with the reasonable peace, comfort, or privacy of any of the landlord's other tenants in the use of the premises occupied by those other tenants, or with the reasonable peace, comfort, or privacy of any other person residing in the neighbourhood.

(3) Where the tenancy agreement specifies a maximum number of persons that may reside in the premises during the tenancy, the tenant shall not permit more than that number to reside in the premises at any time during the tenancy except with the prior written consent of the landlord who shall not withhold such permission unreasonably.

(4) Where the tenancy agreement allows the tenant to keep a certain number or type of pet on the premises the tenant shall not keep more than that number or any other type of pet in the premises at any time during the tenancy except with the prior written consent of the landlord.

(5) Where any damage to the premises is proved to have occurred during any tenancy to which this Law applies, it shall be for the tenant to prove that the damage did not occur in circumstances constituting a breach of subsection (2)(a).

(6) In this section, unless the context otherwise requires, premises includes facilities.

Tenant's responsibility
for actions of others

37. (1) A tenant shall be responsible for anything done or omitted to be done by any person (other than the landlord or any person acting on the landlord's behalf or with the landlord's authority) who is in the premises with the tenant's permission if the act or omission would have constituted a breach of the tenancy agreement had it been the act or omission of the tenant.

(2) Where any person (other than the landlord or any person acting on the landlord's behalf or with the landlord's authority) intentionally or carelessly damages the premises while the tenant is in the premises, it shall be presumed that the tenant permitted that person to be in the premises unless the tenant proves that he took all reasonable steps to prevent that person from entering the premises or, as the case may require, to eject that person from the premises.

38. (1) A tenant shall not affix any fixture to the premises, or make any renovation, alteration, or addition of or to the premises, except- Tenant's fixtures

- (a) in accordance with the tenancy agreement; or
- (b) with the prior written consent of the landlord,

and the landlord shall not withhold that consent unreasonably.

(2) The tenant may, at any time before the expiry of the tenancy, remove any fixture that the tenant has affixed to the premises during the term of the tenancy, unless the removal would cause irreparable damage to the premises.

(3) If, on removing such a fixture, the tenant causes any damage to the premises, the tenant shall inform the landlord forthwith and, at the landlord's option, either repair the damage or compensate the landlord for any reasonable expenses incurred by the landlord in repairing the damage.

39. (1) Where a landlord disposes of his interest in the premises to any other person (in this section referred to as "the purchaser"), the following provisions shall apply- Disposition of landlord's interest

- (a) the landlord shall within 10 working days' of the disposition, give to the tenant written notice of the disposition, including the name and contact address of the purchaser so far as those particulars are known to the landlord;
- (b) until that notice is received by the tenant, the tenant shall not be obliged to pay any rent to the purchaser, and shall not be liable to the purchaser in any proceedings in respect of any sum paid to the landlord on account of rent;
- (c) from and after the date on which the tenant receives that notice, or such later date as may be specified in the notice, the tenant shall pay to the purchaser all sums due and payable by way of rent in respect of any period commencing after that date;
- (d) subject to any lawful claim made to the Commissioner before the date of settlement, the landlord's interest in any security deposit paid by the tenant shall pass to the purchaser on the earlier of the date of settlement or the date of possession.

(2) Nothing in subsection (1)(a) shall absolve the purchaser from the obligation imposed on the purchaser by section 17.

Assignment and
subletting by tenant

40. (1) A landlord may include in a tenancy agreement a provision that expressly and unconditionally prohibits the tenant from assigning, subletting, or parting with possession of the premises during the term of the tenancy.

(2) In the absence of such a provision as specified in subsection (1) the tenant may at any time during the tenancy assign, sublet, or part with possession of the premises with the prior written consent of the landlord and in accordance with any conditions attached to that consent by the landlord; and the landlord shall not withhold that consent unreasonably, nor attach any unreasonable conditions to it.

(3) On giving consent to any assignment, subletting, or parting with possession of the premises by the tenant, a landlord shall be entitled to recover from the tenant any expenses reasonably incurred by the landlord in respect of the proposed transaction.

(4) Where a tenant assigns his interest under the tenancy agreement to any other person with the consent of the landlord and in accordance with any conditions attached to that consent by the landlord, the tenant shall, on the date on which the assignment takes effect, cease to be responsible to the landlord for the obligations imposed on the tenant by the agreement and this Law, but without prejudice to any liability already incurred by the tenant to the landlord in respect of anything done or omitted to be done before that date.

Landlord's
responsibilities

41. (1) A landlord shall at the commencement of the tenancy provide the tenant with premises which are in a reasonable state of cleanliness and fit for human habitation.

(2) In determining for the purposes of this Law whether premises are fit for human habitation regard shall be had to their condition in respect of the following matters-

- (a) repair;
- (b) freedom from damp and mould;
- (c) natural lighting;
- (d) water supply;
- (e) stability;
- (f) ventilation;
- (g) drainage and sanitary conveniences; and
- (h) facilities for the preparation and cooking of food and for the disposal of waste water,

and premises shall be considered unfit if they are so far defective in one or more of those matters that they are not reasonably suitable for occupation in that condition.

(3) A landlord, during the tenancy, shall keep in repair the structure and exterior of the premises (including drains, fresh water tanks and external pipes).

(4) A landlord, during the tenancy, shall keep in repair and working order-

- (a) any cesspool to which the drainage of the premises is connected;
- (b) the installations in the premises-
 - (i) for the supply of water and electricity, for external bottled gas (if any) and for sanitation (including basins, sinks, baths, showers and sanitary conveniences but not, except as aforesaid, fixtures, fittings and appliances for making use of the supply of water, electricity or gas); and
 - (ii) for heating water where such installations exists at the commencement of the tenancy or where the installations are made by the landlord during the tenancy without the request of the tenant.

(5) A landlord shall, during the tenancy, comply with all requirements in respect of the structure of buildings, health, and safety under any enactment so far as they apply to the premises.

(6) A landlord shall compensate the tenant for any reasonable expenses incurred by the tenant in making urgent repair to premises where-

- (a) the state of disrepair has arisen otherwise than as a result of a breach of the tenancy agreement by the tenant and is likely to cause injury to persons or property or is otherwise serious and urgent; and
- (b) the tenant has made a reasonable attempt to give the landlord notice of the state of disrepair and of his intention to incur expense in repairing the premises; and
- (c) the tenant has provided the landlord with a document which sets out in detail the repairs made and the expenses incurred,

and where the landlord fails to compensate the tenant within 1 month after the tenant has incurred such expenses the tenant may deduct the expenses from the next due rent or rents as the case may be.

(7) A landlord -

- (a) shall take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with

the reasonable peace, comfort, or privacy of the tenant in the use of the premises; and

- (b) shall not interfere with the supply of gas, electricity, water, telephone services, or other services to the premises, except where the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.

(8) The provisions of subsections (1) to (6) shall apply notwithstanding that the tenant has notice of the state of the premises at the time at which the tenancy agreement is entered into.

(9) Any covenant by a tenant for the repair of premises (including any covenant to put in repair or deliver up in repair or to pay money in lieu of repairs by the tenant or on account of repairs by the landlord) shall be of no effect so far as it relates to the matters mentioned in subsections (1) to (6).

(10) In determining the standard of repair required by this section regard shall be had to the age, character and prospective life of the premises and the locality in which it is situated.

(11) The covenants implied by this section shall not be construed as -

- (a) as imposing upon the landlord any obligation to repair any damage, or compensate the tenant for any want of repair, arising out of any breach by the tenant of any obligation imposed on tenants by this Law; or
- (b) as requiring the landlord to rebuild or reinstate the premises in the case of destruction or damage by fire, tempest flood or other inevitable accident.

Locks

42. (1) A landlord shall provide and maintain such locks and other similar devices as are necessary to ensure that the premises are reasonably secure.

(2) Except in a case of emergency, neither the landlord nor the tenant shall alter any existing lock or similar device, or add to or remove from the premises any lock or similar device, without the consent of the other given at the time that, or a reasonable time before, the alteration, removal, or addition is carried out.

(3) A person who fails to comply with subsection (1) or who contravenes subsection (2), without reasonable excuse, commits an unlawful act.

Landlord to give notice to tenant of intention to sell

43. (1) If, at any time after entering into a tenancy agreement, a landlord puts the premises on the market for the purposes of sale or other disposition, the landlord shall forthwith give written notice of that fact to the tenant.

(2) When a landlord is offering residential premises as available for letting, the landlord shall inform prospective tenants if the premises are on the market for the purposes of sale or other disposition.

44. (1) A landlord shall not enter the premises except-

Landlord's right of entry

- (a) with the consent of the tenant given at, or immediately before, the time of entry; or
- (b) in any of the circumstances described in subsection (2) or subsection (3).

(2) A landlord may enter the premises-

- (a) in any case of emergency;
- (b) for the purpose of inspecting the premises, at any time between 8 o'clock in the morning and 7 o'clock in the evening on a day specified in a notice given to the tenant not less than 48 hours nor more than 14 days before the intended entry, and not more frequently than once in any period of 4 weeks;
- (c) for the purpose of determining whether or not—
 - (i) the tenant has, within the period allowed by the landlord, completed satisfactorily any work required by the landlord to be done by the tenant to remedy any breach by the tenant of any of the provisions of the tenancy agreement or of this Law; or
 - (ii) the tenant has, within the agreed period, completed satisfactorily any work agreed to be done by the tenant, at any time between 8 o'clock in the morning and 7 o'clock in the evening on any day (after the expiry of the period allowed for the work) specified in a notice given to the tenant not less than 48 hours nor more than 14 days before the intended entry;
- (d) for the purpose of carrying out necessary repairs to or necessary maintenance of, the premises, at any time between 8 o'clock in the morning and 7 o'clock in the evening of any day, after giving to the tenant notice of the intended entry and the reason for it at least 24 hours before the intended entry; or
- (e) pursuant to an order of the Commissioner.

(3) For the purpose of showing the premises to prospective tenants or to prospective purchasers, or to a valuer engaged in the preparation of a report, the landlord may, with the prior consent of the tenant (which shall not be unreasonably withheld) and subject to such reasonable conditions as the tenant may attach to that consent, enter the premises at any reasonable time.

(4) The following are each unlawful acts-

- (a) entry upon the premises by the landlord other than as permitted by or under any of subsections (1) to (3); and
- (b) failure by the tenant, without reasonable excuse, to allow the landlord to enter upon the premises in any circumstances in which the landlord is entitled to enter under subsection (2) or subsection (3).

(5) Notwithstanding anything in subsection (2), (3) or (4), the landlord shall not use force or the threat of force to enter or attempt to enter the premises while the tenant, or any other person with the permission of the tenant, is in the premises.

(6) A landlord who breaches subsection (5) commits an offence in accordance with section 73.

(7) In this section “premises” does not include facilities.

Mitigation of damage or loss

45. Where any party to a tenancy agreement breaches any of the provisions of the agreement or of this Law, the other party shall take all reasonable steps to limit the damage or loss arising from that breach, in accordance with the rules of law relating to mitigation of loss or damage upon breach of contract.

Part IV

Termination of tenancies

Scope of this Part

46. (1) Nothing in this Part affects-
- (a) the law of disclaimer in its application to cases of bankruptcy, liquidation and rights of infants;
 - (b) the law of merger;
 - (c) surrender by operation of law or act of parties;
 - (d) the right of any person to bring an action for the recovery of rent or for the recovery of possession of land from persons wrongfully in possession of land; or
 - (e) the termination of a tenancy agreement which the tenant has acknowledged in writing is to terminate in the event of the tenant ceasing to be employed by the landlord.

Provisions to the contrary to be void

47. Subject to this Part, a tenancy agreement shall only be terminated in accordance with this Part, and any stipulation to the contrary in any tenancy agreement shall have no force or effect.

Termination under the provisions of the tenancy agreement

48. (1) A fixed-term tenancy agreement terminates without notice when that term expires.

(2) Subject to subsection (3), a tenancy agreement which is terminable on notice by either party terminates on the expiration of notice duly given.

(3) Subject to section 46, any reference in a tenancy agreement to a right to give notice to terminate the tenancy in the event of—

- (a) a breach of obligation by the tenant: or
- (b) the bankruptcy or liquidation of the tenant;

shall be construed as including a reference to a right to make application to the court under section 52.

49. (1) Where the landlord and the tenant agree that the tenancy shall be surrendered, it shall be surrendered in the following manner- Surrender of tenancy

- (a) an instrument shall be prepared in the prescribed form, or else the word “surrendered” shall be inscribed on the tenancy agreement or on the duplicate or triplicate thereof;
- (b) the instrument or inscription shall then be executed by the landlord and tenant;
- (c) the Registrar shall then cancel the registration of the tenancy agreement; and
- (d) the instrument or inscribed tenancy agreement shall then be filed,

and thereupon, or upon such earlier date as is expressed in the instrument or inscription, the interest of the tenant shall cease.

(2) No tenancy agreement which is subject to a charge or sub-tenancy shall be surrendered without the consent in writing of the proprietor of the charge or sub-tenancy.

50. (1) Notice to terminate a tenancy shall be in writing and may, but need not, be in the form set out in Part I of the Second Schedule. Notice of termination to be in writing

(2) Subject to any agreement in writing providing for a different manner of service, a notice to terminate a tenancy shall be served in the manner prescribed by Part II of the Second Schedule.

51. Subject to any agreement in writing providing for a different period of notice- Termination by notice

- (a) a tenancy from year to year shall be terminated by not less than 3 months previous notice given at any time after the end of the first year of the tenancy;
- (b) a tenancy for successive rental periods of more than a month and less than a year shall be terminated by notice not shorter than the

rental period given at any time after the end of the first rental period; and

- (c) a tenancy for successive rental periods of a month or less shall be terminated at the end of a rental period by not less than one month's previous notice.

Termination for breach of tenant's obligations, etc

52. (1) Without prejudice to the foregoing provisions of this Part, a landlord may apply to the court for an order to terminate the tenancy agreement where-

- (a) the tenant is in breach of an obligation under the tenancy agreement;
- (b) the tenancy agreement is terminable by its terms in the event of the bankruptcy or liquidation of the tenant and that event has occurred; or
- (c) the tenancy agreement is terminable by its terms on the occurrence of any other event and that event has occurred.

(2) Subject to subsection (3), the tenancy agreement continues, and the rights and obligations of the parties remain enforceable, unless and until the court makes an order under subsection (1).

(3) When dealing with an application made under subsection (1) the court shall have regard to all the circumstances, and in particular shall consider whether-

- (a) the landlord acted reasonably in instituting proceedings, and in particular whether he informed the tenant of the breach;
- (b) the tenant has had a reasonable opportunity or has taken reasonable steps to remedy the breach (if capable of remedy); and
- (c) the tenant during the currency of the proceedings has continued to observe his obligations under the tenancy agreement.

(4) If it is made to appear to the court that the tenant is in breach of his obligation to pay rent, and has been in arrears repeatedly, the court may if it sees fit order termination of the tenancy agreement notwithstanding the payment to the landlord or into court before the hearing, of all arrears of rent and costs, provided that upon accepting payment of all arrears of rent and costs or upon withdrawal of such arrears and costs from the court, the landlord has informed the tenant in writing that action will not thereby abate.

(5) The court may if it sees fit stay execution upon an order for termination of a tenancy agreement or set aside such order, subject to such conditions as it thinks fit.

(6) Subject to subsection (5) there shall be no right to apply for or obtain relief after an order for termination of a tenancy agreement has been made by the court.

(7) Subject to section 46, any reference in any tenancy agreement, or in any statutory provision, to a right or power of re-entry or forfeiture shall be construed as including a reference to the right to make an application to the court under this section.

53. (1) Where an application is made under section 52, no prior notice of intention to commence proceedings shall be required, but the landlord shall in his writ or summons specify with particularity the breach or event upon which he intends to rely.

Institution and stay of proceedings under section 52

(2) The tenant shall be entitled to apply for a stay of proceedings commenced by the landlord under section 52 on the ground that continuance of the proceedings (for the time being) would be oppressive because-

- (a) he has taken or is taking steps to remedy the breach;
- (b) the damage to the reversion is or would be trivial; or
- (c) in all the circumstances it would be unreasonable to order termination of the tenancy agreement.

(3) The court may, in granting or refusing a stay of proceedings under subsection (2), impose such terms and conditions on the parties as it sees fit.

54. (1) Pending final determination of an application made under section 52, the court shall have power, if it sees fit, to make an order providing-

Interim orders

- (a) for the suspension or variation of the performance of the obligations of the parties to the tenancy agreement, as between themselves or in relation to third parties who have joined the proceedings; or
- (b) for the giving of security by the tenant while he remains in possession, both for his good behaviour and compliance with the terms of the tenancy agreement.

(2) Where the court is satisfied that service of the writ or summons on the tenant cannot be effected without undue delay, the court shall have power, if it sees fit, to make an ex parte order under subsection (1).

55. (1) A landlord shall give notice of proceedings commenced by him under section 52-

Notices of proceedings under section 52

- (a) to any person in occupation of the premises or any part thereof, either by name or by description as "Occupier" followed by a description of the premises or the part thereof occupied by him;
- (b) to any person who has an interest as sub-tenant; and
- (c) to any other person specified by the court.

(2) The landlord shall give notice to the tenant of the persons to whom the landlord has given notice under subsection (1).

(3) The tenant shall, within 12 days after the service of the writ or summons on him, give notice to the landlord of any person not specified in the notice given to him by the landlord under subsection (2), who, on the date of service of the writ or summons was in occupation of the premises or was a sub-tenant.

(4) The landlord shall give notice of the proceedings to any person specified in the notice given to him by the tenant under subsection (3).

(5) The court shall have power to order that notice of the proceedings be given to any person whose interest might be affected by the proceedings and who has not been given notice.

(6) Where it appears to the court that several sub-tenants are involved, the court shall have power—

- (a) to order that notice of the proceedings be published in the Gazette or in a newspaper published in the Islands; or
- (b) to order that notice of the proceedings be affixed in a conspicuous position in the main entrance of the premises.

Cessation of rights of third parties after termination of tenancy agreement under section 52

56. Where the court orders termination of the tenancy agreement under section 52 all interests derived out of that tenancy agreement or any sub-tenancy shall thereupon cease, subject to the grant of relief under section 57.

Vesting orders in favour of third parties to proceedings under section 52

57. (1) Where an application is made under section 52, any person claiming an interest as sub-tenant may apply to the court for an order vesting in him, for the whole sub-term of years or any less term, the premises held by the tenant, or any part thereof.

(2) Notwithstanding subsection (1) if the landlord has offered the sub-tenant of part of the premises a new tenancy agreement for that part on the same terms as those on which he previously held as sub-tenant, the court shall not vest the whole of the premises held by the tenant in the sub-tenant.

(3) In making a vesting order under subsection (1), the court may impose such terms and conditions with respect to the tenancy as it thinks fit, and, in the case of an order in respect of part of the premises held by the tenant, may vest in the sub-tenant any ancillary rights previously enjoyed by the sub-tenant which it considers necessary for the reasonable use and enjoyment of that part.

(4) When a vesting order is made under subsection (1) in favour of a sub-tenant who is a mortgagee of a term of years, it shall vest in the mortgagee a term free from any right in the mortgagor to redeem, subject to such ancillary provisions as may be set forth in the order.

(5) Subsections (1) to (4) apply only to persons whose interests were created before the service of the writ or summons under section 52.

58. (1) A tenant may apply to the court for an order to terminate the tenancy agreement where the landlord is in breach of an obligation under the tenancy agreement.

Termination, and other remedies for breach of landlord's obligations

(2) The provisions of sections 52, 53, 54, 55, 56 and 57 shall apply to proceedings brought under subsection (1), subject to the following modifications-

- (a) except in section 57, "tenant" shall be substituted for "landlord" and vice versa;
- (b) section 52 (1) (b) and (c) shall not apply;
- (c) section 52(2) shall not apply where the effect of the breach results in total dispossession (whether of occupation or receipt of rents and profits) of the tenant of the premises, in which case the obligations of the tenant under the tenancy agreement shall be suspended from the time of service of the writ or summons, without prejudice to any right of set-off or to damages that may have accrued from the time of dispossession to the time of service;
- (d) section 52(4) shall not apply;
- (e) section 52(7) shall not apply;
- (f) section 53 (2) (b) shall not apply;
- (g) section 54 (1) (b) shall not apply.

(3) Without prejudice to subsection (1) and section 41 (5), a tenant may apply to the court for an order permitting him to withhold from the landlord payment of the rent, or any part thereof, until the landlord makes good any breach of his obligations under the tenancy agreement.

(4) The court may make an order under subsection (3) upon such terms as it thinks fit in all the circumstances.

(5) Until, on application to the court, an order under subsection (3) is withdrawn, the landlord shall not be entitled to claim any of the rent governed by such order, but nothing in this section prejudices the right of the landlord otherwise to claim arrears of rent after such order is withdrawn.

PART V

Recovery of possession and mesne profits

Compensation when premises not vacated

59. (1) A landlord shall be entitled to compensation for the use and occupation of premises after the tenancy has expired or been terminated in accordance with Part IV and the tenant has neglected or refused to give up possession of the premises.

(2) Acceptance by a landlord of arrears of rent or compensation-

- (a) after the expiration of the tenancy;
- (b) after notice of termination of a tenancy has been duly given in accordance with Part IV; or
- (c) after an order for the termination of the tenancy has been made under section 52,

does not operate as a waiver of the notice or as a reinstatement of the tenancy or as the creation of a new tenancy unless the parties so agree.

(3) The burden of proof that the notice has been waived or the tenancy has been reinstated or a new tenancy created is upon the person claiming.

(4) A landlord's claim for arrears of rent or compensation for use and occupation by a tenant after the expiration or termination of the tenancy may be enforced by action or as provided in section 60.

Application for order for possession

60. (1) Where a tenant, after his tenancy has expired or has been terminated in accordance with Part IV, does not go out of possession of the premises held by him, the landlord may apply to the court for an order for possession.

(2) Notice of the application shall be served on the tenant at least 3 days before the day named in the notice for the hearing of the application.

(3) Except where the tenancy agreement has been terminated by order under section 52, the application of the landlord shall be supported by an affidavit—

- (a) sufficiently describing the tenancy agreement in respect of parties, premises, rent, date of commencement and length of term or exhibiting a true copy of the tenancy agreement;
- (b) proving the expiration or termination of the tenancy;
- (c) stating the failure of the tenant to deliver up possession and the reasons given for the failure, if any were given; and
- (d) stating any other relevant facts.

61. (1) The application of the landlord may also include a claim for arrears of rent and for compensation for use and occupation of the premises by the tenant after the expiration or termination of the tenancy.

Claim for arrears in rent and compensation

(2) Where a claim is made under subsection (1) the affidavit in support of the application will also show—

- (a) where a claim is made for rent, the amount of rent in arrears and the time during which it has been in arrears; and
- (b) where a claim is made for compensation, particulars of the use made of the premises after the expiration or termination of the tenancy, so far as is known.

62. (1) Upon hearing the application, or, where it is opposed, upon hearing and considering the oral and affidavit evidence of the parties and their witnesses, the court may-

Hearing of application

- (a) if satisfied that the tenancy has expired or has been terminated in accordance with Part IV, give an order for possession;
- (b) where a claim for rent is made, give judgment for the amount of rent proved to be in arrears;
- (c) where a claim for compensation is made, give judgment in such amount as the court may determine as compensation for the use and occupation of the premises after the expiration or termination of the tenancy, having regard to the nature of the use and occupation and the rent payable during the tenancy; and
- (d) make such order as to costs as it thinks fit.

(2) The court may grant or dismiss the application in whole or in part and may direct the hearing of an issue to determine any matter in dispute.

63. An order under section 62 granting possession-

Terms of order for possession

- (a) shall direct the tenant to deliver up possession of the premises to the landlord by a specified date or within a specified time after service of the order on the tenant; and

- (b) shall state that if the order is not obeyed by the specified date or within the specified time a warrant of possession will issue under section 64 without any further order.

Warrant to evict 64. Where an order for possession under paragraph (a) of section 63(1) is not obeyed by the date or within the time therein specified, upon proof of service of the order the landlord shall be entitled, without any further order, to sue out a warrant directing the bailiff to evict the tenant from the premises.

Proceedings after tenant vacates 65. Proceedings in respect of a claim for arrears of rent or compensation may continue to judgment notwithstanding that the tenant delivers up possession of or vacates the premises.

PART VI

Registration of certain tenancy agreements

Registration of tenancy agreements 66. A fixed- term tenancy for a specified period of two years or more, or for the life of the landlord or of the tenant, or a tenancy which contains an option whereby the tenant may require the landlord to grant him a further term or terms which, together with the original term, exceed one year, shall be registered by the Registrar in accordance with the provisions of the Registered Land Law (2004 Revision) and the provisions of that Law as they relate to registration shall apply with the necessary changes.

Landlord's consent to dealing with tenancy
2004 Revision 67. Upon the registration of a tenancy agreement containing an agreement, express or implied, by the tenant that he will not transfer, sub-let, charge or part with possession of the premises or any part thereof without the written consent of the landlord, the agreement shall be noted in the register of the tenancy agreement and no dealing with the tenancy agreement shall be registered until the consent of the landlord, verified in accordance with section 107 of the Registered Land Law (2004 Revision), has been produced to the Registrar.

Lease of charged land
2004 Revision 68. Where any premises is subject to a charge, no tenancy of such premises shall be registered without the previous consent in writing of the proprietor of the charge, verified in accordance with section 107 of the Registered Land Law (2004 Revision), unless the charge expressly dispenses with the necessity for such consent.

Future tenancies 69. (1) A tenancy may be made for a period to commence on a future date, not being later than twenty-one years from the date on which the tenancy agreement is executed but shall be of no effect unless it is registered.

(2) Any instrument purporting to create a tenancy to commence on a date more than twenty-one years after the date of the instrument, or to take effect on the fulfilment of any condition, is void.

70. Where application is made to the Registrar to register any tenancy agreement which is not compulsorily registrable under this Law but which is capable of registration, the Registrar shall not register such tenancy agreement unless-

Voluntary registration of tenancy

- (a) it is in the prescribed form, or in such form as the Registrar may approve; and
- (b) in the case of a sub-tenancy, every tenancy superior to that sub-tenancy complies with paragraph (a) and is registered in priority to the sub-tenancy.

PART VII

General

71. (1) Where, otherwise than as a result of a breach of the tenancy agreement, the premises are destroyed, or are so seriously damaged as to be uninhabitable-

Destruction of premises and abatement of rent

- (a) the rent shall abate accordingly; and
- (b) either party may give notice to the other terminating the tenancy.

(2) Where a landlord gives notice of termination under subsection (1), the period of notice shall be not less than 7 days.

(3) Where a tenant gives notice of termination under subsection (1), the period of notice shall be not less than 2 days.

(4) Where, otherwise than as a result of a breach of the tenancy agreement, the premises are partially destroyed, or part of the premises is so seriously damaged as to be uninhabitable-

- (a) the rent shall abate accordingly; and
- (b) either party may apply to the Commissioner for an order terminating the tenancy, and the Commissioner may make such an order if he is satisfied that it would be unreasonable to require the landlord to reinstate the property or (as the case may require) to require the tenant to continue with the tenancy albeit at a reduced rent.

Abandonment of premises

72. (1) On the application of the landlord, the Commissioner may make an order terminating a tenancy where he is satisfied that the tenant has abandoned the premises and the rent is in arrears.

(2) Where the Commissioner makes an order under subsection (1) in respect of a periodic tenancy, he shall determine, as best he can on the evidence before him, the date on which the landlord first became aware, or ought reasonably to have become aware, that the tenant had abandoned the premises, and shall specify that date in the order.

(3) A tenant who abandons the premises shall, notwithstanding any rule of law to the contrary, be liable to pay the rent for any period up to and including, but not after, the following date-

- (a) in the case of a periodic tenancy-
 - (i) the date of the expiry of the period of 21 days after the date specified by the Commissioner under subsection (2); or
 - (ii) the date of commencement of a new tenancy of the premises,whichever is the earlier;
- (b) in the case of a fixed-term tenancy-
 - (i) the date of the expiry of the term; or
 - (ii) the date of commencement of a new tenancy of the premises-whichever is the earlier.

(4) Nothing in section 41 shall impose upon the landlord any obligation, on finding that the tenant has abandoned the premises, to make an application under this section or to grant a new tenancy of the premises.

Violence for securing entry

73. (1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person commits an offence where-

- (a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and
- (b) the person using or threatening the violence knows that that is the case.

(2) The fact that a person has any interest in or right to possession or occupation of any premises shall not for the purposes of subsection (1) constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing entry into those premises.

- (3) It is immaterial for the purposes of this section-
 - (a) whether the violence in question is directed against the person or against property; and
 - (b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or any other purpose.

(4) A person who commits an offence under this section is liable on summary conviction to a fine of \$4000 and imprisonment for four years.

74. (1) A landlord or a tenant, may apply to the court for an order requiring any other person to pay to the applicant an amount in the nature of exemplary damages on the ground that that other person has committed an unlawful act. Unlawful acts

(2) An application under subsection (1) shall not be made later than 12 months after the date of commission of the unlawful act.

(3) If, on such an application, the court is satisfied that the person against whom the order is sought committed the unlawful act intentionally, and that, having regard to-

- (a) the intent of that person in committing the unlawful act;
- (b) the effect of the unlawful act;
- (c) the interests of the landlord or the tenant against whom the unlawful act was committed; and
- (d) the public interest,

it would be just to require the person against whom the order is sought to pay a sum in the nature of exemplary damages, the court may make an order accordingly.

(4) Any amount ordered by the court to be paid under this section on the application of a landlord or a tenant shall be paid to that landlord or that tenant, and shall be in addition to any sum payable to that landlord or that tenant by way of compensation in respect of the unlawful act.

75. The Governor in Cabinet may make regulations in order to give effect to any provision of this Law and such regulations may contain penalties for breach of the regulations. Regulations

76. The Chief Justice may make rules for regulating pleading, practice and procedure in respect of the conduct of any matter before the court arising under this Law. Rules

Staying court proceedings where a dispute is referred to the Commissioner

77. (1) This section applies where a dispute is referred to the Commissioner and any party to the proceedings subsequently commences legal proceedings in any court against any other party to the dispute in respect of any of the matters which are the subject of the dispute.

(2) Where this section applies, any party to legal proceedings may at any time after acknowledgment of service and before delivering any pleadings or taking any other step in the proceedings, apply to the court to stay the proceedings.

(3) On an application under subsection (2) the court may make an order staying the proceedings if it is satisfied-

- (a) that there is no sufficient reason why the matter should not be dealt with by the Commissioner; and
- (b) that the applicant was at the time when the legal proceedings were commenced and still remains ready and willing to do all things necessary to resolve the dispute.

Contract to avoid Law

78. (1) An agreement or arrangement that is inconsistent with this Law or that purports to exclude, modify or restrict the operation of this Law, is (unless the inconsistency, exclusion, modification or restriction is expressly permitted under this Law) to that extent void.

(2) A person who enters into an agreement or arrangement to defeat, evade or prevent the operation of this Law directly or indirectly is guilty of an offence and is liable on summary conviction to a fine of \$5000.

Transitional arrangements

79. (1) Nothing in this Law applies in relation to any proceedings which began before the commencement of this Law.

(2) Notwithstanding subsection (1), this Law applies to every residential tenancy made before and after the date of the commencement of this Law; and where at the date of the commencement of this Law a tenancy agreement is not in writing a landlord shall, within 3 months of such date, provide the tenant with a written tenancy agreement; and nothing in this Law shall be construed as providing that such agreement shall offer less favourable terms than those previously orally agreed or less than provided by this Law.

(3) A landlord who fails to provide a tenant with a written tenancy agreement or who provides tenancy agreement which does not comply with subsection (2) commits an offence and is liable on summary conviction to a fine of \$5000.

80. (1) The Landlord and Tenant Law (Cap. 80) (1997 Revision) is repealed. Repeals

(2) Section 84 of the Penal Code (2006 Revision) is repealed.

Section 12

FIRST SCHEDULE

Dispute Resolution by the Residential Tenancies Commissioner

1. The Residential Tenancies Commissioner shall hold one or more hearings for the purpose of determining disputes or any matter which may be dealt with by him.
2. The parties to the dispute shall be given notice by the Commissioner of the holding of a hearing.
3. The following information shall be included in such notice-
 - (a) the date, time, venue and purpose of the hearing;
 - (b) an outline of the substance of the matters to be dealt with at the hearing;
 - (c) an outline of the procedures to be adopted at the hearing;
 - (d) a reference to the provisions of this Law and any rules made under it that are relevant to the holding of the hearing;
 - (e) a statement that the Commissioner will, unless substantial grounds arise for its deciding to do otherwise, proceed with the hearing at the date and time concerned notwithstanding that a party does not attend the hearing;
 - (f) a statement that the Commissioner will determine the dispute notwithstanding that a party does not take part in the proceedings before the Commissioner; and
 - (g) any other information the Commissioner considers appropriate.
4. The notice under paragraph 3 shall be given at least 14 days before the date of hearing or at such lesser period as the Commissioner may specify where-
 - (a) one or more parties requests the Commissioner to specify such a period and the other party or parties consent to such a specification;
 - (b) the dispute concerns alleged behaviour by the landlord or the tenant that poses imminent danger of death or serious injury or imminent danger to the fabric of the premises concerned.
5. Each of the parties shall be entitled to and be given the opportunity to be heard at the hearing and to be represented and to present evidence and witnesses before the Residential Tenancies Commissioner.

6. Proceedings before the Residential Tenancies Commissioner shall not be conducted in public.

7. The Commissioner has, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of his orders and other matters necessary or proper for the due exercise of his jurisdiction, all such powers, rights and privileges as a summary court, and without limiting the generality of the foregoing, may-

- (a) issue a summons to any person requiring him to appear at the same time and place mentioned therein to testify to all matters within his knowledge relative to a subject matter before the Commissioner and to bring with him and produce any document, book or paper that he has in his personal possession or under his control relative to such subject matter;
- (b) administer oaths and examine any person upon oath, affirmation or otherwise; and
- (c) during a hearing receive such additional information as he may consider credible or trustworthy and necessary for dealing with the dispute before it.

8. Notwithstanding paragraph 7, evidence tendered to the Commissioner need not be given on oath unless the Commissioner otherwise determines in respect of any particular evidence.

9. The Commissioner may on his own initiative seek and receive any other evidence and make any other investigations and inquiries as he thinks fit.

10. A person who is given a summons to attend before the Commissioner or to produce evidence shall comply with such notice and if he fails to do so he commits an offence and is liable on summary conviction to a fine of \$3000.

11. The Commissioner may receive and take into account any relevant evidence or information, whether or not that evidence or information would normally be admissible in a court.

12. The Commissioner may adjourn the hearing by him of a matter until a date specified by him but shall use his best endeavours to determine a dispute within 10 working days after proceedings have started.

13. The Commissioner shall, on completion of the hearing of a dispute, make an order determining the dispute and notify the parties of his order.

14. A party to the dispute that has been determined by the Commissioner may, by written notice delivered to the Commissioner within 3 working days of receipt by the party of the notice given under paragraph 13, apply for a rehearing of the dispute.

15. The Commissioner may rehear a dispute that has been determined by him if the appellant provides, in the opinion of the Commissioner, new and relevant evidence, and he may determine such dispute on any terms and conditions as he thinks fit; but the Commissioner is not obliged to rehear a dispute.

16. The preceding paragraphs of this Schedule apply to the rehearing of a dispute as if it were an original hearing of the dispute.

17. The Minister responsible for housing may make such supplemental rules to govern procedure to be followed by the Commissioner and such rules –

- (a) may specify the forms to be used for referring a dispute to the Commissioner; or
- (b) specify that a fee of a specified amount shall be paid to the Commissioner in respect of the Commissioner dealing with a dispute or the following of any other procedure under this Law in relation to it.

18. The title to any lands shall not be drawn into question in any proceedings or matter before the Commissioner.

19. The proceedings of the Commissioner are judicial proceedings and in the performance of his functions the Commissioner enjoys the same protection that a justice of the peace acting in his civil jurisdiction has and enjoys under the Summary Jurisdiction Law (2004 Revision).

SECOND SCHEDULE

Section 50

PART I

FORMS OF NOTICES

FORM A

NOTICE TO TENANT

TO (Name of Tenant)

I hereby give you notice to deliver up possession of the premises [*identify the premises*] which you hold of me as tenant, on the [*blank*] day of [*blank*] 20 [*blank*]

Dated this [blank] day of [blank] 20 [blank]

[blank]

(Landlord)

FORM B

NOTICE TO LANDLORD

TO (Name of Landlord)

I hereby give you notice that I am giving up possession of the premises [*identify the premises*] which I hold of you as tenant, on the [blank] day of [blank] 20 [blank] Dated this [blank] day of [blank] 20 [blank]

PART II

SERVICE OF NOTICES

1. Notice by a tenant to a landlord shall be given personally to the landlord or sent by prepaid letter post to the landlord at the address where the rent is payable.
2. Except as provided in paragraph 3, notice by a landlord to a tenant shall be given personally to the tenant or sent by prepaid letter post to the tenant at his last known place of business or abode in the Islands.
3. Where the tenant cannot be given notice by reason of his absence from Islands, or by reason of his evading service, the notice may be given to the tenant by posting it up in a conspicuous place upon some part of the premises.
4. Notwithstanding anything in this Part of this Schedule, a notice to a corporation may be served on an officer or secretary of the corporation or in such other manner as a court may sanction.

Passed by the Legislative Assembly this day of 2006

Speaker

Clerk of the Legislative Assembly

