

LAWS OF GUYANA

LANDLORD AND TENANT ACT

CHAPTER 61:01

Act

26 of 1947

Amended by

4 of 1972

O. 23/1986

Current Authorised Pages

<i>Pages (inclusive)</i>	<i>Authorised by L.R.O.</i>
1 - 55 ...	1/2012

Index
of
Subsidiary Legislation

This Chapter contains no subsidiary legislation .

CHAPTER 61:01
LANDLORD AND TENANT ACT
ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Interpretation.

NATURE OF TENANCIES AND THE LAW APPLICABLE THERETO

3. Definitions of various tenancies.
4. Tenancies in Guyana, and the law applicable thereto.

CAPACITY FOR LETTING AND TAKING ON HIRE LAND AND BUILDINGS

5. General contract law to govern capacity to enter into tenancies.

PROVISIONS RELATING TO LEASES

6. Leases for more than three years to be by deed, and other leases to be in writing.
7. Form of lease.
8. Voluntary waste, and accidental fires.
9. Person holding over after expiration of tenancy.
10. Forfeiture of leases for breach of covenant other than for non-payment of rent.
11. Forfeiture for non-payment of rent.
12. Waiver of a covenant in a lease.

PROVISIONS RELATING TO TENANCIES GENERALLY

13. Vesting of land and buildings in possession.
14. Things privileged from distress.
15. Fixtures, etc., of tenant.
16. Attornment.
17. Effect of extinguishment of reversion.
18. Rights and duties of assignees of reversions.

SECTION

19. General words implied in leases.

RECOVERY OF RENT BY DISTRESS

20. Summary recovery of rent under \$500 *per annum*.
21. Rent payable in advance.
22. Claim by landlord before magistrate for rent due, and issue of distress warrant.
23. Breaking open place for goods removed.
24. Liability of person assisting in fraudulent removal of goods.
25. Detention of furniture being clandestinely removed.
26. Sale of goods distrained and not replevied.
27. Replevin.
28. Liability of person distraining where no rent due.
29. Preference of landlord over execution creditors for rent due to certain amount.
30. Effect of irregularity in making distress.
31. Delivery of copy of costs and charges of distress.
32. Distress within six months after lease determined.
33. Distress for rent exceeding \$500 *per annum*.
34. Power of sale of distress taken for rent exceeding \$500 *per annum*.
35. Application of certain provisions to distress for rent exceeding \$500 *per annum*.

SPECIAL PROVISIONS RELATING TO THE LANDLORD'S RIGHT OF DISTRESS FOR RENT

36. Power of under tenant, lodger or other person, where distress levied, to make declaration that immediate tenant has no property in goods distrained.
37. Penalty on superior landlord for illegal distress after declaration.
38. Payments by under tenant or lodger to superior landlord.
39. Exclusion of certain goods.
40. Exclusion of certain under tenants.

SECTION

41. Notice by superior landlord to under tenant to pay him rent due by immediate tenant.
42. Definitions.
43. Distress levied on goods and chattels formerly comprised in bill of sale or hire purchase agreement.

LANDLORD'S DUTY TO REPAIR CERTAIN TENEMENTS

44. Conditions implied in the letting of houses.

RECOVERY OF POSSESSION OF TENEMENTS

45. Neglect to pay rent a determination of tenancy in certain cases.
46. Recovery of possession after termination or determination of tenancy where tenancy is at a rent not exceeding \$1,200 a year.
47. Warrant obtained without right of possession.
48. Protection of magistrate, bailiff and constable.
49. Irregularity in proceeding, but landlord has lawful right to possession.

MISCELLANEOUS PROVISIONS

50. Regulation of costs of distress and ejection.
51. Remedy for taking unauthorized costs and charges.
52. Summoning of witnesses.
53. Power to order costs if complaint not well founded.
54. Proof of order and judgment.
55. Mode of serving notices.
56. Appointment of certified bailiffs.
57. Registration of agents.
58. Receipts or acknowledgments to be given on payment of rent.
59. Rent book.
60. Disturbance of tenant's peaceable enjoyment.
61. Offences and penalties.
62. Use of forms.
63. Fees and costs.

FIRST SCHEDULE- Forms.

SECOND SCHEDULE- Table of Fees and Costs.

CHAPTER 61:01

LANDLORD AND TENANT ACT

1953Ed.
c. 185

26 of 1947

An Act to regulate the relationship between Landlord and Tenant and to amend the existing law with respect thereto.

[30TH SEPTEMBER, 1947]

Short title.

1. This Act may be cited as the Landlord and Tenant Act.

Interpretation.
[4 of 1972]

2. In this Act—

“agent” means a person authorised by a landlord to let any land or buildings, or to collect rent, or to levy distress, or to do any other act in relation to a tenancy;

“buildings” includes houses, rooms, flats, apartments and parts thereof;

“deed” means—

- (a) an instrument so called according to the common law; or
- (b) an instrument executed in Guyana before a notary public or public notary, and registered in the Deeds Registry;

“land” includes buildings, houses and other structures and erections thereon;

“landlord” means any person who under any tenancy is, as between himself and the tenant for the time being, entitled to the rents and profits of the land or building payable under the tenancy;

“lease” includes under-lease and assignment operating as a lease or under-lease;

“lessee” in relation to a lease has the same meaning as “tenant”;

“lessor” in relation to a lease has the same meaning as “landlord”;

“rent” means the sum of money or other ascertainable consideration payable by the tenant for the possession of the land or building under a tenancy;

“tenant” means any person entitled in possession to the land or building under any contract of tenancy, whether the interest of such tenant was acquired by original contract, assignment, operation of law or otherwise;

“tenement” means any land or buildings in possession of a tenant under a tenancy.

NATURE OF TENANCIES AND THE LAW APPLICABLE THERE TO

Definitions of various tenancies.

3. (1) A tenancy for years is a holding of land or buildings under a contract for the exclusive possession thereof for some certain number of years or other determinable period.

(2) A tenancy from year to year is a holding of land or buildings under a contract, express or implied, for the exclusive possession thereof for a term which may be determined at the end of the first year or any subsequent year of the tenancy either by the landlord or the tenant by a

regular notice to quit.

(3) A tenancy for less than a year is a holding of land or buildings under a contract for the exclusive possession thereof for an indefinite period less than a year, the hiring in the absence of stipulation to the contrary, being monthly or weekly according to the circumstances of each case.

(4) A tenancy at will is a holding of land or buildings under a contract for the exclusive possession thereof to hold at the will of the landlord.

(5) A tenancy on sufferance is a holding of land or buildings in exclusive possession by a person who, without the assent or dissent of the person entitled to possession, wrongfully continued in possession of the same after his right to the possession thereof expired.

Tenancies in Guyana, and the law applicable thereto.

4. (1) It is hereby declared that the tenancies defined in section 3 comprise, and have always since the 1st January, 1917, comprised, the relationships between landlord and tenant in Guyana and that every such tenancy, as the case may be, had and, subject to this Act, shall continue to have in Guyana such and the same qualities and incidents as it has by the common law of England.

(2) It is further declared that the common law of England relating to the said respective tenancies has, since the 1st January, 1917, applied in Guyana, and subject to this Act, shall continue to apply to and to govern the said tenancies.

CAPACITY FOR LETTING AND TAKING ON HIRE LAND AND BUILDINGS

General contract law to

5. (1) Capacity to enter into an agreement for a lease or to enter into any of the tenancies defined in this Act is

govern
capacity to
enter into
tenancies.

regulated by the general law concerning capacity to contract or to dispose of and acquire property.

(2) All persons not under legal disability may grant leases for such terms as are consistent with their right, title or interest in the land or buildings, and all persons under no legal incapacity may hold leases.

PROVISIONS RELATING TO LEASES

Leases for more
than three
years to be by
deed, and other
leases to be in
writing.

6. (1) Every lease for more than three years from the making thereof, and every lease for a term of less than three years with the right in the lessee at his option to prolong it to a period exceeding three years from the date thereof, shall be by deed signed and sealed by the parties, and every such lease not made by such deed shall have the force and effect of an agreement for a lease only.

(2) Every lease for a term of three years or less shall be in writing and shall be signed by the lessor and the lessee, or by their respective agents thereunto lawfully authorised in writing.

(3) Every agreement for a lease made in writing or orally under which the person to become lessee went into possession of the land or buildings, shall take effect and be construed as a tenancy from year to year from the date of the entry into possession and until the lease has been actually executed.

(4) Section 13 (2) and (4) of the Deeds Registry Act shall apply with respect to every lease not a long lease.

(5) Nothing in this Act shall affect the provisions of section 13 of the Deeds Registry Act relating to a long lease.

Form of lease.

7. Every lease shall contain—

- (a) a statement of the date, the names, the addresses and occupations of the parties;
- (b) the recitals (if any), the operative words, the description of the parcels leased;
- (c) the duration of the lease;
- (d) the reservation of the rent;
- (e) the covenants (if any);
- (f) any provisions for re-entry for non-payment of the rent or non-observance of covenants;
- (g) the determination of the lease by notice before the expiration thereof (if so intended).

Voluntary
waste and
accidental fires.

8. (1) A lessee shall not make voluntary waste of the land or buildings held under the tenancy without the permission of the lessor, and if he does so the lessee shall be liable to pay damages to the lessor.

(2) No action shall be brought by any landlord against any tenant on or in whose land or buildings any fire shall accidentally begin in respect of any damage suffered by him in consequence thereof:

Provided that this subsection shall take effect in so far only as a contrary intention is not expressed in any contract or agreement made between landlord and tenant.

Person holding over after expiration of tenancy.

9. In case any tenant for years or from year to year shall wilfully hold over any land or buildings after the termination or determination of the tenancy, and after demand made and notice in writing given for delivering the possession thereof to the person entitled to possession of the land or buildings, the person so holding over shall, for and during the time he shall so hold over or keep the person entitled out of possession, pay to the person so kept out of possession double the yearly rent which was payable under the tenancy to be recovered by action in the proper court.

Forfeiture of leases for breach of covenant other than for non-payment of rent

10. (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice—

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

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

(2) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the court for relief, and the court may grant or refuse relief, as the court, having regard to the proceedings and conduct of the parties under the foregoing

provisions of this section and to all the other circumstances, thinks fit, and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit.

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

(4) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, or for non-payment of rent, the court may, on application by any person claiming as under-lessee any interest in the tenement or part thereof, either in the lessor's action (if any) or in any action brought by such person for that purpose, make any order vesting, for the whole term of the lease or any less term, the land or buildings comprised in the lease or part thereof in any person entitled as under-lessee to any interest in such land or buildings upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the court in the circumstances of each case may think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

(5) This section does not apply to a condition for forfeiture on the insolvency of the lessee or on the taking in execution of the lessee's interest if contained in a lease of—

- (a) a house used or intended to be used as a hotel or spirit shop; or
- (b) a house let as a dwelling-house, with the use of any furniture, books, work of art or other chattels not being in the nature of fixtures; or
- (c) any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding under him.

(6) This section shall have effect notwithstanding any stipulation to the contrary.

Forfeiture for non-payment of rent.

11. (1) In the case of any action for a forfeiture brought for non-payment of rent, the High Court or a judge thereof shall have power to give relief in a summary manner, and subject to the same terms and conditions in all respects as to payment of rent, costs and otherwise as could formerly have been imposed in the Court of Chancery in England, and if the lessee, his executors, administrators or assigns are so relieved that they shall hold the tenement according to the terms of the lease and without the necessity of any new lease.

(2) Nothing in this section shall affect the principles of equity applicable to re-entry or forfeiture or relief in the case of non-payment of rent.

Waiver of a covenant in a lease.

12. (1) Where any actual waiver by a lessor or the persons deriving title under him of the benefit of any covenant or condition in any lease is proved to have taken place in any particular instance, such waiver shall not be deemed to extend to any instance, or to any breach of covenant or condition save that to which such waiver

especially relates, nor operate as a general waiver of the benefit of any such covenant or condition save that to which such waiver especially relates, nor operate as a general waiver of the benefit of any such covenant or condition.

(2) This section applies unless a contrary intention appears and extends to waivers effected after the 1st January, 1917.

**PROVISIONS RELATING TO TENANCIES
GENERALLY**

Vesting of land
and buildings
in possession.

13. The doctrine of *interesse termini* in the common law shall have no application in Guyana, and every tenant shall be deemed to have entered into possession of the land or buildings intended to be let as from the date fixed for the commencement of the tenancy, if the same were in the possession of the landlord at the time of entering into the contract for a tenancy.

Things
privileged from
distress.
[4 of 1972]

14. Without prejudice to any rule of common law relating to things privileged from distress for rent, the following goods and chattels shall be exempt from distress for rent—

- (a) the wearing apparel and bedding of the tenant or his family and, to the value of one hundred dollars, the tools and implements of his trade:

Provided that, in respect of such exemption from distress, the privilege shall not extend to any case where the lease, term or interest of the tenant has expired, and possession of the tenement in respect of which the rent is claimed has been demanded and the distress is made not earlier than seven days after such demand; and

- (b) in the case of a tenancy relating to

land used for agricultural or grazing purposes—

- (i) agricultural or other machinery which is the property of a person other than the tenant, and is on the tenement under an agreement with the tenant for the hire or use thereof in the conduct of his business;
- (ii) livestock which is the property of a person other than the tenant and is on the tenement solely for breeding purposes; and
- (iii) if there be other sufficient distress on the tenement, livestock on the tenement which is the property of a person other than the tenant, and has been taken in by the tenant to be fed at a fair price:

Provided that, in respect of the exemption from distress referred to in paragraph (b) (iii), if such livestock is so distrained by reason of other sufficient distress not being found, there shall not be recovered by that distress a sum exceeding the amount of the sum agreed to be paid for the feeding, or any part thereof which remains unpaid.

Fixtures, etc.,
of tenant.

15. (1) The doctrine of the common law, *quicquid solo plantatur, solo cedit*, shall have no application in Guyana to tenant's fixtures of any kind, and all such fixtures affixed to a tenement by a tenant and any building erected by him thereon for which he is not under any law or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, shall be the property of and be removable by

the tenant before or after the termination of the tenancy:

Provided that—

- (a) before the removal of any fixture or building, the tenant shall pay all rent owing by him and shall perform or satisfy all his other obligations to the landlord in respect of the tenement;
- (b) in the removal of any fixture or building, the tenant shall not do any avoidable damage to any other building or to any part of the tenement;
- (c) immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or to any part of the tenement by the removal;
- (d) the tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of his intention to remove it;
- (e) at any time before the expiration of the notice of removal, the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord,

who shall pay to the tenant the fair value thereof to an incoming tenant of the tenement, and any difference as to the value shall be settled by the magistrate of the magisterial district in which the tenement lies on application made by either the landlord or the tenant.

(2) The proviso to subsection (1) shall not apply to fixtures and buildings removed before the commencement of this Act, but subject thereto this section shall have effect and be deemed always to have had effect as from the 1st January, 1917.

Attornment.

16. (1) Where land or a building is subject to a lease the conveyance or assignment of a reversion in the land or building expectant on the determination of the lease shall be valid without any attornment of the lessee:

Provided that nothing in this subsection—

- (a) shall affect the validity of any payment of rent by the lessee to the person making the conveyance or transfer before notice of such conveyance or transfer is given to him by the person entitled thereunder; or
- (b) shall render the lessee liable for any breach of covenant to pay rent, on account of his failure to pay rent to the person entitled under the conveyance or transfer before such notice is given to the lessee.

(2) An attornment by the lessee in respect of any land or building to a person claiming to be entitled to the interest in the land or building of the lessor, if made without

the consent of the lessor, shall be void:

Provided that this subsection shall not apply to an
attornment—

- (a) made pursuant to a judgment of a court of competent jurisdiction; or
- (b) to any person rightfully deriving title under the lessor.

Effect of
extinguish-
ment of
reversion.

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

(2) This section shall have effect, and be deemed always to have had effect, as from the 1st January, 1917.

Rights and
duties of
assignees of
reversions.

18. All assignees of the reversion shall have and enjoy all the advantages, benefits and remedies by entry for non-payment of rent, or for doing waste or other forfeiture or by action only for non-performance of conditions, covenants or agreements, contained or expressed in leases which the lessors had, and conversely, all lessees and their assigns shall have the same remedies against assignees of the reversion as they (the lessees) had against the lessors.

General words
implied in
leases.

19. (1) A lease of land shall be deemed to include and shall by virtue of this Act operate to grant with the land all servitudes, easements, rights and advantages whatsoever appertaining or reputed to appertain to the land, or any part thereof, or at the time of the lease occupied or enjoyed with or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2) This section shall not be construed as giving to any person a better title to any property, right or thing in this section mentioned than the title which the grant gives to him to the land expressed to be granted, or as granting to him any property, right or thing in this section mentioned, further or otherwise than as the same could have been granted to him by the lessor.

(3) This section applies only if and so far as a contrary intention is not expressed in the lease, and has effect subject to the terms of the lease and to the provisions therein contained.

RECOVERY OF RENT BY DISTRESS

Summary
recovery of
rent under
\$500 *per annum*.
[4 of 1972]

20. All rents not exceeding the sum of five hundred dollars a year, accruing to a landlord for the hire of any land or buildings situate in any part of Guyana may be recovered, and are hereby declared to be recoverable, in the manner hereinafter set forth.

Rent payable
in advance.

21. Where it has been agreed between the tenant and his landlord or agent that the rent is to be payable in advance, the rent shall be deemed to be due and payable on the day on which it so becomes payable in advance, and in default of payment by the tenant on that day, proceedings may be taken against him for the default.

Claim by
landlord
before
magistrate
for rent due
and issue of,
distress
warrant.
[4 of 1972]

22. (1) If when any rent not exceeding the sum of five hundred dollars a year becomes due the tenant remains in default of payment thereof for seven days after it has become due, the landlord or his agent may lay his claim, with the particulars thereof in writing properly substantiated or sworn before a magistrate or a clerk of the court, who is hereby authorised to administer the oath in connection therewith.

(2) The magistrate shall thereupon issue a warrant authorising any constable or bailiff in the daytime to

enter, and if necessary to break open, the tenement in respect of which the rent is due between the hours of nine in the morning and four in the afternoon, and, in the presence of the landlord or his agent and under his direction, to distrain the goods and chattels therein sufficient to satisfy the amount due, subject, however, to any privilege from distress at common law or under this Act.

(3) The constable or bailiff, in the presence and at the desire or under the direction of the landlord or his agent, if sufficient property is not found on the tenement, may distrain any of the goods and chattels of the tenant fraudulently or clandestinely carried off the tenement to prevent the landlord from distraining the same for rent in arrear, wherever they are found within the space of thirty days next ensuing such carrying off, unless they have been sold for a valuable consideration before such distraint to any person not privy to such fraud.

(4) The person executing the warrant of distress shall make out and leave with the tenant an inventory of the goods distrained.

Breaking open place for goods removed.

23. The constable or bailiff, under warrant and in presence as aforesaid, may break open in the daytime any place where the goods are locked up or whither they have been fraudulently removed:

Provided that, if that place is a dwelling-house, the landlord or his agent shall first satisfy the magistrate by sworn testimony that there is reasonable ground to suspect that the goods are concealed in it.

Liability of person assisting in fraudulent removal of goods.

24. All persons privy to or assisting in any fraudulent conveyance of the goods and chattels from the tenement upon which any rent is due shall forfeit to the landlord double the value of the rent, to be recovered in any court of competent jurisdiction.

Detention of
furniture being
clandestinely
removed.

25. (1) Any police constable, in the presence and at the request, or under the direction, of a landlord or his agent, may stop and detain, until due inquiry can be made, all carts and carriages which he finds employed in removing furniture from any buildings belonging to that landlord, and in consequence of that request or direction he may take to the nearest police station all furniture being removed in any manner whenever the landlord or his agent alleges that rent is in arrear and that the removal is being made for the purpose of evading the payment thereof.

(2) Every landlord or agent who causes any furniture to be detained or taken to a police station under the last preceding subsection for any rent pretended to be in arrear and due in respect of the hiring of the building from which the said furniture is being removed where in truth no rent is in arrear shall be liable to pay as damages double the amount of the rent claimed.

Sale of goods
distraigned and
not replevied.

26. Where any goods or chattels are distraigned for any rent reserved and due, they shall be set up for sale by public auction at the expiration of five days after the distress, unless the tenant or owner of the goods distraigned replevy them as hereinafter provided:

Provided that the magistrate may extend the time for setting up the goods and chattels for sale.

Replevin.

27. (1) The remedy of replevin under the common law shall be available to the owner of goods which have been wrongfully taken under a distress for rent.

(2) Where the tenant or owner of the goods distraigned desires to replevy them he shall serve the bailiff with a notice to that effect before sale and at the same time deposit the amount of rent due and five dollars as security for costs, which shall include the cost for appraisalment of the goods if the replevisor desires an appraisalment, and shall

sign an act of deposit or, in lieu of deposit, enter into a recognisance with at least one sufficient surety to the satisfaction of the magistrate conditioned for the due and effective prosecution of the action, including the payment of the costs aforesaid, and on concluding the aforesaid deposit and act of deposit, or recognisance, the bailiff shall restore those of the goods distrained in respect of which a replevin has been made.

(3) If the replevisor succeeds in his action, the sums deposited for the amount of rent shall be paid over to him, and the defendant shall pay to the replevisor any costs to which he has been put or which have been awarded to him by judgment of the court.

(4) If the defendant succeeds in the action, the court shall find the value of the goods so distrained and judgment shall be given for the amount of that value if it does not exceed the amount of rent for which the distress was made, but if the amount of the value so found exceeds the amount of the rent judgment shall be given for the amount of the rent, and the replevisor shall, in either case, pay all costs to which the defendant has been put, or such costs as are awarded by the judgment of the court, and the judgment with the costs shall be satisfied out of the sums so deposited, or in case of a recognisance by estreating it.

(5) If any other cause of action shall be joined with an action for replevin, the court may order a separate trial of any other claim which cannot be conveniently tried with the action for replevin.

Liability of
person
distraining
where no rent
due.

28. If any distress aforesaid is made by virtue or under colour of this Act for rent pretended to be in arrear and due, where in truth no rent is in arrear or due to the person distraining or to him in whose name or right the distress is taken as aforesaid, then the owner of the goods or chattels distrained, his heirs, executors, administrators and assigns,

shall and may, by action to be brought within three months after the date of the distress against the person so distraining, his heirs, executors, or administrators, recover double the value of the rent claimed and distrained for, together with full costs of the suit.

Preference of landlord over execution creditors for rent due to certain amount.

29. (1) Where an execution issued out of the High Court is levied upon any goods or chattels whatsoever, lying or being in or upon any lands or in any buildings held under any tenancy, those goods and chattels shall be sold by virtue of the execution, subject to the right of the landlord of the premises to payment out of the net proceeds of the sale, of the sum of money due for rent for the premises at the time of the taking the goods and chattels by virtue of the execution:

Provided that—

- (a) the landlord, within five days from the date of the levy shall claim that sum by delivering to the marshal making the levy a statutory declaration, made and signed by himself or his agent, stating the amount of rent claimed to be in arrear and the time for and in respect of which that rent is due; and
- (b) not more than six months' rent, or more than one hundred and twenty dollars, whichever sum may be the lower, shall be paid to the landlord for or in respect of the arrears.

(2) In that case the proper officer of the court shall, without further authority or warrant than is hereby granted, pay out to the landlord, after deduction of the costs of execution only, all and every sum and sums not exceeding six months' rent or one hundred and twenty dollars.

c. 7:01

(3) The landlord of any house or other building in which any movable property is seized and taken by virtue of a writ of execution issued under the Summary Jurisdiction (Petty Debt) Act may claim the rent thereof at any time within five days from the date of the seizure and taking, or before the removal of the property, by delivering to the bailiff making the levy a statutory declaration made and signed by himself or his agent, stating the amount of rent claimed to be in arrear, and the time for and in respect of which it is due.

(4) If that claim is made, the bailiff making the levy shall, in addition thereto, distrain for the rent so claimed and the costs of the distress, and shall not within five days next after the distress sell any part of the property taken unless it is of a perishable nature, or with the consent in writing of the party against whom the writ has been issued; and the bailiff shall afterwards sell such of the property taken, as may satisfy, first, the costs of and incidental to the sale, next, the claim of the landlord, not exceeding the rent of four weeks where the house or other building is let by the week, the rent of six months where the house or other building is let for any other term less than a year, and the rent of one year in any other case, and, lastly, the amount for which the writ of execution was issued; and the overplus of the sale, if any, and the residue of the property so seized and taken, shall be returned to the party against whom the writ has been issued.

(5) The fees and costs of the bailiff in respect of the distress shall be the same as would have been payable if the distress had been an execution of the court, and no other fees shall be demanded or taken in respect thereof.

Effect of
irregularity in
making distress

30. (1) Where any distress is made for any rent justly due, and any irregularity or unlawful act is afterwards done by the party distraining or his agent, the distress itself shall not therefore be deemed to be unlawful, nor the party making it be deemed a trespasser *ab initio*, but the party aggrieved by the irregularity or unlawful act may recover by

action in any court of competent jurisdiction, full satisfaction for any special damage he has sustained thereby, and no more:

Provided that where the plaintiff recovers in the action, he shall be paid his full costs of suit and have all the like remedies for them as in other cases.

(2) No tenant or lessee shall recover in an action for any irregularity or unlawful act aforesaid, if tender or sufficient amends has been made by the party distraining or his agent before action brought.

Delivery of copy of costs and charges of distress.

31. Every agent or other person who makes and levies a distress shall give a copy (signed by him) of his charges, and of all the costs and charges of any distress, to the person or persons on whose goods and chattels the distress is levied.

Distress within 6 months after lease determined.

32. It shall be lawful for any person having any rent in arrear or due upon any tenancy for years or from year to year or at will ended or determined to distrain for such arrears after the determination of the said respective tenancies in the same manner as they might have done if such tenancy had not been ended or determined:

Provided that such distress be made within the space of six calendar months after the termination or determination of such tenancies and during the continuance of such landlord's title or interest and during the possession of the tenant from whom such arrears became due.

Distress for rent exceeding \$500 *per annum*. [4 of 1972 6 of 1997]

33. (1) The remedy of distress for rent in the common law shall be available to every landlord in relation to tenancies in respect of which the rent reserved exceeds five hundred dollars *per annum*.

(2) If the landlord does not himself distrain in person, the distress shall be levied by a certified bailiff.

(3) No person shall act as a bailiff to levy any distress for rent under this section unless he shall be authorised to act as a bailiff by a certificate in writing under the hand of a magistrate and such certificate may be general or apply to a particular distress or distresses and may be granted in such manner and for such duration as may be prescribed by rules made under the Summary Jurisdiction (Magistrates) Act.

(4) A certificate granted to a bailiff by a magistrate may at any time be cancelled.

(5) If any person not holding a certificate under this section levies a distress, he and any person who has authorised him so to levy shall be deemed to have committed a trespass, and he shall, without prejudice to that civil liability, be liable on summary conviction to a fine of thirteen thousand dollars.

Power of sale of
distress taken
for rent
exceeding
\$500 *per annum*.
[4 of 1972]

34. Where any goods and chattels are distrained for any rent exceeding five hundred dollars *per annum* reserved and due upon any tenancy whatsoever, and the tenant or owner of the goods so distrained does not, within five days after such distress taken, or such extended period of not more than fifteen days as the landlord or other person levying the distress may at the request in writing of the tenant or owner grant, and after notice thereof given by the landlord to the tenant, replevy the same with sufficient security to be given to the clerk of the court according to law, then the person distraining shall with the said clerk cause the goods and chattels so distrained to be appraised and thereafter shall sell the goods and chattels at public auction and apply the proceeds to the satisfaction of the rent and charges of such distress, appraisal and sale leaving the overplus (if any) in the hands of the said clerk for the owner's use.

Application of certain provisions to distress for rent exceeding \$500 *per annum*. [4 of 1972]

35. (1) Section 22 (3) and sections 23 to 32 (inclusive) and 50 to 54 (inclusive) shall, *mutatis mutandis*, apply to a distress for rent exceeding five hundred dollars *per annum*.

(2) All things being upon any tenement at the time of a distress taken in respect of rent which exceeds five hundred dollars *per annum* shall be subject to the privileges and exemptions from distress existing at common law or under this Act.

SPECIAL PROVISIONS RELATING TO THE LANDLORD'S RIGHT OF DISTRESS FOR RENT

Power of under tenant, lodger, or other person, where distress levied, to make declaration that immediate tenant has no property in goods distrained. [6 of 1997]

36. (1) If any superior landlord shall levy, or authorise to be levied, a distress on any furniture, goods or chattels of—

- (a) any under tenant liable to pay by equal instalments not less often than every month of a year rent in respect of the whole or part of the tenement let by the superior landlord to his immediate tenant; or
- (b) any lodger; or
- (c) any other person whomsoever not being a tenant of the tenement or of any part thereof, and not having any beneficial interest in any tenancy of the tenement or of any part thereof, for arrears of rent due to such superior landlord by his immediate tenant, such under tenant, lodger, or other person aforesaid may serve such superior landlord, or his agent, with a declaration in writing made by such under tenant, lodger, or other person aforesaid, setting forth that

such immediate tenant has no right of property or beneficial interest in the furniture, goods, or chattels, so distrained or threatened to be distrained upon, and that such furniture, goods or chattels are the property or in the lawful possession of such under tenant, lodger, or other person aforesaid, and are not goods or livestock to which this Act is expressed not to apply; and also, in the case of an under tenant or lodger, setting forth the amount of rent (if any) then due to his immediate landlord, and the times at which future instalments of rent will become due, and the amount thereof, and containing an undertaking to pay to the superior landlord any rent so due or to become due to his immediate landlord, until the arrears of rent in respect of which the distress was levied or authorised to be levied have been paid off, and to such declaration shall be annexed a correct inventory, subscribed by the under tenant, lodger, or other person aforesaid, of the furniture, goods, and chattels referred to in the declaration.

(2) If any under tenant, lodger or other person aforesaid shall make or subscribe such declaration and inventory knowing the same or either of them to be untrue in any material particular, he shall be guilty of an offence and shall be liable on conviction—

- (a) under the Summary Jurisdiction Acts, to a fine of thirty-two thousand five

hundred dollars and to imprisonment for one year;

- (b) on indictment to imprisonment for two years.

Penalty on superior landlord for illegal distress after declaration.

37. (1) If any superior landlord, or any agent employed by him, shall, after being served with the before-mentioned declaration and inventory, and in the case of an under tenant or lodger after such undertaking as aforesaid has been given, and the amount of rent (if any) then due has been paid or tendered in accordance with that undertaking, levy or proceed with a distress on the furniture, goods or chattels of the under tenant, lodger, or other person aforesaid, such superior landlord or agent shall be deemed guilty of an illegal distress, and the under tenant, lodger, or other person aforesaid, may apply to a magistrate for an order for the restoration to him of such goods, and such application shall be heard before a magistrate who shall inquire into the truth of such declaration and inventory, and shall make such order for the recovery of the goods or otherwise as to him may seem just, and the superior landlord shall also be liable to an action at law at the suit of the under tenant, lodger, or other person aforesaid, in which action the truth of the declaration and inventory may likewise be inquired into.

(2) Such application and action may be joined in the same proceeding.

Payments by under tenant or lodger to superior landlord.

38. For the purpose of the recovery of any sums payable by an under tenant or lodger to a superior landlord under such an undertaking as aforesaid, or under a notice served in accordance with section 41, the under tenant or lodger shall be deemed to be the immediate tenant of the superior landlord, and the sums payable shall be deemed to be rent; but, where the under tenant or lodger has, in pursuance of any such undertaking or notice as aforesaid, paid any sums to the superior landlord, he may deduct the amount thereof from any rent due or which may become due

from him to his immediate landlord, and any person (other than the tenant for whose rent the distress is levied or authorised to be levied) from whose rent a deduction has been made in respect of such a payment may make the like deductions from any rent due or which may become due from him to his immediate landlord.

Exclusion of
certain goods.

39. Sections 36 to 42 (inclusive) shall not apply to—

- (a) goods belonging to the husband or wife of the tenant whose rent is in arrears; or
- (b) goods comprised in any bill of sale, hire-purchase agreement, or settlement made by such tenant; or
- (c) goods in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof; or
- (d) any livestock to which section 14 (b) applies; or
- (e) goods of a partner of the immediate tenant; or
- (f) goods (not being goods of a lodger) upon premises where any trade or business is carried on in which both the immediate tenant and the under tenant have an interest; or
- (g) goods (not being goods of a lodger) on premises used as offices or

warehouses where the owner of the goods neglects for one calendar month after notice (which shall be given in like manner as a notice to quit) to remove the goods and vacate the premises; or

- (h) goods belonging to and in the offices of any company or corporation on premises the immediate tenant whereof is a director or officer, or in the employment of such company or corporation:

Provided that it shall be competent for a magistrate, upon application by the superior landlord or any under tenant or other such person as aforesaid after hearing the parties to determine whether any goods are in fact goods covered by paragraphs (e) to (h) (inclusive).

Exclusion of certain under tenants.

40. Sections 36 to 42 (inclusive) shall not apply to any under tenant where the under tenancy has been created in breach of any covenant or agreement in writing between the landlord and his immediate tenant, or where the under tenancy has been created under a lease existing at the date of the commencement of this Act, contrary to the wish of the landlord in that behalf, expressed in writing and delivered at the tenement within a reasonable time after the circumstances have come, or with due diligence would have come, to his knowledge.

Notice by superior landlord to under tenant to pay him rent due by immediate tenant.

41. (1) In cases where the rent of the immediate tenant of the superior landlord is in arrear, it shall be lawful for such superior landlord to serve upon any under tenant or lodger a notice addressed to such under tenant or lodger upon the tenement stating the amount of such arrears of rent, and requiring all future payments of rent, whether the same has already accrued due or not, by such under tenant or lodger to be made direct to the superior landlord giving such

notice until such arrears shall have been duly paid, and such notice shall operate to transfer to the superior landlord the right to recover, receive, and give a discharge for such a rent.

(2) If any superior landlord shall wilfully make any false statement in such notice he shall be guilty of an offence.

Definitions.

42. In sections 36 to 41 (inclusive) the words “superior landlord” shall be deemed to include a landlord in cases where the goods seized are not those of an under-tenant or lodger, and the words “tenant” and “under tenant” do not include a lodger.

Distress levied on goods and chattels formerly comprised in bill of sale or hire purchase agreement. [6 of 1997]

43. (1) All goods and chattels which were formerly comprised in any bill of sale given in security for the payment of money or in any hire purchase agreement and remaining upon the tenement shall be liable to be seized and taken as a distress for rent reserved and in arrear, notwithstanding that the goods have been seized by the assignee under the bill of sale or the hire purchase agreement has been terminated by the hire owner, subject to the following conditions:

- (a) that the value of the interest of the assignor in the goods and chattels prior to the seizure thereof, or the amount paid by the hire purchaser under the hire purchase agreement prior to the seizure thereof, or the amount paid by the hire purchaser under the hire purchase agreement prior to the termination thereof, was at least double the amount of the rent for which the distraint is made; or
- (b) that the landlord pays the balance of money due to the assignee under the bill of sale before the seizure of the

goods and chattels, or the amount due to the hire owner under the hire purchase agreement before the termination thereof.

(2) Where a distress has been levied on any such goods and chattels subject to subsection (1) (a) and the goods and chattels have afterwards been sold pursuant thereto, the assignee or the hire owner as the case may be shall be entitled to receive any surplus proceeds from the sale thereof.

(3) Where a distress has been levied on such goods and chattels subject to subsection (1) (b) and the goods and chattels have afterwards been sold pursuant thereto, the hire purchaser or the assignor, as the case may be, shall be entitled to receive any surplus proceeds from the sale after the landlord has recovered all rent due and expenses and the balance of money paid to the assignee or the hire owner under the said paragraph (b).

(4) Every assignee under a bill of sale or hire owner under a hire purchase agreement shall, in relation to all goods and chattels formerly comprised in such bill of sale or hire purchase agreement and distrained on upon a tenement, serve on the landlord who takes any such goods and chattels as a distress a statement showing the details of the account between the assignor and the assignee or the hire purchaser and the hire owner, and if any assignee or hire owner makes any such statement knowing the same to be untrue in any material particular, he shall be liable on summary conviction to a fine of sixteen thousand two hundred and fifty dollars or to imprisonment for a term not exceeding three months.

(5) If, in relation to any goods and chattels which were formerly comprised in a bill of sale or hire purchase agreement and distrained on whilst upon the tenement for rent reserved and due, none of the conditions of

subsection (1) (a) and (b) has been fulfilled, the assignee or the hire owner, as the case may be, may apply to a magistrate for an order that the goods be delivered up to him.

LANDLORD'S DUTY TO REPAIR CERTAIN TENEMENTS

Conditions implied in the letting of houses.

44. (1) In any contract for letting any house for human habitation, there shall, notwithstanding any stipulation to the contrary, be implied a condition that the house is at the commencement of the tenancy, and an undertaking that the house will be kept by the landlord during the tenancy, in repair and in all respects reasonably fit for human habitation:

Provided that the condition and undertaking aforesaid shall not be implied where a house is let for a term of not less than three years upon the terms that it be put by the lessee into a condition reasonably fit for human habitation, and the lease is not determinable at the option of either party before the expiration of three years.

(2) The landlord, or any person authorised by him in writing, may at reasonable times of the day, on giving twenty-four hours' notice in writing to the tenant or occupier, enter any premises to which this section applies for the purpose of viewing the state and condition thereof.

(3) Where the property or the person or the health of an inmate of any house to which this section applies is, by reason of a breach by the landlord of the condition or the undertaking in this section mentioned, injuriously affected, such inmate shall be entitled to recover damages from the landlord of the house in respect of such injurious affection.

(4) This section applies to a contract made either before or after the commencement of this Act.

RECOVERY OF POSSESSION OF TENEMENTS

Neglect to pay rent a determination of tenancy in certain cases.

45. Where the tenant of any building held by him as a tenant from month to month or weekly at a rent which does not exceed the rate of ten dollars a month, fails to pay the rent due within seven days after the day on which it becomes due and payable, the failure shall for the purpose of enabling the landlord to recover possession be deemed a determination of the tenancy and the landlord may proceed to recover possession of that building under this Act.

Recovery of possession after termination or determination of tenancy where tenancy is at a rent not exceeding \$1,200 a year. [6 of 1997]

46. (1) Whenever the term or interest of any tenant of a tenement held by him at will or for a term, either without being liable to the payment of rent, or at a rent not exceeding the rate of twelve hundred dollars a year, has ended or has been determined by a legal notice to quit, or otherwise, if the tenant (or, when he does not himself occupy the premises or occupies only a part thereof, if the person by whom they or any part thereof are or is occupied) refuses or neglects to deliver up possession of them the following provisions shall apply:

c. 7:01

- (a) the former landlord or his agent may file against the former tenant or occupier an action under the Summary Jurisdiction (Petty Debt) Act for the recovery of possession of the land or buildings formerly held under the tenancy;
- (b) if the former tenant or occupier does not appear in accordance with the summons, or appears but does not show to the satisfaction of the magistrate reasonable cause why possession should not be delivered up, and still refuses or neglects to deliver up the possession of the

premises to the former landlord or his agent, the magistrate, on proof of the holding and of the end or determination of the tenancy and the time and manner thereof (and, where the title of the landlord has accrued since the letting of the premises, on proof of the right by which he claims the possession) may order that possession of the land or buildings be delivered up by the former tenant or occupier as well as by all persons who were theretofore on the land or in the buildings through or under the former tenant;

- (c) at the hearing of an action for possession of any land or buildings, the former landlord may adduce evidence of the mesne profits thereof which shall or might have accrued from the day of the expiration or determination of the former tenant's interest in the same down to the time of judgment or to some preceding day to be specially mentioned therein, and if the court finds that mesne profits are due judgment may be given for the recovery of the whole or part of the land or buildings as well as for the amount of the damages to be paid for such mesne profits:

Provided that nothing herein contained shall be construed to bar any former landlord from bringing any action for the mesne profits which shall accrue from the judgment, or the day specified therein, down to the day of the delivery of possession of the land or buildings recovered in

the ejectment;

- (d) if the former tenant or occupier or any person lawfully on the land or in the buildings through or under him fails to deliver up possession of the land or buildings as directed by the order within the period fixed thereby the magistrate may issue a warrant of ejectment to any constable or bailiff requiring and authorising him forthwith or within a period to be named therein to give possession of the land or buildings to the former landlord or his agent, and that warrant shall be a sufficient authority to any constable or bailiff executing it to enter upon the land or buildings, with any assistants he deems necessary, and to give possession accordingly; but the entry shall not be made on a public holiday, or at any time except between the hours of nine in the morning and four in the afternoon;
- (e) at the time of the making or giving of any judgment or order for the recovery of possession of any land or buildings, or of any application for the ejectment of a former tenant or occupier or other person thereon or therein through or under the former tenant or occupier, the court may adjourn the hearing of the action, or stay or suspend execution on the order or judgment, or postpone the date of possession for any period subject to such conditions (if any) in

regard to payment by the former tenant or occupier of arrears of rent, mesne profits and otherwise as the court thinks fit;

- c. 7:01.
- (f) the law, practice and procedure under the Summary Jurisdiction (Petty Debt) Act and the Summary Jurisdiction (Civil Procedure) Rules shall apply to the plaint, the issue of the summons and the hearing and determination of the action for the recovery of possession under this section.

(2) Where the tenement consisted of lands the following provisions shall apply:

- (a) if at the hearing of the action for possession there are growing crops thereon which have been planted by the former tenant or by those from whom he derives his interest, the magistrate may direct that the former landlord shall, before obtaining an order for possession, deposit with the clerk of court the value of those growing crops, after deducting the amount of what is due and will become due for rent of the land up to the time when the order will be made, and after deducting the costs incurred, if the value of the crops exceeds that sum;
- (b) the magistrate shall have full power to inquire into and determine the value of the crops, and, on the warrant being returned executed,

may direct that the amount be paid over to the former tenant;

- (c) the magistrate may authorise any person or persons to enter on the lands the possession of which is claimed, and direct him or them to appraise the value of the growing crops;
- (d) every person so appointed may enter on the lands and examine the crops, and every person who obstructs any person so appointed shall be guilty of an offence and on conviction thereof shall be liable on summary conviction to a fine of two thousand six hundred dollars.

(3) If any person who, previously to the execution of the warrant, was a tenant, or any person who was on the land or in the buildings under or through the former tenant, after the execution of the warrant re-enters on the land or in the buildings, he shall, unless he has acquired title to the land or buildings after the warrant is issued, be deemed a wilful trespasser and shall be liable on summary conviction to a fine of thirteen thousand dollars or to imprisonment for three months:

Provided that nothing herein contained shall be deemed to protect any person at whose instance a warrant to deliver possession of land or buildings is issued as aforesaid from any action brought against him by the former tenant or occupier for or in respect of the entry and taking possession where he had not, at the time of issue of the warrant, lawful right to the possession of the premises.

(4) The plaintiff may join in an action for the recovery of land or buildings under this Act claims in respect

of mesne profits, arrears of rent, double value in respect of the land or buildings claimed or any part thereof, damages for breach of any contract under which the same or any part thereof was held or for any wrong or injury to the land or buildings.

c. 3:04.

(5) The plaintiff or the defendant may appeal from the decision of the magistrate given in any action for possession of land or buildings filed under this Act to the court under the Summary Jurisdiction (Appeals) Act in the manner and in accordance with the provisions prescribed in that Act.

Warrant
obtained
without right
of possession.

47. (1) Wherever the person at whose instance any warrant to give possession as aforesaid is granted had not at the time of granting it lawful right to the possession of the land or buildings, the obtaining of the warrant shall be deemed a trespass by him against the tenant or occupier of the land or buildings, although no entry may be made by virtue of the warrant; and if the tenant or occupier becomes bound, with two sureties as hereinafter provided to be approved by the magistrate, in a sum to him seeming reasonable, regard being had to the value of the premises and to the probable costs of an action, to sue the person at whose instance the warrant to give possession was granted with effect and without delay, and to pay all the costs of the proceedings in the action in case judgment is given for the defendant, or the plaintiff discontinues or does not prosecute his action or is nonsuited therein, execution of the warrant shall be delayed until judgment is given in the action; and if, on the trial of the action, judgment is given for the plaintiff, that judgment shall supersede the warrant so granted and the plaintiff shall be entitled to double costs in the action.

(2) The bond shall be made to and at the cost of the landlord or his agent, and shall be approved and signed by the magistrate; and if the bond so taken is forfeited, or if on the trial of the action for securing the trial of which the bond

was given the judge by whom it is tried does not endorse upon the record in court that the condition of the bond has been fulfilled, the party in whose favour the bond has been so made may bring an action, and recover thereon:

Provided that the court where the action last aforesaid is brought may by order give any relief to the parties upon the bond agreeable to justice, and that order shall have the nature and effect of a defeasance to the bond.

Protection of
magistrate,
bailiff and
constable.

48. No action or prosecution may be brought against the magistrate by whom the warrant aforesaid has been issued or against any constable or bailiff by whom it is executed, for that issue or execution respectively, by reason that the person on whose application it was granted had not lawful right to the possession of the premises.

Irregularity in
proceeding, but
landlord has
lawful right to
possession.
[4 of 1972]

49. Where the landlord at the time of applying for the warrant aforesaid had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither he nor his agent, nor any other person acting in his behalf shall be deemed to be a trespasser by reason merely of an irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act, but the party aggrieved, if he thinks fit, may bring an action for the irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for that special damage, with costs of suit:

Provided that, if the special damage so laid is not proved, the defendant shall be entitled to judgment, and if proved but assessed by the court at any sum not exceeding five dollars, the plaintiff shall recover no more costs than damages, unless the court or judge before whom the trial has been held certifies upon the record that full cost ought to be allowed.

MISCELLANEOUS PROVISIONS

Regulation of costs of distress and ejection.

50. No person making, or employed in any manner whatsoever in making, any distress for rent, or in ejecting any tenant, or in doing any act whatsoever in the course of the distress, or for carrying it into effect, shall take or receive out of the produce of the goods and chattels detained upon and sold, or from the tenant detained on or ejected, or from the landlord, or from any other person whomsoever, other or more costs and charges for and in respect of that distress or ejection or any other matter or thing done therein than those fixed and allowed by law and appropriated to each act done in the cause of the distress or ejection; and no person shall make any charge whatsoever for any act, matter, or thing in respect of which the costs and charges are so fixed, allowed, and appropriated, unless that act has been actually done.

Remedy for taking unauthorised costs and charges.

51. (1) If any person in any manner levies, takes, or receives from any person whomsoever, or retains or takes from the produce of any goods sold for the payment of the rent, any other or greater costs and charges than are so fixed, allowed, and appropriated as aforesaid, or makes any charge whatsoever for any act, matter, or thing aforesaid which has not been really done, the party aggrieved by those practices may apply to a magistrate for the redress of his grievances so occasioned.

(2) The magistrate shall summon the person of whom complaint is made to appear before him at a reasonable time to be fixed in the summons, and examine into the matter of the complaint by all legal ways and means, and also hear in like manner the defence of that person.

(3) If, on the hearing, it appears to the magistrate that that person has levied, taken, or received, other and greater costs and charges than are so fixed, allowed, and appropriated as aforesaid, or made any charge for any act,

matter or thing aforesaid which has not been actually done, he shall order and adjudge treble the amount of the moneys so unlawfully taken to be paid by the person who has so acted to the party who has thus preferred his complaint thereof, together with full costs.

(4) In case of non-payment of any moneys or costs so ordered and adjudged to be paid, the magistrate shall forthwith issue his warrant to levy them by distress and sale of the goods and chattels of the party ordered to pay them, rendering the overplus, if any, to the owner after the payment of the charges of the distress and sale; and if no sufficient distress can be had, the magistrate shall, by warrant under his hand, commit the party to prison, there to remain for any time not exceeding two calendar months, unless the order or judgment is sooner satisfied.

Summoning of
witnesses.
[6 of 1997]

52. (1) The magistrate may, at the request of either of the parties, summon all persons as witnesses and may administer an oath to them touching the matter of the complaint or of the defence to it.

(2) Any person so summoned who fails without any reasonable or lawful excuse to obey the summons, or refuses to be examined upon oath, shall forfeit and pay a sum not exceeding six hundred and fifty dollars, to be ordered, levied, and paid in the manner and by the means, and with the power of commitment hereinbefore directed as to the order and judgment to be given between the parties in the original complaint, excepting so far as regards the form of the order.

Power to order
costs if
complaint not
founded.

53. The magistrate may, if he finds that the complaint of the party aggrieved is not well founded, order and adjudge costs, not exceeding ten dollars, to be paid to the party against whom complaint is made, which order shall be carried into effect, and levied, and paid in the manner, and with like power of commitment, hereinbefore directed as to the order and judgment founded on the original complaint:

Provided that—

- (a) nothing herein contained shall empower the magistrate to make any order or judgment against the landlord for whose benefit any distress or ejection has been made, unless the landlord has personally levied the distress or rejected the tenant; and
- (b) no person aggrieved by any distress, or any process of ejection for rent or by any proceedings had in the course thereof, or by any costs and charges levied upon him in respect thereof, shall be barred from any legal or other suit or remedy which he might have had before the commencement of this Act, excepting so far as any complaint to be preferred under this Act has been determined by the order and judgment of the magistrate before whom it has been heard and determined, and that order and judgment shall and may be given in evidence under the plea of the general issue in all cases where the matter of the complaint may be made the subject of any action.

Proof of order
and judgment.

54. An order and a judgment on any complaint aforesaid may be proved before any court by proof of the signature of the magistrate thereto; and orders regarding persons who have been summoned as witnesses shall be made in the form to the magistrate seeming most fit and convenient.

Mode of
serving
notices.

55. A notice in writing given by or on behalf of a landlord or a tenant may be served—

- (a) on the tenant by delivering the same to him personally, or by leaving it for him at the tenement with some person there residing, or by sending it through the post in a registered letter addressed to the tenant there, or in the case of a company by delivering it or sending it in a registered letter to the secretary or other proper officer at the registered office of the company; and
- (b) on the landlord by delivering the same to him or to his agent personally, or by leaving it for either of them at his most usual place of abode, or by sending it through the post in a registered letter addressed to either of them there, or in case of a company by delivering it, or sending it in a registered letter, to the secretary or other proper officer at the registered office of the company.

Appointment
of certified
bailiffs.

56. (1) It shall be lawful for the magistrate in charge of any magisterial district to appoint such and so many fit and proper persons as certified bailiffs as may be necessary in that district to expedite the execution of distress warrants and warrants to give possession of land or buildings to former landlords.

(2) A certified bailiff shall by virtue of his appointment be a rural constable and have all the powers and immunities of such a constable and he shall be paid for

each execution such sums as may from time to time be prescribed by the Minister by notice published in the *Gazette*.

(3) For the purpose of the execution of any such warrant a certified bailiff shall have the same powers and authorities as a bailiff of the court.

Registration of agents.

57. (1) Every person shall, before acting as an agent, be registered as such with the clerk of the court of the magisterial district in which the tenement is situate, and if he so acts while his name is not on the register he shall be guilty of an offence.

(2) It shall be lawful for the magistrate in charge of any magisterial district to authorise the clerk of court of that district to register any fit and proper person as an agent and any person registered as agent may be removed from the register by order of the magistrate on any ground of misconduct which the magistrate may think sufficient.

(3) The clerk of court shall keep a register called the "Landlords' Agents Register" (in this section referred to as "the register") in which he shall enter the name, address and occupation of every person whom he has been authorised by the magistrate to register as an agent and he shall remove the name of any agent from the register if directed so to do by the magistrate.

(4) The register or an extract therefrom shall be *prima facie* evidence in all courts of the registration, or the non-registration, of a person as an agent.

Receipts or acknowledgements to be given on payment of rent.

58. (1) Except where a rent-book is in use as required by section 59, every landlord or his agent shall give to every tenant, or person representing a tenant, who pays any sum of money for or on account of rent a receipt or acknowledgment for such rent or portion of rent so paid.

(2) The full name and address of the landlord shall be written or printed by the landlord or his agent on every such receipt or acknowledgment.

Rent book.

59. (1) Where the rent for the year, month or week does not exceed five dollars, the landlord shall provide a rent book in respect of every tenant.

(2) The names and addresses of the landlord and the tenant, a short description of the tenement and the amount of the rent reserved shall be legibly written by the landlord at the head of the first page of every rent book.

(3) The rent book shall remain in the custody of the tenant, but it shall be delivered up by him to the landlord or his agent for such time as is necessary for the making of entries therein by the landlord or his agent who shall make such entries and forthwith re-deliver the rent book to the tenant.

(4) The landlord or his agent shall, at the time of every payment of money for or on account of rent, enter in the rent book every sum of money so paid to him.

(5) The landlord shall provide in the said rent book a number of blank pages, the first of which shall be headed "Notices" for the purpose of enabling notices affecting the tenancy to be given by the landlord or the tenant, and every landlord or his agent on the one hand or tenant on the other shall, on the first occasion on which the rent book comes into his possession after the insertion therein of any notice by the other, put his signature immediately below that notice in acknowledgment of the fact that he has seen that notice.

Disturbance of
tenant's
peaceable
enjoyment.
[6 of 1997]

60. (1) No landlord or agent shall, during the subsistence of any tenancy, remove the roof, window, door, or any other part of a tenement without the consent of the tenant or otherwise than in the execution of any duty to repair the buildings, and every landlord or agent who

violates the provisions of this section shall be liable on summary conviction to a fine of thirty-two thousand five hundred dollars.

(2) Any damages sustained by the tenant by reason of a violation of subsection (1) may, with the consent of the tenant, be assessed by the magistrate at the hearing of the criminal proceedings against the landlord or the agent and the magistrate may order such damages to be paid to the tenant out of the penalty imposed upon the landlord or agent in those proceedings.

(3) Nothing in this section shall take away or in any way prejudice the right of action accruing to a tenant by reason of any such wrongful act by or on the part of a landlord or his agent or on account of any disturbance of the peaceful enjoyment by the tenant of the tenement, so, however, that the tenant shall not be entitled both to damages under subsection (2) and to damages in an action at law.

Offences and penalties.
[6 of 1997]

61. (1) Every landlord or agent who commits a breach of sections 58 and 59 in any respect whatever or fails to comply with any of the provisions of those sections shall be guilty of an offence.

- (2) (a) Every tenant who wilfully damages or fouls any tenement; and
- (b) every person who after the determination of his tenancy and with respect to any building formerly in his possession as tenant wilfully damages any land or building or maliciously carries away or disposes of any door key or other part of such building, shall be guilty of an offence.

(3) Every person who, with intent to defraud—

- (a) makes any false entry in a rent book;
or
- (b) extracts from a rent book any page thereof, or obliterates or obscures any writing or entry made therein by a landlord or his agent or a tenant; or
- (c) destroys or mutilates a rent book,

shall be guilty of an offence.

(4) Every person who assaults or obstructs any constable, bailiff or other person in the execution of any duty under this Act shall be guilty of an offence.

(5) Every person guilty of an offence under this Act for which no special penalty is provided shall be liable on summary conviction to a fine of sixteen thousand two hundred and fifty dollars or to imprisonment for three months.

Use of forms.
First Schedule.

62. The forms contained in the First Schedule shall be deemed and held to be forms under and for the purposes of this Act, and wherever any of those forms is not appropriate to the facts and circumstances of the case, then any other form adapted to those facts and circumstances shall be deemed and held to be sufficient.

Fees and costs.
Second
Schedule.
c. 3:05.

63. The fees and costs set forth in the Second Schedule may be demanded and taken in respect of the several matters therein mentioned, and the Summary Jurisdiction (Magistrates) Act shall apply to those fees and costs as if they were fees and costs payable under that Act.

FIRST SCHEDULE

FORMS

FORM 1

Warrant of Distress

.....*Magisterial District*

To *E.F.*, of.....

A.B. of..... in the county of
having laid before me his claim which he holds against *C.D.*
for the sum of for rent, with the particulars
thereof, and duly sworn, I do hereby authorise you the said
E.F., to enter on the premises on which the said rent is due, in
the daytime, between the hours of nine in the morning and
four in the afternoon, and, in the presence of the said *A.B.* or
his agent, and under his direction, to distrain, subject to the
provisions of the Landlord and Tenant Act, the goods and
chattels except the wearing apparel and bedding of *C.D.* and
his family, and (to the value of one hundred dollars) the tools
and implements of his trade in the premises (or as the case
may be) which he holds of *A.B.*, in the county aforesaid, for
..... amount of rent due to him for the said premises on
theday of last past; and for your so
doing, this shall be a sufficient warrant.

Dated thisday of 20.....

s. 62
[4 of 1972]

FORM 2

Inventory of Goods Distrained

An inventory of the several goods and chattels distrained by me whose name is under-written, theday of.....20....., in the premises of *C.D.*, situate atin the county ofby the authority and on the behalf of *A.B.*, offoramount of rent due to him, the said *A.B.*
 In the dwelling house—one table, six chairs.
 In the out-houses—a washing tub.

FORM 3

Application before a magistrate, where goods are being fraudulently removed, or secured in a dwelling-house to prevent them from being taken as a distress for rent.

A.B., of makes oath that certain goods and chattels of *C.D.*, of have, within thirty days last past, been fraudulently or clandestinely carried off a certain tenement let by the said *A.B.* to the said *C.D.*, to witsituate at in the aforesaid Magisterial district, by the said *C.D.*, his servant or servants, agent or agents, or other person or persons aiding or assisting therein, to prevent the said landlord from distraining the said goods and chattels for amount of rent due to the said *A.B.*, for the said ; and that the said *A.B.* has reasonable ground to suspect, and does suspect, that the said goods and chattels are in the place hereunder described, namely,

(Signed)*A.B.*.....

Sworn before me this day of20

(Signed).....

Magistrate,Magisterial District

FORM 4

Warrant to follow and search for goods fraudulently removed to prevent distress.

.....Magisterial District.

To *E.F.*, of.....

Whereas *A.B.*, of has this day of 20....., made oath before me, magistrate for the.....Magisterial district, that certain goods and chattels of *C.D.*, have within 30 days last past, been fraudulently or clandestinely carried off a certain tenement let by the said *A.B.* to the said *C.D.*, to witsituate at..... in the aforesaid Magisterial district, to prevent the landlord from distraining the same for rent in arrear; and that the said *A.B.* has reasonable ground to suspect, and does suspect, that the said goods and chattels are in the place hereunder described, namely,

This is therefore to authorise you the said *E.F.* with such assistance

as may be necessary, to enter on the aforesaid place, in the day-time between the hours of nine in the morning and four in the afternoon, and in the presence of *A.B.* or his agent and under his direction, to distrain, subject to the provisions of the Landlord and Tenant Act, the goods and chattels of the said *C.D.* found in the place as aforesaid within the space of thirty days next ensuing their carrying off as aforesaid, for..... the amount of rent due to the said *A.B.* by the said *C.D.* for the tenement hereinbefore described; and for your so doing, this shall be a sufficient warrant.

Dated thisday of.....20.....

(Signed).....
Magistrate,Magisterial District

FORM 5
Appraisement

The appraisement may be in the form of the inventory, specifying the particulars and their respective valuation, and then add at the end, "Appraised by us this.....day of20....."

(Signed)

G.H.....

J.K.....

Appraisers

FORM 6
Act of Deposit

.....Magisterial District.
Know all men by these presents that I, C.D.,of have this day deposited with the magistrate of theMagisterial district, the sum of..... dollars and five dollars, upon the following conditions, that is to say that if I, the said C.D., do appear at the next sitting of theand do then and there prosecute my suit with effect and without delay against A.B., for the taking and unjustly detaining my goods and chattels, to wit (here describe the goods and chattels) and do make return of the said goods and chattels, if a return hereof is adjudged, then this present act of deposit and obligation to be void and of no force; otherwise to stand and remain in full force, vigour and effect.

Dated this.....day of.....20

(Signed)

C.D.....

Witness—

(Signed) L.M.....

FORM 7

Warrant of Ejectment

.....Magisterial District.

To..... of and all other constables and bailiffs.

Whereas (set forth the judgment), I, the undersigned magistrate for thedistrict, do authorise and command you, on any day withindays from the date thereof, except on Sunday, Christmas Day, and Good Friday, between the hours of nine in the morning and four in the afternoon, to enter (by force, if necessary), and with or without the aid of the owner (or agent of the owner as the case may be), or any other person or persons whom you may think requisite to call to your assistance, into and upon the said tenement, and to eject there out any person, and of the said tenement full and peaceable possession to deliver to the said..... the owner (or agent of the owner, as the case may be).

Dated this.....day of20.....

(Signed).....

Magistrate,.....Magisterial District

FORM 8

Consent for Distrainer to Continue in Possession

(Not liable to stamp duty)

I, C.D., do hereby request that A.B., my landlord, who, on the day of19, distrained my goods

and chattels on my premises at.....in the county of..... will forbear the sale thereof until the day of.....20....., in order to enable me to discharge my said rent; and I do consent that the said goods and chattels so distrained may remain at my proper cost, and in his possession, upon the premises where they now are until that time, and I undertake not to replevy the said goods and chattels.

Dated this.....day of.....20.....
 (Signed) C.D.....
 Witness—
 (Signed)

L.M.....

SECOND SCHEDULE

s. 63
 [O. 23 of 1986]

TABLE OF FEES AND COSTS

	\$	c.
1. For drawing and preparing claim for recovery of rent or plaint for possession	325.00	
2. For preparing warrant of distress including levy... ..	325.00	
3. For preparing complaint when goods fraudulently or clandestinely removed	325.00	
4. For warrant thereon.... ..	325.00	
5. For filing action for the recovery of possession of Tenement.... ..	325.00	
6. For warrant of ejection	325.00	
7. For removal of property — the reasonable expenses actually incurred and paid... ..		
8. For appraisalment a sum not exceeding....	1,625.00	