

CAYMAN ISLANDS



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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 MEDIATE
DISPUTES ARISING BETWEEN LANDLORDS AND TENANTS; TO
REPEAL THE LANDLORD AND TENANTS 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 Tenants Law (1998 Revision).

PART I- PRELIMINARY

Clause 1 provides the short title.

Clause 2 is the definition clause.

PART II- 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 or form part of a hospital or other institution for the sick or where the tenant is sharing the premises 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 a 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. 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 III- RESIDENTIAL TENANCIES COMMISSIONER

Clause 9 provides for the appointment by the Governor of one or more persons as Residential Tenancies Commissioner. A Residential Tenancies Commissioner ("the Commissioner) will be a public officer.

Clause 10 provides that where a dispute-

- (a) arises in connection with any matter under a tenancy agreement; and
- (b) cannot be resolved by the parties to the tenancy agreement,

a party to the tenancy agreement may, in order to resolve the dispute, first make an application in writing to a Commissioner for mediation of the dispute.

A Commissioner shall inquire fully into any dispute referred to him and all matters affecting its merits and shall make such suggestions and recommendations and do all such things as he thinks right and proper for inducing the parties to come to a fair and amicable settlement.

Clause 11 provides that where a settlement is reached it shall be put in writing by the Commissioner and signed by the parties. A signed agreement shall form a part of the tenancy agreement.

Clause 12 provides that if it appears to the Commissioner that it is unlikely that a settlement can be reached within a reasonable time or at all, the Commissioner shall prepare a report which shall include-

- (a) any statement of facts agreed to by the parties;
- (b) a summary of the points, if any, settled in mediation and those still requiring determination by a court; and
- (c) any comments that the Commissioner may wish to make on the conduct of the parties so far as that may be relevant to the question of costs before a court.

The Commissioner shall provide a copy of the report to each party to the dispute and shall advise the parties of their right to seek determination of the matter by the court. A report of the Commissioner shall be admissible in evidence in any proceedings before a court.

Clause 13 provides that a tenant's liability to pay the rent to which he agreed and to comply with the other obligations under a tenancy agreement and a landlord's obligations under a tenancy agreement are not suspended while a matter is being dealt with by a Commissioner or by the court.

PART IV- TENANCY AGREEMENTS

Preliminary matters

Clause 14 provides that every tenancy agreement shall be in writing and signed by both the landlord and the tenant. The cost of preparing a written tenancy agreement shall be borne by the landlord.

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 including any person with superior title to 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 (if applicable);
- (i) the amount of the rent payable;
- (j) the period of notice required to vacate premises;
- (k) the frequency of the rent payments;
- (l) the place or bank account number where the rent is to be paid;
- (m) 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 an assignment of the tenancy;
- (n) a list of any chattels, if any, provided by the landlord;
- (o) a statement as to which party is responsible for the payment of utilities and any other assessments arising under the tenancy agreement;
- (p) an option to renew and vary (if accepted); and
- (q) if the tenancy is a fixed-term tenancy, the date on which the tenancy will terminate.

Clause 16 provides that at the time that a tenancy agreement is entered into, the landlord shall complete and provide to the tenant two signed copies of an inspection sheet in the prescribed form which the landlord and tenant shall use as a comparison check when the tenant vacates the premises.

Clause 17 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 18 provides that where the name and contact address, or address for service, of any person has been provided 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 43 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 19 deals with the duration of tenancies.

Security deposits and rent

Clause 20 provides that 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. The landlord shall give to the tenant upon receiving a deposit from the tenant or his agent a written receipt setting out, among other things-

- (a) the amount and nature of the payment;
- (b) the date of the payment;
- (c) the name of the person who made the payment; and
- (d) the address of the premises to which payment relates.

Clause 21 provides that a security deposit shall be held by the landlord in trust.

Clause 22 provides that a landlord may invest the security deposit in an interest bearing account at a Class "A" bank in the Islands. 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. Notwithstanding the provisions of this clause, a landlord and a tenant may expressly agree that a deposit will not be subject to any interest.

Clause 23 provides that, subject to clause 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.

Clause 24 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 24 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 a 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 25 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 public general 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 a Commissioner for a settlement of the matter.

Clause 26 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 one year 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 one year 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; and
- (f) a landlord under a fixed-term tenancy shall not increase the rent otherwise than as permitted by the agreement.

Clause 27 provides that a landlord must provide receipts for rent paid to him.

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 chattels-

- (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 chattels in contravention of this provision commits an unlawful act.

Nothing in this clause applies to any of the tenant's chattels if the landlord has reasonable cause to believe that the premises or the chattels have been abandoned by the tenant.

Rights and obligations of parties

Clause 32 provides that 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. A landlord who contravenes this clause commits an unlawful act.

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, strata fees, and insurance premiums) 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 and any outgoings as agreed under the tenancy agreement as and when they are 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 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 in no worse condition as they were in at the date of the commencement of the tenancy fair wear and tear excepted and to replace such articles as are lost, damaged or destroyed with chattels of equal value.

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 his agent) 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 assignment and subletting by the tenant. A tenant may at any time during the tenancy assign, charge, 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 or delay that consent unreasonably, nor attach any unreasonable conditions to it.

Clause 40 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 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) cleanliness;
- (b) repair;
- (c) freedom from damp and mould;
- (d) natural lighting;
- (e) water supply;
- (f) stability;
- (g) ventilation;
- (h) drainage and sanitary conveniences;
- (i) 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.

A landlord shall, during the tenancy, keep the premises in a reasonable state of repair and ensure that they remain fit for human habitation. The landlord must also 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, where-

- (a) premises are in a state of disrepair that does not arise from a contravention of the tenancy agreement by the tenant;
- (b) the state of disrepair is, unless remedied, likely to result in personal injury or damage to property or undue inconvenience;
- (c) the tenant notifies the landlord of the state of disrepair or makes a reasonable attempt to do so and the landlord fails to make the necessary repairs;
- (d) the tenant incurs costs in having the state of disrepair remedied; and
- (e) the repairs are carried out by a person who is licensed to carry out the necessary work and the tenant provides the landlord with a report on the work carried out and the apparent cause of the state of disrepair,

the tenant is entitled to recover from the landlord the reasonable costs of having the repairs carried out.

Where the landlord fails to compensate the tenant within one month after the tenant has incurred expenses specified above, the tenant may deduct the expenses from the next due rent or rents as the case may be; except that in the case of a periodic tenancy for a period of one month or less he shall not deduct more than one-third of the rent due for any period.

Clause 41 specifies the circumstances under which, and times when, the landlord may enter the premises.

Clause 42 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 43 deals with the disposition of a landlord's interests in the premises and how the tenant must be dealt with in those circumstances.

Clause 44 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 V - TERMINATION OF TENANCIES

General

Clause 45 sets out the scope of this Part of the legislation.

Clause 46 provides that, subject to this Part, a tenancy agreement shall only be terminated in accordance with this Part.

Clause 47 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 48 deals with the surrender of a tenancy agreement.

Clause 49 provides that a notice to terminate a tenancy shall be in writing and shall be in the form set out in Part I of the 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 Schedule.

Clause 50 sets out the length of notice required to terminate different tenancies.

Clause 51 provides that a fixed-term tenancy agreement may contain a proviso for forfeiture upon the occurrence of one or more of the following events-

- (a) the tenant fails to pay the rent within 14 days after service of a written demand in the prescribed form;
- (b) the tenant fails to remedy a breach of any of the covenants implied by clause 36 within 28 days after service of a forfeiture notice in accordance with clause 52;
- (c) the expiry or revocation of the tenant's work permit;
- (d) the tenant is adjudicated bankrupt or, being a company, goes into liquidation;
- (e) the landlord fails to take reasonable steps to comply with his repairing obligations within 28 days after service of a notice by the tenant under clause 36 (1)(d); or
- (f) the landlord fails to remedy a breach of any of the obligations implied under this Law within 28 days after service of a forfeiture notice in accordance with clause 54.

Clause 52 deals with the notice which is required before the landlord can exercise his right to forfeiture.

Clause 53 provides that a tenant may seek relief from forfeiture by applying to the court.

Clause 54 provides that if a landlord breaches a tenancy agreement, the tenant may give the landlord a written notice-

- (a) specifying the breach; and
- (b) informing the landlord that if the breach is not remedied within a specified period, (which must be a period of at least seven days from the date the notice is given) the tenancy is terminated by force of the notice from a date that is also specified in the notice (which must be at least seven days after the end of the period allowed for the landlord to remedy the breach).

Where the landlord is of the opinion that he is not in breach of the tenancy agreement or that he has remedied the breach specified by the tenant he may, before the time fixed in the tenant's notice for termination of the tenancy or the tenant gives up possession of the premises whichever is the later, apply to a

Commissioner for mediation of the matter. If the matter cannot be settled by mediation then the landlord may apply to the court.

PART VI- RECOVERY OF POSSESSION AND COMPENSATION

Clause 55 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.

Clause 56 provides that a person shall not, except in accordance with an order or warrant of a court enter residential premises or any part of such premises of which another person has possession-

- (a) under a tenancy agreement; or
- (b) as a former tenant holding over after termination of a residential tenancy agreement,

for the purpose of recovering possession of the premises or part of the premises.

Clause 57 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 58 without any further order.

Clause 58 provides that where an order for possession under this legislation 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 59 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 VII- REGISTRATION OF CERTAIN TENANCY AGREEMENTS

Clause 60 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 61 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 62 provides that where any premises is subject to a charge, no tenancy agreement relating to 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 63 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 64 provides for the voluntary registration of tenancy agreements.

PART VIII- GENERAL

Clause 65 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 court for an order terminating the tenancy, and the court may make such an order if it is satisfied that it would be unreasonable to require the landlord to reinstate the property or to require the tenant to continue with the tenancy albeit at a reduced rent.

Clause 66 provides that on the application of a landlord, the court 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 67 regulates how the landlord should deal with chattels abandoned on the premises by the tenant.

Clause 68 provides that 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 there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure. The penalty is imprisonment for four years and a fine of \$5000.

Clause 69 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 70 empowers the Governor in Cabinet to make regulations in order to give effect to any provision of this legislation.

Clause 71 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 72 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 73 provides that the court may, on application by an interested person, if the court considers it necessary or desirable in the circumstances, order that a provision of this Law will not apply in relation to a tenancy agreement or prospective agreement or to particular premises, or will apply in a modified manner and the order will have effect accordingly.

Clause 74 is a transitional clause.

Clause 75 provides for the repeal of the Landlord and Tenant Law (1998 Revision) and section 84 of the Penal Code (2007 Revision) which deals with violent entry.

The Schedule contains the forms of notice required to be served by a landlord and by a tenant in accordance with clause 49.

ARRANGEMENT OF CLAUSES

PART I -PRELIMINARY

1. Short title
2. Interpretation

PART II -APPLICATION OF THIS LAW

3. Binding of the Crown
4. Law to apply generally to all residential tenancies
5. Exclusion of this Law in certain cases
6. Parties to excluded tenancies may agree that Law shall apply
7. Onus of proof
8. Law generally to apply despite contrary provisions

**PART III- RESIDENTIAL TENANCIES COMMISSIONER AND
MEDIATION**

9. Appointment of Residential Tenancies Commissioner, etc
10. Mediation by the Commissioner
11. Agreed settlements
12. Failure to reach settlement during mediation
13. Obligations under tenancy agreements not suspended

PART IV- TENANCY AGREEMENTS

Preliminary matters

14. Tenancy agreement to be in writing
15. Contents of tenancy agreement
16. Inspection sheets
17. Variations and renewals of tenancy agreements
18. Change of name or address
19. Duration of tenancy

Security deposits and rent

20. Security deposit
21. Security deposits to be held in trust
22. Investment of security deposits
23. Interest on security deposits
24. Security deposits not attachable, etc
25. Return of security deposit
26. Rent increases
27. Receipts for rent
28. Landlord to keep records
29. Apportionment of rent
30. Accelerated rent or damages prohibited
31. Tenant's goods not to be seized

Rights and obligations of parties

32. Legal impediments to occupation
33. Vacant possession
34. Quiet enjoyment of the tenant
35. Outgoings
36. Tenant's responsibilities
37. Tenant's responsibility for actions of others
38. Tenant's fixtures
39. Assignment and subletting by tenant
40. Landlord's responsibilities
41. Landlord's right of entry
42. Landlord to give notice to tenant of intention to sell
43. Disposition of landlord's interest
44. Mitigation of damage or loss

PART V- TERMINATION OF TENANCIES

45. Scope of this Part
46. Provisions to the contrary to be void
47. Termination under the provisions of the tenancy agreement
48. Surrender of tenancy
49. Notice of termination to be in writing
50. Termination by notice
51. Forfeiture of fixed term tenancy agreement

- 52. Notice before forfeiture
- 53. Relief against forfeiture
- 54. Notice of termination by tenant on ground of breach of the tenancy agreement

PART VI- RECOVERY OF POSSESSION AND COMPENSATION

- 55. Compensation when premises not vacated
- 56. Recovery of possession of residential premises prohibited except by order
- 57. Terms of order for possession
- 58. Warrant to evict
- 59. Proceedings after tenant vacates

PART VII- REGISTRATION OF CERTAIN TENANCY AGREEMENTS

- 60. Registration of tenancy agreements
- 61. Landlord's consent to dealing with tenancy
- 62. Lease of charged land
- 63. Future tenancies
- 64. Voluntary registration of tenancy agreement

PART VIII- GENERAL

65. Destruction of premises and abatement of rent
66. Abandonment of premises
67. Abandoned chattel
68. Violence for securing entry
69. Unlawful acts
70. Regulations
71. Rules
72. Contract to avoid law
73. Court may exempt agreement or premises from provisions of Law
74. Transitional arrangements
75. Repeals

SCHEDULE- Forms of notices; Service of notices

CAYMAN ISLANDS

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 MEDIATE DISPUTES ARISING BETWEEN 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.

PART I- PRELIMINARY

Short title

1. This Law may be cited as the Residential Tenancies Law, 2009.

Interpretation

2. (1) In this Law-

“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 a 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 (2007 Revision) to carry out banking business within and outside of the Islands; (2007 Revision)

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

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

“court” means a court of competent 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, 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 chargee 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 assignees of such chargee; and
- (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;

(2004 Revision)

“Land Register” means the Land Register compiled under Division 2 of Part II of the Registered Land Law (2004 Revision);

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

- (a) the landlord’s spouse;
- (b) any child of the landlord or of the landlord’s spouse;
- (c) any other child who is being, or is to be, cared for on a continuous basis by the landlord, by the landlord’s spouse or by any person specified in paragraph (b);
- (d) any parent of the landlord and of the landlord’s spouse;
- (e) 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;

“public general holiday” has the meaning assigned by the Public Holidays Law (2007 Revision) (2007 Revision);

“register” means the leaf of the Land Register kept in respect of a parcel of land or of a registered lease;

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

“spouse”, in relation to a person, means a legal resident who is-

- (a) the legal husband or wife of that person; or
- (b) a person of the opposite sex who, although not legally married to that person, lives with that person in the same household under the same domestic arrangements as a legal husband or wife and has been so living with that person for a continuous period of five years,

but where a person is judicially or otherwise separated from a legal spouse he shall not be considered to have any other spouse except that legal spouse;

“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 written 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; and

(2007 Revision)

“working day” does not include Saturday, Sunday or a public general holiday as defined in the Public Holidays Law (2007 Revision).

(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-

- (a) 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; and
- (b) a tenancy at will is not a valid tenancy.

PART II- APPLICATION OF THIS LAW

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|--|---|
| 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 used for commercial purposes;
 - (b) where the premises are a hotel or a motel;
 - (c) 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;
 - (d) where the premises constitute part of any hospital, home, or other institution for the care of children, 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 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;
 - (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; or
 - (j) to a prescribed agreement or an agreement of a prescribed class.

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 purposes, 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 a Commissioner or a court, a 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 III- RESIDENTIAL TENANCIES COMMISSIONER AND MEDIATION

Appointment of Residential Tenancies Commissioner, etc

9. (1) The Governor shall appoint one or more persons as Residential Tenancies Commissioner to mediate in certain disputes arising under tenancy agreements.

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

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

(4) A Commissioner, in mediating disputes, shall have the following duties, functions, and powers-

- (a) to offer his services to the parties to the dispute and to assist the parties in bringing about a settlement where an application has been made for the exercise of the Commissioner's jurisdiction in respect of a dispute; and
- (b) in giving such assistance, to inquire fully into any such dispute and all matters affecting its merits, and to make such suggestions and recommendations and do all such things as he thinks right and proper for inducing the parties to come to a fair and amicable settlement.

10. (1) Where a dispute-

Mediation by the
Commissioner

- (a) arises in connection with any matter under a tenancy agreement; and
- (b) cannot be resolved by the parties to the tenancy agreement,

a party to the tenancy agreement may, in order to resolve the dispute, first make an application in writing to a Commissioner for mediation of the dispute.

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

(3) As soon as practicable but no later than seven days after an application is made to a Commissioner, the Commissioner shall start a mediation process.

(4) If a Commissioner considers that the tenancy dispute is not suitable for mediation he may give written notice to the parties to that effect.

(5) During the mediation process each party to the tenancy dispute-

- (a) shall conduct his own case; and
- (b) may be represented by an approved representative only if-
 - (i) the party is a corporation; or
 - (ii) the Commissioner is satisfied, and continues to be satisfied, that a person should be allowed to represent the party.

(6) A person who is not a party to the tenancy dispute may take part in the mediation process if the Commissioner is satisfied the person has a sufficient interest in the resolution of the dispute; but the person does not become a party to the dispute.

(7) The Commissioner may adjourn a proceeding at any stage to enable parties to negotiate.

(8) The Commissioner has no power to determine any matter in dispute, whether with or without a request by the parties.

(9) A court shall not consider a dispute arising under a tenancy agreement if the plaintiff had not first sought mediation or if either party has refused to participate in the mediation process relating to the matter.

Agreed settlements

11. (1) Where a settlement is reached it shall be put in writing by the Commissioner and signed by the parties.

(2) A signed agreement under subsection (1) shall form a part of the tenancy agreement.

(3) A Commissioner shall not approve an agreement which is inconsistent with this Law.

Failure to reach settlement during mediation

12. (1) If it appears to the Commissioner that it is unlikely that a settlement can be reached within a reasonable time or at all, the Commissioner shall prepare a report which shall include-

- (a) any statement of facts agreed to by the parties;
- (b) a summary of the points, if any, settled in mediation and those still requiring determination by a court; and
- (c) any comments that the Commissioner may wish to make on the conduct of the parties so far as that may be relevant to the question of costs before a court.

(2) The Commissioner shall provide a copy of the report to each party to the dispute and shall advise the parties of their right to seek determination of the matter by the court.

(3) A report of the Commissioner shall be admissible in evidence in any proceedings before a court.

Obligations under tenancy agreements not suspended

13. A tenant's liability to pay the rent to which he agreed and to comply with the other obligations under a tenancy agreement and a landlord's obligations under a tenancy agreement are not suspended while a matter is being dealt with by a Commissioner or by the court.

PART IV- TENANCY AGREEMENTS

Preliminary matters

14. (1) Every tenancy agreement shall be in writing and signed by the landlord and the tenant. Tenancy agreement to be in writing

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

(3) The cost of preparing a written tenancy agreement shall be borne by the landlord.

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

- (a) the full name and contact address of the landlord including any person with superior title to 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 (if applicable);
- (i) the amount of the rent payable;
- (j) the period of notice required to vacate premises;
- (k) the frequency of the rent payments;
- (l) the place or bank account number where the rent is to be paid;
- (m) 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 an assignment of the tenancy;
- (n) a list of any fixtures, if any, provided by the landlord;
- (o) a statement as to which party is responsible for the payment of utilities and any other assessments arising under the tenancy agreement;
- (p) an option to renew and vary (if accepted); and
- (q) if the tenancy is a fixed-term tenancy, the date on which the tenancy will terminate.

Inspection sheets	<p>16. (1) At the time that a tenancy agreement is entered into, the landlord shall complete and provide to the tenant two signed copies of an inspection sheet in the prescribed form which-</p> <ul style="list-style-type: none">(a) provides for the premises to be identified;(b) provides comprehensive details of fixtures and other contents of the premises;(c) provides for the condition of the premises and the fixtures and other contents of the premises to be described by both the landlord and the tenant, both at the time of commencement and termination of the agreement;(d) provides for the signature of the parties of the agreement both at the time of commencement and termination of the agreement; and(e) advises the tenant that if a dispute arises about the condition of the premises the tenant may contact a Commissioner about the matter. <p>(2) The landlord and tenant shall use the form as a comparison check when the tenant vacates the premises.</p>
Variations and renewals of tenancy agreements	<p>17. (1) Every variation of a tenancy agreement, and every renewal of a tenancy agreement, shall be in writing and signed by the landlord or his agent and the tenant.</p> <p>(2) The landlord, at least sixty days before the date on which the variation or renewal of the tenancy is to take effect, shall provide the tenant with a copy of the variation or renewal.</p>
Change of name or address	<p>18. Where the name and contact address, or address for service, of any person has been provided 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 43 applies), the person shall, within ten working days thereafter, cause notice of the new particulars to be given to the other party to the tenancy.</p>
Duration of tenancy	<p>19. (1) Where the period of a tenancy is expressed as commencing on a particular day, that day is included in computing that period.</p> <p>(2) Where no day of commencement is named, the period commences on the date of execution of the tenancy agreement, and that day is included in computing that period.</p>

(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

20. (1) 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. Security deposit

(2) The landlord shall give to the tenant upon receiving a deposit from the tenant a written receipt setting out, among other things-

- (a) the amount and nature of the payment;
- (b) the date of the payment;
- (c) the name of the person who made the payment; and
- (d) the address of the premises to which payment relates.

(3) The landlord shall, where the deposit is paid in cash, give a receipt to the tenant immediately or within seventy-two hours after payment in any other case.

21. Subject to this Law, every security deposit paid to the landlord with respect to residential premises shall be held by the landlord in trust for the tenant who paid the deposit. Security deposits to be held in trust

22. (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) The landlord shall, within fourteen 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.

(3) Subsequent to providing a notice under subsection (2) if the landlord changes the manner and the location in which he is holding the security deposit he shall notify the tenant within thirty days of such change.

(4) 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 two thousand dollars.

(5) Notwithstanding the provisions of this section, a landlord and a tenant may under the tenancy agreement stipulate that a deposit will not be subject to any interest.

Interest on security deposits

23. Subject to section 22(5), 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.

24. (1) A security deposit held by a landlord for a tenant is not attachable under any garnishee proceedings, injunction, freezing order 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 damage to the premises or any defective conditions that pre-existed the tenancy;
- (b) for ordinary wear and tear to the premises 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 to the premises occurring during one or more tenancies.

(3) At the termination of the tenancy agreement the landlord and the tenant shall inspect the premises using the inspection sheet and the landlord shall compile a comprehensive and detailed list of any damage to the premises which forms 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 ascertain the accuracy of the list.

(4) The landlord and the tenant shall sign the list and the 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 22 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 mediation.

(7) A 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.

25. (1) Within fourteen days, excluding Saturdays, Sundays and public general 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-

- (a) pay to the tenant the security deposit and any accrued interest, if applicable; 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, if applicable.

(2) If the tenant disputes the retention of the deposit or any portion thereof, the landlord, within sixty days after the termination of the tenancy agreement, may apply to a Commissioner for a settlement of the dispute.

(3) Where the landlord applies to a 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, within sixty days of the termination of the tenancy to a Commissioner for a settlement of the dispute and shall pay the prescribed fee and provide the Commissioner with such information as the Commissioner may require.

(5) Where a Commissioner receives an application, information and fee under this section he shall deal with the application in accordance with section 10.

(6) Where a tenant leaves and does not pay the last rent he is due to pay the landlord may, after fourteen days, remove the deposit from the account and apply the deposit to the outstanding rent.

(7) Where a tenant quits the premises 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 that the deposit should be collected by the tenant no later than thirty days after the date of the notice.

(8) The landlord shall send a copy of the notice under subsection (7) to the Commissioner; and where the landlord does not receive a response from the tenant within thirty days of the date of the notice, he shall so advise the Commissioner and the landlord shall remove the deposit and pay it into the office of the Commissioner.

(9) 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 no later than one hundred and eighty days after the date of the notice.

(10) Where the Commissioner does not receive a response from the tenant within the time stated in subsection (9) 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

26. (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 sixty days after the date on which that notice is given;
- (d) the rent shall not be increased within one year 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 one year 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 sixty 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 twenty-eight days after the specified date in any year; and
- (g) a landlord under a fixed-term tenancy shall not increase the rent otherwise than as permitted by the agreement.

(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 shall 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.

27. (1) Subject to subsection (3), every landlord who receives 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-

Receipts for rent

- (a) the name of the tenant;
- (b) the address of the premises or an appropriate code or reference to identify the premises to which the payment relates;
- (c) the amount and nature of the payment;
- (d) the date of the payment; and
- (e) the period of the tenancy to which the payment relates.

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

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

(3) Nothing in subsection (1) or (2) 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.

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

Landlord to keep records

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

- (a) all payments of rent paid by or on behalf of the tenant; and
- (b) any amount by way of security deposit paid by or on behalf of the tenant on or after the commencement of this Law.

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

Apportionment of rent

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

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

Accelerated rent or damages prohibited

30. (1) A 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; or
- (b) rent of an increased amount,

shall be of no effect.

(2) A 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.

31. (1) A landlord shall not be entitled to seize or dispose of any of the tenant's chattels- Tenant's goods not to be seized
- (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 chattels 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 court may be enforced.
- (4) Nothing in this section applies to any of the tenant's chattels if the landlord has reasonable cause to believe that the premises or the chattels have been abandoned by the tenant.

Rights and obligations of parties

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. Legal impediments to occupation
- (2) A landlord who contravenes subsection (1) commits an unlawful act.
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. Vacant possession
- (2) In this section "premises" does not include facilities.
34. (1) A landlord or any person claiming by, through, or under the landlord or having superior title to that of the 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. Quiet enjoyment of the tenant
- (2) A landlord 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.
- (3) A landlord commits an unlawful act where-
- (a) he contravenes subsection (1) or (2); or
 - (b) he persistently withdraws or withholds services to the premises,

and, in either case, he knows, or has reasonable cause to believe, that that conduct is likely to cause the tenant to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(4) A person does not commit an unlawful act under subsection (2) if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(5) In this section “premises” includes facilities.

Outgoings

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

(2) Subject to subsection (3), the following outgoing 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 (1) and (2) 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.

Tenant’s responsibilities

36. (1) The tenant shall-

- (a) pay the rent and any outgoing as agreed under the tenancy agreement as and when they are due and payable under the tenancy agreement;

- (b) ensure that the premises are occupied principally for residential purposes;
- (c) keep the premises clean and 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 in no worse condition as they were in at the date of the commencement of the tenancy, fair wear and tear excepted, and to replace such articles as are lost, damaged or destroyed with chattels of equal value.

(2) A tenant shall not-

- (a) intentionally 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 on 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).

(2007 Revision)

(6) A tenant who intentionally causes damage to the premises commits an offence and the Penal Code (2007 Revision) shall apply.

(7) The liability to be prosecuted for an offence under subsection (6) is in addition to civil liability for a breach of the tenancy agreement.

(8) 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 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, 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.

Tenant’s fixtures

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-

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

and the landlord shall not withhold or delay that consent unreasonably.

(2) A tenant may, at any time before the expiry of the tenancy, remove any fixture that he 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.

Assignment and
subletting by tenant

39. (1) A tenant may at any time during the tenancy assign, charge, 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 or delay that consent unreasonably, nor attach any unreasonable conditions to it.

(2) On giving consent to any assignment, charge, 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 transaction.

(3) 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.

40. (1) A landlord shall at the commencement of the tenancy provide the tenant with premises which are fit for human habitation.

Landlord's
responsibilities

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

- (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) Where-

- (a) premises are in a state of disrepair that does not arise from a contravention of the tenancy agreement by the tenant;
- (b) the state of disrepair is, unless remedied, likely to result in personal injury or damage to property or undue inconvenience;
- (c) the tenant notifies the landlord of the state of disrepair or makes a reasonable attempt to do so and the landlord fails to make the necessary repairs;
- (d) the tenant incurs costs in having the state of disrepair remedied; and
- (e) the repairs are carried out by a person who is licensed to carry out the necessary work and the tenant provides the landlord with a report on the work carried out and the apparent cause of the state of disrepair,

the tenant is entitled to recover from the landlord the reasonable costs of having the repairs carried out.

(7) Where the landlord fails to compensate the tenant within one month after the tenant has incurred expenses specified in subsection (6), the tenant may deduct the expenses from the next due rent or rents as the case may be; except that in the case of a periodic tenancy for a period of one month or less he shall not deduct more than one-third of the rent due for any period.

(8) A notice under subsection (6) shall be considered to have been received in the ordinary course of the mail within three days of its being posted.

(9) 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.

(10) Any obligation by a tenant for the repair of premises (including any obligation 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).

(11) 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.

(12) The obligations implied by this section shall not be construed as-

- (a) 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) requiring the landlord to rebuild or reinstate the premises in the case of destruction or damage by fire, tempest, flood or other inevitable accident.

41. (1) A landlord shall not enter the premises of his tenant except-

Landlord's right of entry

- (a) with the prior 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 forty-eight hours nor more than fourteen days before the intended entry, and not more frequently than once in any period of eight 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 forty-eight hours nor more than fourteen 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 twenty-four hours before the intended entry; or
- (e) pursuant to an order of the court.

(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 or delayed) 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) refusal 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 68.

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

Landlord to give notice to tenant of intention to sell

42. (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.

43. (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 or the purchaser shall within ten 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; and
- (d) subject to any lawful claim made to the court before the date of settlement, the landlord's interest in any security deposit paid by the tenant shall pass to the purchaser on the date of settlement or the date of possession, whichever is earlier.

(2) Nothing in subsection (1)(a) shall absolve the landlord from the obligation imposed on the purchaser by section 18.

44. 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.

Mitigation of damage or loss

PART V-TERMINATION OF TENANCIES

45. (1) Nothing in this Part affects-

Scope of this Part

- (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	46. 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	47. (1) A fixed-term tenancy agreement terminates without notice when that term expires or when forfeited in accordance with this Law. (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 45, any reference in a tenancy agreement to a right to give notice to terminate the tenancy in the event of- <ul style="list-style-type: none">(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 this Law.
Surrender of tenancy	48. (1) Where the landlord and the tenant agree that the tenancy shall be surrendered, it shall be surrendered in the following manner- <ul style="list-style-type: none">(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; and(b) the instrument or inscription shall then be executed by the landlord and tenant, and thereupon, or upon such earlier date as is expressed in the instrument or inscription, the interest of the tenant shall cease. (2) A tenancy agreement which is subject to a charge or sub-tenancy shall not be surrendered without the consent in writing of the proprietor of the charge or sub-tenancy.
Notice of termination to be in writing	49. (1) Notice to terminate a tenancy shall be in writing and shall be in the form set out in Part I of the Schedule. (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 Schedule.
Termination by notice	50. Subject to any agreement in writing providing for a different period of notice and to the provisions of this Part-

- (a) a tenancy from year to year shall be terminated by not less than three 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.

51. (1) A fixed-term tenancy agreement may contain a proviso for forfeiture upon the occurrence of one or more of the following events-

Forfeiture of fixed term tenancy agreement

- (a) the tenant fails to pay the rent within fourteen days after service of a written demand in the prescribed form;
- (b) the tenant fails to remedy a breach of any of the covenants implied by section 36 within twenty-eight days after service of a forfeiture notice in accordance with section 52;
- (c) the expiry or revocation of the tenant's work permit;
- (d) the tenant is adjudicated bankrupt or, being a company, goes into liquidation;
- (e) the landlord fails to take reasonable steps to comply with his repairing obligations within twenty-eight days after service of a notice by the tenant under section 36(1)(d); or
- (f) the landlord fails to remedy a breach of any of the obligations implied under this Law within twenty-eight days after service of a forfeiture notice in accordance with section 54.

(2) The right of forfeiture may be-

- (a) exercised, where neither the tenant or any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or
- (b) enforced by action in the court.

(3) Subject to subsection (4), the right of forfeiture shall be taken to have been waived if-

- (a) the landlord accepts rent which has become due since the breach of agreement or condition which entitled the landlord to forfeit the tenancy agreement or has by any other positive act shown an intention to treat the tenancy agreement as subsisting; and
- (b) the landlord is or should by reasonable diligence have become aware of the commission of the breach.

(4) The acceptance of rent after the landlord has commenced an action in the court under subsection (2) shall not operate as a waiver.

(5) The forfeiture of a tenancy agreement shall terminate every subtenancy (and every other interest appearing in the register relating to that tenancy if the tenancy has been registered), but-

- (a) where the forfeiture is set aside by the court on the grounds that it was procured by the landlord in fraud of the subtenant; or
- (b) where the court grants relief against the forfeiture under section 53, every such subtenancy and other interest shall be deemed not to have terminated.

Notice before forfeiture

52. Notwithstanding anything to the contrary contained in a tenancy agreement, no landlord shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the tenancy agreement whether expressed or implied, until the landlord has served on the tenant a notice-

- (a) specifying the particular breach complained of;
- (b) if the breach is capable of remedy, requiring the tenant to remedy the breach within such reasonable period as is specified in the notice; and
- (c) in any case other than non-payment of rent, requiring the tenant to make compensation in money for the breach; and
 - (i) the tenant has failed to remedy the breach within a reasonable time thereafter if it is capable of remedy and to make reasonable compensation in money; and
 - (ii) the matter was referred for mediation by a Commissioner and no agreement was reached.

Relief against forfeiture

53. (1) A tenant upon whom a notice has been served under section 52, or against whom the landlord is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit.

(2) Subject to subsection 3, the court on application by any person claiming as subtenant or chargee of any interest in the property or part of the property comprised in the tenancy agreement forfeited or sought to be forfeited, may make an order vesting the property or such part in such subtenant or chargee for the whole period of the lease or any less period, upon such conditions as the court in the circumstances of the case thinks fit.

(3) Nothing in subsection (2) shall apply in the case of a forfeiture arising from a breach to which the subtenant is a party or from the breach of an express agreement or condition against subletting, parting with the possession of or disposing of the property leased.

(4) For the purpose of this section a tenancy agreement limited to continue as long only as the tenant abstains from committing a breach of the tenancy agreement or condition shall be and take effect as a tenancy agreement to continue for any longer term for which it could subsist, but terminable by a provision for re-entry on such breach.

(5) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the tenancy agreement is registered or not.

54. (1) If the landlord breaches a fixed term tenancy agreement, the tenant may give the landlord a written notice-

Notice of termination by tenant on ground of breach of the tenancy agreement

- (a) specifying the breach; and
- (b) informing the landlord that if the breach is not remedied within a specified period (which must be a period of at least twenty-eight days from the date the notice is given) the tenancy is terminated by force of the notice from a date that is also specified in the notice (which must be at least seven days after the end of the period allowed for the landlord to remedy the breach)

(2) Where the landlord is of the opinion that he is not in breach of the tenancy agreement or that he has remedied the breach specified by the tenant he may, before the time fixed in the tenant's notice for termination of the tenancy or the tenant gives up possession of the premises whichever is the later, apply to the Commissioner for mediation of the matter.

(3) Where the parties fail to reach a settlement of the matter through mediation the landlord may apply before the time fixed in the tenant's notice for termination of the tenancy or before the tenant gives up possession of the premises whichever is the later to court for an order-

- (a) declaring that the landlord is not in breach of the tenancy agreement, or has remedied the breach of the agreement, and that the tenancy is not liable to be terminated under this section; or
- (b) reinstating the tenancy.

(4) If the court is satisfied that a tenancy has been validly terminated under this section, but that it is just and equitable to reinstate the tenancy or it would be just and equitable to reinstate the tenancy if the conditions of the order were complied with, the court may make an order reinstating the tenancy.

(5) An order reinstating the tenancy under this section may be made on conditions that the court considers appropriate.

**PART VI- RECOVERY OF POSSESSION OF PREMISES AND
COMPENSATION**

Compensation when
premises not vacated

55. (1) A landlord is 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) A tenant is liable to pay-

- (a) any arrears of rent due;
- (b) compensation to the landlord for any loss caused to the landlord by his failure to vacate the premises; and
- (c) an occupation fee to the landlord equal to the amount of rent that would have been payable by the tenant for the premises for the period the tenant remains in possession after termination of the tenancy agreement.

(3) 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 legal action.

(4) Where a claim is made for arrears of rent or for compensation it shall be supported by an affidavit showing-

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

Recovery of possession
of residential premises
prohibited except by
order

56. (1) A person shall not, except in accordance with an order or warrant of a court enter residential premises or any part of such premises of which another person has possession-

- (a) under a tenancy agreement; or
- (b) as a former tenant holding over after termination of a residential tenancy agreement,

for the purpose of recovering possession of the premises or part of the premises.

(2) This section applies to a person who enters residential premises or any part of such premises, whether on his own behalf or on behalf of another person.

(3) A court before which proceedings for an offence under this section are brought may, in addition to any other penalty, order the person who committed the offence or any person on whose behalf that person acted to pay to the person against whom the offence was committed such compensation as it thinks fit.

57. An order by the court 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 58 without any further order.

58. Where an order for possession under this Law 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.

Warrant to evict

59. 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.

Proceedings after tenant vacates

PART VII-REGISTRATION OF CERTAIN TENANCY AGREEMENTS

60. 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 two years, 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.

Registration of tenancy agreements
(2004 Revision)

61. 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.

Landlord's consent to dealing with tenancy
(2004 Revision)

62. Where any premises are 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

Lease of charged land
(2004 Revision)

(2004 Revision), unless the charge expressly dispenses with the necessity for such consent.

Future tenancies

63. (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.

Voluntary registration of tenancy agreement

64. 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-

- (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 VIII-GENERAL

Destruction of premises and abatement of rent

65. (1) Where, otherwise than as a result of a breach of the tenancy agreement, 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.

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

(3) Where a tenant gives notice of termination under subsection (1), the period of notice shall be not less than two 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 court for an order terminating the tenancy, and the court may make such an order if it is satisfied that it would be unreasonable to require the landlord to reinstate

the property or, as the case may be, to require the tenant to continue with the tenancy albeit at a reduced rent.

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

(2) Where the court makes an order under subsection (1) in respect of a periodic tenancy, it shall determine, as best it can on the evidence before it, 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 twenty-one days after the date specified by the court 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 44 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.

67. (1) If a tenancy terminates or is terminated and chattel are left on the premises that were subject to the tenancy, then- Abandoned chattel

- (a) the landlord may, when at least two days have passed since the landlord took possession of the premises, remove, and destroy or dispose of, chattel-
 - (i) if they are perishable foodstuffs; or
 - (ii) if their value is less than a fair estimate of the cost of their removal, storage and sale; but
- (b) if the chattel are not liable to destruction or disposal under paragraph (a), the landlord shall store the chattel in a safe place and manner for at least sixty days.

(2) The landlord shall, within seven days after storing chattel or having chattel stored under this section-

- (a) give notice of the storage of the chattel to-
 - (i) if the tenant has left a forwarding address, the tenant; and
 - (ii) if another person has, to the knowledge of the landlord, an interest in the chattel and the person's name and address are known to, or reasonably ascertainable by the landlord, that person; and
- (b) publish notice of the storage of the chattel in a newspaper circulating generally throughout the Islands.

(3) A notice shall be in the form prescribed by regulations for the purposes of this section.

(4) A person who is entitled to possession of chattel stored under this section may reclaim the chattel by paying to the landlord-

- (a) the reasonable costs of removing and storing the chattel;
- (b) the reasonable costs of giving notice under subsection (2)(b); and
- (c) any other reasonable costs incurred by the landlord as a result of the chattel being left on the premises.

(5) If the chattel are not reclaimed within the sixty day period, the landlord shall, as soon as practicable after the end of that period, have the chattel sold by public auction.

(6) On the sale of the chattel by public auction, the landlord-

- (a) may retain out of the proceeds of sale-
 - (i) the reasonable costs of removing, storing and selling the chattel;
 - (ii) the reasonable costs of giving notice under subsection (2)(b);
 - (iii) any other reasonable costs incurred by the landlord as a result of the chattel being left on the premises; and
 - (iv) any amounts owed to the landlord under the tenancy agreement; and
- (b) shall pay the balance, if any, to the owner, or if the identity and address of the owner are not known to, or reasonably ascertainable by, the landlord, to the court for the credit of the tenant.

(7) If chattel are sold by public auction under this section, the purchaser acquires a good title to the goods which defeats-

- (a) the tenant's interest in the chattel; and

- (b) the interests of others, apart from the tenant, unless the purchaser has actual notice of the interest before purchasing the chattel.

(8) If a dispute arises between a landlord and tenant about the exercise of powers conferred by this section, the court may, on application by either party to the dispute, make an order resolving the matters in dispute.

68. (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 there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure.

Violence for securing entry

(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 five thousand dollars and imprisonment for four years or to both.

69. (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 forty-five days 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.

Regulations

70. 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.

Rules

71. 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.

Contract to avoid Law

72. (1) Subject to section 73, 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 five thousand dollars.

Court may exempt agreement or premises from provisions of Law

73. (1) The court may, on application by an interested person, if the court considers it necessary or desirable in the circumstances, order that a provision of this Law will not apply in relation to a tenancy agreement or prospective agreement or to particular premises, or will apply in a modified manner and the order will have effect accordingly.

(2) In the disposition of an application under subsection (2) the court shall make such order as it considers fit but shall not hear such an application unless it is satisfied that the parties have separately received advice from an attorney-at-law explaining the consequence of excluding the provisions of this Law and are otherwise separately represented by an attorney-at-law in the proceedings.

(3) An order may be made subject to such conditions as the Commissioner considers appropriate.

(4) A person who contravenes an order commits an offence and is liable on summary conviction to a fine of four thousand dollars.

74. (1) Nothing in this Law applies in relation to any proceedings which began before the commencement of this Law and which have not yet been determined.

Transitional
arrangements

(2) Subject to section 73, where at the date of the commencement of this Law a tenancy agreement is not in writing a landlord shall, within three months of such date, provide the tenant with a written tenancy agreement; and nothing in this section 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 a tenancy agreement which does not comply with subsection (2) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

75. (1) The Landlord and Tenant Law (Cap. 80) (1998 Revision) is repealed.

Repeals

(2) Section 84 of the Penal Code (2007 Revision) is repealed.

(1998 Revision)

(2007 Revision)

SCHEDULE

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 registered letter posted 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 registered letter posted 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 2009

Speaker

Clerk of the Legislative Assembly