

**BERMUDA
1978 : 27**

**RENT INCREASES (DOMESTIC PREMISES)
CONTROL ACT 1978**

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[13 June 1978]

[preamble and words of enactment omitted]

PART I

INTERPRETATION, ADMINISTRATION AND APPLICATION

Interpretation

- 1 In this Act, unless the context otherwise requires —
- "Commissioner" means the person appointed in accordance with section 2 to discharge the functions vested in the Commissioner under this Act;
- "court" means a court of summary jurisdiction;
- "child" includes a step-child and a child adopted under the Adoption of Children Act 1963 [title 27 item 22] or any Act amending or replacing that Act;

"domestic tenancy" means a tenancy of premises let as a dwelling;

"furniture" includes fittings and other articles;

"landlord" includes any person for the time being receiving (other than as a mere collector) the rent of the premises, whether on his own account or as agent or trustee for some other person, and, in relation to a particular tenant, means a person entitled to receive the rent from such tenant;

"Minister" means the Minister responsible for rent control;

"Panel" means the Rent Increases Advisory Panel appointed under section 31;

"premium" includes any fine or other like sum and any other valuable consideration in addition to rent;

"principal tenant" means a tenant of premises who sublets the whole or any part or parts thereof under a domestic tenancy;

"reviewing fee" means the fee payable for the review of a certificate under section 16 of such amount as may be prescribed under the Government Fees Act 1965 [*title 15 item 18*];

"specified" means specified under section 33;

"tenancy" means a tenancy, a sub-tenancy, an agreement for a tenancy and an agreement for a sub-tenancy (whether oral or in writing) of premises to which this Act applies;

"tenant" or "sub-tenant" includes —

(a) a person who is in possession of premises, to which this Act applies;

(b) a person who retains possession of any premises by virtue of this Act,

and "tenant" includes sub-tenant;

"the repealed Act" means the Rent Increases (Domestic Premises) Control Act 1971;

"Tribunal" means the Rent Increases Arbitration Tribunal convened under section 10(4).

Appointment of Commissioner

2 Subject to the appropriation by the Legislature of funds therefor the Governor shall appoint a Commissioner and other officers, and retain

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such professional advisers, on such terms and conditions as he may think necessary for carrying out this Act.

Application

3 (1) Save as otherwise provided in this section this Act shall apply to every domestic tenancy existing on 1 July 1978, or which may thereafter subsist, and notwithstanding any provision in such tenancy, including any provision purporting generally or specifically to exclude this Act.

(2) This Act shall not apply to the following —

- (a) a tenancy of any premises where it is proved to the satisfaction of the Commissioner that a certificate of occupancy of the premises has issued out of the Department of Planning not earlier than 30 June 1983;
- (b) a tenancy of agricultural land, including such a tenancy where there exists on the land any dwelling-house occupied by persons working the land;
- (c) a tenancy for a life or lives;
- (d) premises licensed under section 6;
- (e) a tenancy where the Government of any country outside Bermuda or an agency thereof, is the landlord;
- (f) the use of premises as a boarding or common lodging house or to premises of which the occupiers share ablution, sanitary or cooking facilities;
- (g) a tenancy for a fixed term not exceeding twelve months of a house in which the landlord ordinarily resides, during the temporary absence from Bermuda of the landlord.

(3) This Act shall not apply to a tenancy of any premises if —

- (a) the whole of such premises are the subject of a single tenancy; and
- (b) the annual rental value of the premises as determined by the current valuation list prepared for the purposes of the Land Valuation and Tax Act 1967, exceeds

\$9,900.

(4) The Minister may in his discretion by order published in the Gazette exclude from the further application of this Act any class of tenancy or any class of premises.

(5) The negative resolution procedure shall apply to an order made under subsection (4).

Determination of nature of tenancy

4 (1) Notwithstanding the purpose for which premises were let, in determining the nature of the tenancy for the purposes of this Act, regard shall be had to the following:

- (a) in any agreement in writing between a landlord and tenant, a term that the premises shall be used for a specified purpose shall be prima facie evidence that the premises are being used for such purpose;
- (b) notwithstanding any evidence as to whether premises were originally let as a dwelling or not, where such premises are being used primarily for another purpose, they shall be deemed to have been let for that other purpose;
- (c) where there exists insufficient evidence as to whether premises were let as a dwelling or not, the nature of the tenancy shall be determined by the primary user of the premises which in the case of a sub-tenancy shall be subject to paragraph (d);
- (d) where there is evidence that premises were let otherwise than as a dwelling, or that they were being used otherwise than as a dwelling at the commencement of a sub-tenancy created out of the original tenancy, any premises the subject of such sub-tenancy shall themselves be deemed to be used otherwise than as a dwelling until the sub-tenant proves the contrary;
- (e) the covenants, terms and conditions of the tenancy;
- (f) any planning permission given under the Development and Planning Act 1974 [*title 20, item 1*], or any zoning order having effect by virtue of section 75 of that Act.

(2) Where a dispute arises as to whether a tenancy is domestic, the landlord or tenant under any tenancy of the premises, whether or not it is the tenancy to which the dispute relates, may if primary user is rele-

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vant to the dispute, apply in the specified form to the Commissioner for his certificate as to the primary user of the premises.

(3) Where an application under subsection (2) is made to the Commissioner, he shall inspect the premises, and may —

(a) where he is satisfied on the evidence available as to the primary user, issue free of charge a certificate as to the primary user of the premises on the day of his inspection;

(b) where he is not so satisfied, decline to give a certificate.

(4) A certificate issued by the Commissioner under subsection (3) shall be prima facie evidence of the facts set out therein and of the primary user of the premises on the day on which they were inspected.

(5) A landlord or tenant may apply to the court —

(a) for a review of a certificate of the Commissioner;

(b) for a determination where the Commissioner has declined to issue his certificate; or

(c) generally for a determination as to whether the tenancy is domestic.

(6) The court, on the hearing of an application under subsection (5), may —

(a) affirm the certificate of the Commissioner or substitute therefor its own determination; or

(b) in the case of an application under subsection (5)(b) or (c), make a determination as to whether the tenancy or sub-tenancy is domestic.

Benefits of Act to extend to widows and others

5 (1) The benefits and protection afforded by this Act shall, in any tenancy, be available to —

(a) the widow, widower, mother, father or any child over the age of twenty-one years or married of the tenant where she or he was ordinarily resident with the tenant at the time of his or her death; and

(b) the deserted, divorced or separated wife of the tenant if

the tenant has departed from the premises and such wife was residing in the premises at the time of his departure and has continued so to reside, and pays or tenders the rent thereof,

and, for the purposes of this Act, references to the tenant shall, where applicable, be deemed to include a reference to such widow, widower, mother, father, child or wife and the tenancy shall be deemed to continue in existence notwithstanding the death of the tenant and such widow, widower, mother, father, child or wife, as the case may be, shall be deemed to be the assignee of the tenant's rights and obligations under the tenancy.

(2) For the purposes of subsection (1)(a), in the event of there being any dispute as to the person entitled to the benefits and protection afforded by this Act, the person so entitled shall be —

- (a) the person mutually agreed to be so entitled between the landlord and other persons so entitled, and where any person so entitled has continued to pay the rent due under the tenancy for a period of six months after the death of the tenant without any other person so entitled notifying the landlord of his entitlement, such agreement in favour of such person paying the rent shall be deemed to subsist;
- (b) in the absence of any such agreement the rights of the persons so entitled shall take precedence in the order set out in the said paragraph (a) and, where there is more than one person in the category, preference shall be given to the elder, although any person may waive his rights under this section and, in such a case, his rights to the tenancy shall pass to the person next entitled.

Licensing of tourist accommodation

6 (1) The Minister responsible for tourism may, on the application of the landlord and the payment of such fee as may be prescribed therefor under the Government Fees Act 1965 [*title 15 item 18*], licence, subject to such conditions as he may see fit to impose, any premises for the accommodation of persons visiting Bermuda, and may, in like manner, revoke any such licence.

(2) A licence issued under this section shall be in such form as may be specified and shall be valid for a period of twelve months from the date of issue and any such licence may be renewed from time to time for a like period.

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(3) A licence issued under this section shall be deemed to be forthwith revoked by operation of law where the premises are let or sub-let for more than an aggregate of six months in any consecutive period of twelve months, being a period subsequent to the issue of the licence, to any person who is ordinarily resident, or who is employed, in Bermuda.

PART II

CONTINUATION AND TERMINATION OF TENANCIES

Continuation of tenancies

7 (1) Save as is provided in section 8, no tenancy existing on 1 July 1978, or which may thereafter subsist, shall terminate during the continuance in force of this Act:

Provided that, subject to any contrary agreement between the landlord and the tenant, this section shall not apply to any tenancy of an apartment in a building a part of which is occupied by the owner where such a building does not comprise more than 3 living units and such tenancy commences after 30 June 1983; and for the purpose of this proviso "living unit" means a part of a building so constructed or divided as to be occupied as a complete dwelling area.

(2) Save as is provided in section 5, a tenancy shall not by virtue of this Act continue in existence after any change in the identity of the landlord or tenant which would terminate such tenancy in law; but for the purposes of this Act a tenancy shall be deemed to continue in existence notwithstanding any change in the rent payable.

(3) In every tenancy there shall, in the absence of any express covenant or condition, be implied a covenant to pay rent on the due date and a condition for forfeiture for non-payment within 15 days of such date.

Grounds for termination of tenancies

8 (1) A tenancy shall terminate where —

- (a) vacant possession is delivered up;
- (b) the landlord determines the tenancy for failure to pay rent or for the breach of any other covenant or condition which under any provision of law, would have been a cause of forfeiture or termination;

- (c) a notice to quit given under subsection (2) or (6) or an order made under section 9(3) takes effect;
- (d) in the case of a sub-tenancy, the tenancy out of which the sub-tenancy was created is itself terminated:

Provided that upon such termination this Act shall apply to any tenancy thereupon arising by operation of law.

(2) A notice to quit may be served and shall, subject to section 9, take effect as if this Act had not been enacted where in such notice the landlord or principal tenant specifies—

- (a) that he requires possession for use as a dwelling by himself, his mother, his father, or any child or grand-child of his over the age of twenty-one years or married;
- (b) his intention of rebuilding the premises or of carrying out therein renovations of a major character.

(3) Where a notice to quit is served under subsection (2) and in addition is displayed for 3 successive days upon the main door or entrance of the premises affected, such notice to quit shall take effect also on any sub-tenancies created under the tenancy to which it relates.

(4) In this section, "renovations of a major character" means renovations which are extensive and which are of such a nature either that they cannot reasonably be carried out with the tenant in occupation or that it would cause undue hardship to the landlord, by reason of the additional expense, if the tenant remained in occupation while the renovations are carried out.

(5) For the purposes of subsection (2) "landlord" includes a person —

- (a) who receives the rents, issues and profits of any premises as a beneficiary under a trust or settlement if—
 - (i) he receives fifty-one per centum or more of such rents, issues and profits; or
 - (ii) he can establish that he has, subject to the tenancy, the right to occupy and continue to occupy the premises as a dwelling to the exclusion of all other such beneficiaries and that such right cannot be revoked without his consent;
- (b) who possesses an interest in any premises (not being a future estate) acquired as a legacy and he can establish that he has, subject to the tenancy, the right to occupy

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and continue to occupy the premises as a dwelling to the exclusion of all other persons with a like interest in the premises.

(6) A notice to quit may be served and shall, subject to section 10, take effect as if this Act had not been enacted where in such notice the landlord or principal tenant specifies that the tenant is an undesirable tenant.

Proceedings on service of notice to quit under section 8(2)

9 (1) A notice to quit given under section 8(2) shall not be valid unless there is set out therein the substance of the provisions of subsection (2) of this section.

(2) Within 14 days of service of a notice to quit under section 8(2) any tenant of the premises affected by the notice to quit may serve a counter notice in the specified form on the landlord or principal tenant, as the case may be, disputing the right of the landlord or principal tenant to serve notice to quit.

(3) Within 14 days of the receipt of a counter notice under subsection (2) the landlord or principal tenant, as the case may be, may apply to the court for an order for possession of the premises to which such notice relates and if he does not so apply the notice to quit shall be void.

(4) Where the landlord or principal tenant, as the case may be, satisfies the court that he is entitled to possession on the ground specified in the notice to quit, the court shall make an order for possession which shall take effect on such date as the court may order but not earlier than the date on which the notice to quit would have taken effect nor later than three months from the date of such order; and at the hearing of such an application the court may order the payment of rent or mesne profits:

Provided that no order shall be made unless the court is satisfied that the landlord bona fide requires the premises on the grounds specified by him.

(5) Where a court makes an order for possession under subsection (4), the court may if it thinks fit, grant to the tenant an option in such terms as the court may determine, to take a new tenancy of the premises on terms similar to the tenancy which has been terminated if—

(a) in the case where the order for possession was given on the grounds specified in section 8(2)(a) the dwelling is not, within a reasonable period thereafter used, or ceases to be used, as a dwelling by any of the persons specified in that paragraph;

(b) in the case where the order for possession was given on the grounds specified in section 8(2)(b) the premises are not rebuilt or renovated within such time as the court may determine as a reasonable time.

(6) The court may, as a condition precedent to making an order under subsection (4), require the landlord to give security to the tenant in such manner and in such amount as the court may determine, with provision for the forfeiture to the tenant of such amount in the circumstances specified in subsection (5)(a) or (b).

Proceedings on service of notice to quit under section 8(6)

10 (1) A landlord may serve on the tenant a notice to quit on the grounds that he is an undesirable tenant:

Provided that a notice shall not be served under this subsection unless the landlord has given to the tenant in writing an opportunity to remedy the matter complained of and the tenant has failed to do so.

(2) The notice to quit served under subsection (1) shall specify the grounds on which the landlord considers the tenant to be undesirable.

(3) Where the tenant disputes the allegation contained in the notice to quit, he shall do so in writing within 14 days of receiving the notice and he may submit such explanation as he thinks fit, and thereupon the landlord shall send copies of the notice to quit and of the tenant's reply to the Rent Commissioner, together with a request that a date be fixed for a hearing before the Tribunal.

(4) A Tribunal to be called the Rent Increases Arbitration Tribunal and consisting of the Commissioner and two members of the Panel, shall hear evidence in a summary way and adjudicate on the dispute between the landlord and the tenant.

(5) If the Tribunal are satisfied that the tenant is an undesirable tenant within the meaning of this Part they may —

(a) confirm the notice to quit and, where necessary, extend the time specified in the notice; or

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- (b) if the circumstances so warrant, order the tenant to remedy the matter complained of within a given period, and suspend the operation of the notice for that period,

and if they are not satisfied that he is an undesirable tenant, shall cancel the notice to quit.

- (6) The decision of the Tribunal shall be final.

(7) For the purposes of this Part "undesirable tenant" means a tenant who —

- (a) uses the premises for any illegal purpose; or
- (b) persistently admits to the premises any person of bad character; or
- (c) causes unnecessary annoyance, nuisance, disturbance, inconvenience or damage to the landlord or his property or to any other person or the property of that person occupying the same building as the tenant or any building adjacent to it; or
- (d) in breach of his agreement, is persistently in arrears in the payment of his rent for periods of not less than two weeks and at the time of service upon him of the notice to quit his rent is in arrears for not less than two months.

Part II not to apply to certain tenancies

11 (1) This Part shall not apply to a tenancy —

- (a) where the landlord is the employer and the tenant is the employee in possession of the premises in accordance with the terms and conditions of his employment or by reason of or in consequence of his employment; or
- (b) of premises ordinarily used by a landlord to house his employees during a period when they are not being so used if such tenancy is a tenancy which has been authorized by the Commissioner and the landlord has complied with the terms of such authorization.

(2) An authorization given by the Commissioner for the purposes of subsection (1)(b) shall be in such form, and shall be for such period, and subject to such conditions, as the Commissioner may determine.

PART III

INCREASES IN RENTS

Effect of Part III

12 No rent payable under any tenancy in being on 1 July 1978, or which may thereafter subsist, shall be increased after that date save in accordance with this Part; and any increase which is not made in accordance with this Part shall be irrecoverable by the landlord.

Increase in rent by agreement with tenant

13 (1) Where an increase in rent is agreed between a landlord and tenant, the landlord shall lodge a notice thereof in the specified form in triplicate with the Commissioner.

(2) Where a notice is lodged with the Commissioner under subsection (1), he shall record the agreement concerning the increase in rent and shall endorse, free of charge, on two copies of the notice a statement to that effect and shall return one copy to the Landlord and one copy to the tenant.

(3) Rent at the increased rate shall not be recoverable save where the landlord is in possession of a copy of a notice endorsed by the Commissioner under subsection (2), but any rent paid under a lawful agreement shall be irrecoverable by the tenant, whether or not the landlord is in possession of such a copy.

(4) It shall be unlawful for any landlord to require, as a condition of the renewal of any tenancy or as a condition of not exercising a right to terminate any tenancy, the agreement of the tenant to any increase of rent for the purposes of this section, and any purported agreement in contravention of this subsection shall be void.

(5) If the Commissioner has reason to believe that an agreement is void under subsection (4) he may refuse to make an endorsement under subsection (3) until and unless he is satisfied that the agreement is not void.

(6) The Commissioner shall not endorse an agreement under subsection (2) —

(a) where the agreement is lodged within six months after the date on which the tenant entered into possession of the premises; or

(b) where the agreement is unlawful.

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(7) The Commissioner may refuse to make an endorsement under subsection (2) where the agreement has retrospective effect.

(8) Before endorsing an agreement under subsection (2) the Commissioner may make such enquiries in writing as he thinks fit to satisfy himself that there is no infringement of this Act and that the tenant is aware of his rights under this Act; and he shall in writing notify the landlord of such enquiries.

Application for increase in rent

14 (1) Subject to section 23, a landlord may apply for an increase in rent by sending a notice in the specified form in duplicate to the Commissioner.

(2) An application under subsection (1) shall specify the increase desired by the landlord.

(3) Upon receipt of an application under subsection (1) the Commissioner shall serve a copy thereof on the tenant.

(4) Within 14 days of service on him of a notice under subsection (3) the tenant may send his comments thereon in writing to the Commissioner.

Grant of certificate

15 (1) Where a landlord applies for an increase in rent under section 14, the Commissioner, on receipt of the comments of the tenant under section 14(4) or after one month from the service of a copy of the application on the tenant in accordance with section 14(3), whichever is the sooner, may —

(a) if satisfied that an increase in rent would be reasonable in the circumstances of the tenancy, issue free of charge and serve on the landlord and on the tenant certificates in the specified form stating a fair increase which shall not exceed the increase specified in the application under section 14; or

(b) if not satisfied that an increase in rent would be reasonable in the circumstances of the tenancy, issue free of charge and serve on the landlord and on the tenant certificates in the specified form to that effect,

and he may endorse on the certificates such comments as he may think proper relating to such application.

(2) The Commissioner shall determine any application and any dispute of fact arising out of an application in an informal and summary

manner.

(3) The landlord or the tenant may within 7 days of the service upon him of a certificate issued under subsection (1)(a) or (b) require the Commissioner to state his reasons for issuing such certificate.

Review of Commissioner's initial certificate

16 (1) The landlord or the tenant may within 14 days of the service on him of the certificate, in accordance with section 15, apply by notice in the specified form to the Commissioner for a review of the certificate issued by him under section 15 (hereafter in this Part referred to as "the initial certificate").

(2) On receipt of an application under subsection (1) and upon payment of the reviewing fee by the applicant, the Commissioner shall review the initial certificate and shall for that purpose consult with the Panel.

(3) Having reviewed the initial certificate the Commissioner may —

- (a) confirm the refusal to award any increase; or
- (b) confirm the increase in rent stated in the initial certificate; or
- (c) vary or set aside the increase in rent stated in the initial certificate; or
- (d) if an increase is refused in the initial certificate, award such increase in rent as he considers fair in the circumstances of the tenancy,

and shall issue free of charge and serve on the landlord and on the tenant certificates specifying his decision:

Provided that no increase shall exceed that specified in the application under section 14.

(4) The Commissioner shall endorse on any certificate issued under subsection (3) —

- (a) a statement that it is in substitution for the initial certificate; and
- (b) a note stating whether the Panel concur in the issue of the certificate or not, and, if they do not, the substance of the disagreement,

and he may further include such additional comments as he may think proper relating to such review.

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(5) All proceedings on review under this section shall be held *in camera*.

Matters to which Commissioner shall have regard

17 In the exercise of his functions under sections 15 and 16 the Commissioner in assessing fair increases in rent —

- (a) shall have regard to the circumstances of the particular tenancy, other than the personal circumstances of the landlord or tenant; and
- (b) may consider the actual rent or recent increases in rent in tenancies of premises of a similar nature; and
- (c) shall further have regard to the generally prevailing level of rents for premises of like nature in the same area and similar areas; and
- (d) shall further have regard to such other matters, including the incidence of land tax payable, as may appear to him to be relevant in the circumstances.

Appeal to court

18 (1) The landlord or the tenant may in such manner and within such time as may be prescribed by rules made under section 35 appeal to the court against any determination by the Commissioner on review under section 16, and on any such appeal the court shall hear the matter *de novo*.

(2) Where a landlord appeals under subsection (1), the tenant shall be made the respondent in the appeal and where a tenant appeals under subsection (1) the landlord shall be made the respondent in the appeal.

Proceedings of appeal

19 (1) On any appeal under section 18, a certificate purporting to be issued by the Commissioner under section 16(3) shall be receivable in evidence and shall be *prima facie* evidence that the increase stated therein is reasonable in the circumstances of the tenancy, or that no increase is justified, as the case may be.

(2) On the hearing of an appeal under section 18 the court shall determine any facts in dispute and may further—

- (a) confirm the certificate; or
- (b) if satisfied that the increase in rent specified in the certificate is manifestly unfair or unreasonable, having regard to the matters set out in section 17 and to any determination it makes in a dispute as to facts relevant to the assessment, vary or set aside the increase; or
- (c) if the certificate confirms the refusal to award any increase in rent, and if satisfied that the confirmation is manifestly unfair or unreasonable, order such increase in rent as it considers fair, having regard to the matters set out in section 17 and to any determination it makes in a dispute as to facts relevant to the assessment:

Provided that no increase shall exceed that specified in the application under section 14.

Increase in rents of sub-tenancies when rents of tenancy increased

20 (1) Where the rent of a tenancy is increased under this Act the principal tenant may apply by notice in the specified form to the Commissioner for a certificate to be issued under subsection (2) or (3).

(2) On receipt of an application under subsection (1) the Commissioner may, save where the increase took effect under section 13, serve on the principal tenant and on the sub-tenant certificates specifying the percentage by which the rent of the tenancy has been increased and the date on which such increase took effect.

(3) On receipt of an application under subsection (1) in respect of an increase in rent under section 13 the Commissioner may serve on the principal tenant and on the sub-tenant certificates specifying what increase in rent of the sub-tenancy would in his opinion be reasonable in the circumstances of the sub-tenancy.

(4) The rent of a sub-tenancy shall be increased —

- (a) by the percentage by which the rent of the tenancy is increased as specified in a certificate issued under subsection (2):

Provided that no increase under this paragraph shall exceed the amount expressed in money by which the rent of the tenancy (or that portion thereof which may be attributed to the premises the subject of the sub-tenancy) is increased; or

- (b) by the amount specified in a certificate issued under subsection (3).

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(5) The increase in rent of a sub-tenancy shall, unless otherwise agreed between the principal tenant and the sub-tenant, be deemed to take effect on the first day when rent becomes due after the expiration of—

- (a) one month from the date of the receipt of the application under section 14; or
- (b) one month from the date of the endorsement of the Commissioner on a notice under section 13,

but not earlier than the date on which certificates are served under subsection (2) or (3).

(6) The Commissioner shall, when issuing certificates under subsection (2) or (3), endorse thereon a notice of the date when the increase in rent takes effect and, in the case of a certificate issued under subsection (3), he may endorse on the certificate such comments as he thinks proper relating to the application.

(7) In this section "tenancy" and "tenant" do not include "sub-tenancy" and "sub-tenant" respectively.

Increase of rent prior to reletting premises

21 (1) At any time prior to the entering into of any tenancy the landlord shall, if he wishes to let the premises at a rent which is in excess of that which would otherwise be chargeable under this Act, apply for an increase in rent by sending a notice in the specified form to the Commissioner.

(2) Where an application is made to the Commissioner under subsection (1), the Commissioner may forthwith determine the application without serving a copy of the application on any tenant in occupation of the premises under any subsisting tenancy and may, thereupon, issue his initial certificate under section 15(1); and, notwithstanding section 14, no such certificate shall be served on such tenant.

(3) An increase in rent consequent upon an application under this section shall not take effect until and unless a tenant who was not in occupation at the time of the application enters into occupation of the premises subsequent to the application and such increase shall only take effect in relation to the new tenancy.

(4) The landlord, but not the tenant, shall have the same right to apply for a review of the certificate of the Commissioner and to appeal

against any determination of the Commissioner on review as he would have had had his application been made under section 14 and not this section:

Provided that the tenant shall not be a party to such review or appeal proceedings.

Day on which increase in rent takes effect

22 (1) Subject to section 21(3), where the initial certificate authorizes an increase in rent that increase shall, unless otherwise agreed between the landlord and his tenant, be deemed to take effect on the first day when rent becomes due after the expiration of a period of one month from the date of the receipt of the application under section 14.

(2) It shall be the duty of the Commissioner to endorse upon the initial certificate a note of the date when the increase in rent is deemed to take effect.

(3) Notwithstanding that proceedings on review under section 16, or on appeal under section 18, are pending in relation to any initial certificate given under section 15, such certificate shall take effect in accordance with subsection (1) and shall continue to have effect unless and until it is superseded by any further certificates issued by the Commissioner under section 16 or by the directions of the court on appeal, as the case may be.

(4) Notwithstanding subsection (3) when the rent to be paid is finally determined under this Part, the rent as so determined shall be deemed to have been payable from the time when the initial certificate of the Commissioner took effect (or would have taken effect had it granted an increase) and the difference between the rent deemed to have been payable under this subsection and the rent actually paid shall be a debt due by the landlord to the tenant or by the tenant to the landlord, as the case may be, depending on whether the rent has been over-paid or under-paid.

(5) Any debt owing by the landlord to the tenant under subsection (4) may be recovered by the tenant in accordance with section 28.

(6) Any debt owing to the landlord by the tenant under subsection (4) may, at the option of the tenant (if he is still in possession of the premises) be paid in equal instalments payable with his rent over a period commencing when such debt is first claimed by the landlord by notice in writing to the tenant and extending over a period equivalent to that which elapsed between the date when the initial certificate of the Commissioner took effect under subsection (1) and the final determination of the rent, calculated to the nearest complete week.

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Limitation on increases

23 (1) No increase in rent in any tenancy, except by agreement under section 13, shall take effect within a period of one year from the date when the rent of the tenancy was last increased under this Act or under the repealed Act, other than an increase—

- (a) by agreement with a former tenant to which regard is not had under paragraph (b) of the proviso to section 24(1); or
- (b) under section 21 which has not come into effect because no new tenant has entered into occupation of the premises,

whichever is the later.

(2) Subject to subsection (3), no application under section 14 for an increase in rent of any tenancy shall be made earlier than two months before the expiration of the period of one year referred to in subsection (1).

(3) No application under section 14 for an increase in rent of any tenancy shall be made within a period of one year from the date of the previous application.

(4) This section shall not apply to an application for an increase of rent under section 21.

PART IV

RENTS CHARGEABLE IN THE CASE OF NEW TENANCIES

Limitations on rents chargeable under new tenancies

24 (1) Where any tenancy came into being after 15 September 1971, (including a new tenancy between the same parties and of the same premises as a previous tenancy) and there has previously subsisted in relation to the premises the subject of the tenancy a previous tenancy which terminated at any time subsequent to 1 January 1969, the maximum rent which may be charged in relation to those premises for any such new tenancy shall not exceed the rent payable at the termination of such previous tenancy as increased, where authority to increase has been obtained, either under Part III of the repealed Act or under Part III of this Act:

Provided that in determining the maximum rent payable under this section no regard shall be had to —

- (a) any rent payable while the premises were licensed under section 6;
 - (b) any increase under section 13 where the agreement to an increase was made within a period of six months prior to the entering into a tenancy to which this section applies.
- (2) Any rent charged in excess of that authorized by this section shall be irrecoverable by the landlord.

Statement to be supplied

25 (1) Where any tenancy comes into being after 30 June 1978 the landlord shall, upon the execution of the lease or making of the tenancy agreement, as the case may be, or within 14 days thereafter —

- (a) where the maximum rent payable under such lease or agreement has been fixed by a certificate issued, or order of court made, under Part III, exhibit to or furnish the tenant with, the original or a true copy of such certificate or order;
- (b) where the maximum rent so payable has not been so fixed but is determinable under this Part, furnish the tenant with a written statement setting out the rent last paid for the premises under any tenancy which terminated after the 1 January 1969, (disregarding any rent or increase in rent to which no regard is to be had under the proviso to section 24(1)) or, if there has been no such tenancy, with a statement to that effect.

(2) Any person who fails to comply with subsection (1) or who makes any statement under those provisions which is false or misleading in any material particular commits an offence:

Punishment on summary conviction : imprisonment for 6 months or a fine of \$1,000 or both such imprisonment and fine.

Advertisement and offer of premises at other than controlled rent an offence

26 (1) A person shall not —

- (a) in any advertisement specify as the rent at which any premises may be let (being premises a tenancy of which would be a tenancy to which section 24 applies) a rent in excess of the maximum rent which may be charged in accordance with section 24;

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(b) offer any such premises for letting at a rent in excess of the maximum rent which may be charged in accordance with section 24.

(2) Any person who contravenes subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$1,000.

(3) In subsection (1)(b) "offer" —

(a) includes an invitation to treat as well as an offer which becomes a contract on acceptance;

(b) excludes an offer made in the course of negotiations between a landlord and his tenant under a subsisting tenancy with the object of increasing the rent payable by the tenant in accordance with section 13.

Prohibition on key money

27 (1) Subject to this section no person shall as a condition of the grant, renewal, continuance or assignment of any tenancy require the payment of any premium or the making of any loan (whether secured or unsecured), and any such premium or loan shall be irrecoverable by the landlord.

(2) Nothing in this section shall prevent a landlord from requiring the payment of a deposit not exceeding a fortnight's rent or \$100.00 whichever is the greater for the premises the subject of the tenancy, if it is a condition of such payment that the deposit shall be refunded at the termination of the tenancy, subject to the deduction therefrom of any expenses occasioned to the landlord by the failure of the tenant to comply with any provision of the tenancy which it is the duty of the tenant to comply with, and the manner in which any such deduction is to be calculated is clearly specified.

(3) Where the purchase of any furniture has been required as a condition of the grant, renewal, continuance or assignment of any tenancy then, if the price exceeds the reasonable price of the furniture, the excess shall be treated, for the purposes of this section, as if it were a premium required to be paid as a condition of the grant, renewal, continuance or assignment of the tenancy.

(4) Any person who contravenes this section commits an offence:

Punishment on summary conviction : imprisonment for 6 months or a fine of \$1,000 or both such imprisonment and fine and the court by whom such person is convicted may order the amount of the premium or so much of it as cannot lawfully be required under this section, to be repaid by the person to whom it was paid.

PART V

SUPPLEMENTARY

Recovery of sums paid in excess of recoverable sums

28 (1) Where a tenant has paid on account of rent or a premium any amount in excess of the amount permitted by this Act then, subject to subsection (4), the tenant who paid it shall be entitled to recover that excess from the landlord who received it or his personal representatives.

(2) No court shall make an order for the recovery of the possession of any premises by reason of the non-payment of rent until and unless it is satisfied that the rent claimed does not exceed the maximum rent which may be claimed by virtue of this Act.

(3) Subject to subsection (4) any amount which a tenant is entitled to recover under subsection (1) may, without prejudice to any other method of recovery, be deducted by the tenant from any rent payable by him to the landlord.

(4) No amount which a tenant is entitled to recover under subsection (1) shall be recoverable at any time after the expiry of two years from the date of payment.

(5) In this section "court" includes the Supreme Court.

Certificate of Commissioner

29 In any proceedings in any court under section 28 a certificate purporting to be under the hand of the Commissioner and setting out whether the rent chargeable for any premises has been fixed under Part III and, if so, what amount has been so fixed, shall be receivable in evidence and shall be prima facie evidence of the facts specified therein.

Jurisdiction of court

30 Jurisdiction is hereby conferred on the court for the purpose of hearing and determining all applications and appeals for which provision is made in this Act, and all actions for possession upon the termination of any tenancy under Part II, and for the purpose of ordering the payment of rent or mesne profits in any such application, appeal or action.

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Rent Increases Advisory Panel

31 (1) For the purpose of this Act, the Minister shall appoint a Panel of not less than five persons, to be known as the Rent Increases Advisory Panel, to assist the Commissioner in those cases in which he is required to consult with the members thereof, and such persons shall hold office at the pleasure of the Minister.

(2) Notice of appointments to the Panel shall be published in the Gazette.

(3) Where the Commissioner is required to consult with the panel it shall be sufficient compliance with this Act if he consults with a majority or moiety of the members of the Panel present in Bermuda.

Exercise of powers of Commissioner

32 (1) The Commissioner may, for the purposes of this Act, exercise any of the powers conferred on the Land Valuation Officer by section 8 of the Land Valuation and Tax Act 1967 [*title 14 item 31*], and that section shall extend to the exercise of the powers of the Commissioner under this section as they do to the exercise of the powers of the Land Valuation Officer under that section.

(2) The powers conferred and duties imposed by this Act on the Commissioner, other than those relating to a review, may be exercised and performed by any other officer appointed to assist the Commissioner in the performance of his functions.

Forms

33 (1) The Commissioner may specify the forms to be used under this Act.

(2) The Commissioner may publish in the Gazette any form specified by him under subsection (1).

(3) The Commissioner may in his discretion accept any notice or application which is not in the form specified.

Enlargement of time

34 Where under this Act time is fixed for the making of any application to the Commissioner or the court, the Commissioner or the court, as the case may be, may enlarge such time.

Rules

- 35 (1) The Chief Justice may make rules regulating —
- (a) the practice and procedure in all proceedings brought before the court under this Act;
 - (b) the costs which the court may award upon the determination of any proceedings under this Act;
 - (c) the fees to be paid to the court in respect of any proceedings under this Act.
- (2) The affirmative resolution procedure shall apply to rules fixing or varying the fees referred to in subsection (1).
- (3) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to rules made under this section, other than those to which subsection (2) applies.

Service of notice

- 36 (1) Service of any notice, application, certificate or other document under this Act may be effected —
- (a) by personal service;
 - (b) by registered post addressed to the last known place of business or residence of the person to be served; or
 - (c) in the case of service on a tenant, by leaving the notice, application, certificate or other document with an adult occupier of the premises in which the tenant resides and to which such document relates.
- (2) Service effected otherwise than by personal service shall be deemed to take effect 3 days after the steps pursuant to any of subsection (1) have been taken unless and to the extent that the contrary is proved.

Determination by Commissioner

- 37 (1) Where it becomes necessary to determine for the purposes of this Act —
- (a) whether any premises subject to a tenancy are the same as premises previously so subject; or
 - (b) the proportion of the rent under a tenancy attributable to premises the subject of a sub-tenancy for the purposes of section 20(4)(a),

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the landlord or tenant may make application to the Commissioner for his certificate in the matter, which certificate shall, subject to subsection (2), be conclusive evidence of the facts stated therein.

(2) Any person aggrieved by the determination of the Commissioner under this subsection may appeal to the court in such manner and within such time as may be prescribed in rules under section 35 and the court may on hearing such appeal make such order in the matter as it thinks fit.

(3) In determining whether any premises are the same as any others pursuant to subsection (1) premises shall be deemed to be the same if they are substantially the same from the point of view of the rent which might reasonably be charged therefor.

(4) If furniture has been removed from premises which were formerly rented as furnished premises, or if furniture has been included in premises which were formerly rented as unfurnished premises, this shall not be a ground which would entitle the Commissioner to issue a certificate under subsection (1), but in any such case the landlord shall prior to re-letting, apply under section 21 to the Commissioner to assess the rent for the premises.

Directions of the Minister

38 The Minister may give the Commissioner directions of a general nature as to the procedure to be followed by the Commissioner in the exercise of his functions under this Act and it shall be the duty of the Commissioner to comply with any such directions.

Saving

39 Nothing in this Act shall —

- (a) authorize any increase in rent during the unexpired portion of a tenancy for a fixed term;
- (b) affect any right or remedy arising, either before or after 1 July 1978, out of any breach of condition or other term in any tenancy or out of any condition providing for a right of re-entry in the event of the business of the tenant being wound up, the tenant suffering execution to be levied or a receiving order in bankruptcy to be made, assigning the lease for the benefit of creditors or entering any agreement or making any arrangement with creditors for the liquidation of debt by composition or otherwise.

Amendment of No. 107 of 1971

40 [omitted]

Repeal and saving

41 [omitted]

Commencement

42 [omitted]

[This Act was brought into operation on 1 July 1978]

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