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A Bill

for an Act of Parliament to simplify, modernize and consolidate the laws relating to renting of business and residential premises; to establish a framework for the regulation of landlords and tenants so as to promote stability in the rental sector; protect tenants from unlawful rent increases and unlawful evictions; to balance the responsibilities of landlords and tenants and to provide for the adjudication of disputes and other purposes incidental thereto.

PART 1 – PRELIMINARY

Short title and commencement date.

1. This Act may be cited as the Landlord and Tenant Act, 2007 and shall come into operation on the date appointed by the minister by notice in the Gazette.

Interpretation.

2.(1) For the purposes of this Act, except where the context otherwise requires-

"composite tenancy" means a tenancy comprising more than one premises where the tenancy is expressed to be in respect of, or where a single rent is expressed to be payable in respect of, all the premises;

"Chairperson" means a Chairperson appointed under section 4 and includes Deputy Chairpersons.

"fair rent" means the rent assessed and determined by the Tribunal on the basis of the going rent for comparable lettings taking into consideration the location, size, age, tenantable quality and outgoings of the subject premises;

"holding" in relation to tenancy, for the purposes of this Act, means the property comprised in the tenancy excluding such part thereof as is not occupied by the tenant, the tenant's dependant or employees;

"inspector" means an officer of the Tribunal appointed under section 7;

"the land" means the site of the premises (or a proportionate part of the site where appropriate) and any other land included in the letting;

“landlord” in relation to a tenancy means;

- (a) the person for the time being entitled as between that person and the tenant, to the rent and profits of the premises payable under the terms of the tenancy and includes an agent, clerk or other person authorized to act on the landlord’s behalf; and
- (b) Includes the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a).

“let” includes sublet;

“market value” in relation to premises and land means the current value of the premises and the land on the open market;

“market rent” means the rent at which the premises concerned might reasonably be let on the open market, based on the going rent for comparable lettings taking into consideration location, size, age, tenantable condition and outgoings of the subject premises;

"Minister" means the Minister for the time being responsible for matters relating to housing;

"outgoings" means all ground rent, fire insurance premiums, rates, cost of repairs and management and letting commissions;

“premises” means a place of residence or business to which the Act applies;

“reference” means a reference to the Tribunal under section 20;

“rent” includes any sum paid as valuable consideration for the occupation of any premises, and any sum paid as rent or hire for the use of furniture or as a service charge where premises are let furnished or where premises are let and furniture therein is hired by the landlord to the tenant or where premises, furnished or unfurnished are let with services;

“requesting party” means a landlord or tenant of a tenancy by whom a tenancy notice is given;

“receiving party” means a tenant or a landlord of a tenancy to whom a tenancy notice has been given;

“Residential premises” means any living accommodation used

or intended for use as a rented premises;

“service charge” means a charge for any service provided by the landlord and includes a charge for any services provided or paid for by the landlord such as security, conservancy, sanitation and other amenities;

“services” in relation to a tenancy means the use of water, light or power, conservancy, sewerage facilities, sweeper, watchman, telephone or other amenities or facilities available to the tenant, save and except the supplying of means, and the right of access to any place or accommodation accorded to the tenant by reason of the tenant’s occupation of the premises comprised in the tenancy, but does not include capital expenditure on maintenance;

"service tenancy", in relation to a dwelling-house, means a letting by the landlord to an employee in connexion with the employee’s employment;

“ statutory duties or powers” include any duties or powers imposed or exercised under any order having the force of law in Kenya;

“tenancy” means a relationship created by a lease, agreement or assignment and includes a sub-tenancy but does not include any relationship between a mortgagor and mortgagee;

“tenancy agreement” means a written, oral or implied agreement between a tenant and a landlord for occupancy of a residential or business premises and includes a license to occupy a rental unit;

“tenancy notice” means an express notice in writing given to the landlord in accordance with the terms of that tenancy or in accordance with the provision of this Act, of the tenants intention to terminate the tenancy;

“tenant” in relation to a tenancy means the person for the time being entitled to the tenancy whether or not the tenant is in occupation of the holding, and includes the tenant’s family, a sub-tenant and any person from time to time deriving title under the original tenancy;

"Tribunal" means a Landlord and Tenant Tribunal established

under section 4.

(2) Notwithstanding Anything contained in any other written law requiring the registration of tenancies, evidence of a tenancy may, for any of the purposes of this Act, be given in proceedings whether such tenancy is registered or not.

Application

3. (1) This Act applies to -

(a) all residential premises , other than –

(i) excepted residential premises;

(ii) residential premises let on service tenancies;

(iii) residential premises which have a fair rent not exceeding fifteen thousand shillings per month, furnished or unfurnished

and for the purposes of this paragraph, where a residential premises is let on a composite tenancy each rented premises in the composite tenancy shall be treated for the purposes of this Act as though it were let on a separate tenancy;

(b) tenancy of a business premise -

(i) which has not been reduced into writing; or

(ii) Which has been reduced into writing and which relates to premises of a class specified under subsection (2) of this section.

(2) For the purposes of paragraph (b) of subsection (1) the Minister may, by notice in the Gazette, specify, by reference to rent paid or rateable value entered in a valuation roll under the Valuation for Rating Act, classes of businesses premises tenancies of which this Act shall apply.

(3) For purposes of this Act, the Minister in consultation with the Director of Physical Planning may, by notice in the Gazette divide the country into zones as a basis for regulation.

(4) If any provision of this Act conflicts with a provision of another Act, the provisions of this Act applies.

PART II – LANDLORD AND TENANT TRIBUNAL

Establishment and
composition of Tribunal

4. (1) The Landlord and Tenant Tribunal is hereby established for the purposes of settling disputes arising between parties under this Act.

(2) The Tribunal shall consist of –

(a) a Chairperson who shall be a person qualified for appointment as a Judge of the High Court of Kenya;

(b) Deputy Chairpersons as the minister may by notice in the Gazette appoint;

(c) The Chairperson of the Tribunal shall be appointed by the Minister on advice of the Judicial Service Commission; and

(d) two other members for each Tribunal, being persons with expert knowledge of the matters likely to come before the Tribunal and who are not persons with a direct material interest in Landlord and Tenant matters, all of whom shall be appointed by the Minister.

(3) Subject to the control of the Chairperson, a Deputy chairperson has and may exercise the powers, duties and functions of the Chairperson under this Act.

(4) Deputy Chairpersons appointed under subsection (2) (d) shall be persons who are advocates of the High Court of Kenya for at least five years.

(5) The members of the Tribunal appointed under subsection (2) shall hold office for such period, not exceeding five years, on such terms and conditions as shall be specified in the instrument of appointment but shall be eligible for re-appointment for one further term of a period not exceeding five years.

(6) The provisions set out in the Schedule shall have effect with respect to the meetings and procedure of the Tribunal.

(7) Except as provided in the Schedule, the Tribunal shall regulate its own procedure.

(8) Subject to subsection (1) the minister may by notice in the gazette establish such number of tribunals over such areas to exercise jurisdiction conferred under this Act.

(9) Tribunals established under subsection (8) shall be presided over by deputy chairpersons appointed under sub-section (2) (b).

Chief Executive Officer

5. The Chairperson shall be the Chief Executive of the Tribunal.

Powers of Tribunal

6. (1) In the exercise of the powers conferred upon it by this Act, the Tribunal shall have the same jurisdiction and powers in civil matters as are conferred upon the *High Court*, and in particular, (but without prejudice to the generality of the foregoing) shall have power to –

- (a) administer oaths and order discovery and production of documents;
- (b) require any landlord or tenant to disclose any information or evidence which the Tribunal considers relevant regarding rents and terms or conditions of tenancies;
- (c) issue summons for the attendance of witnesses to give evidence or produce documents; or both, before the Tribunal;
- (d) award costs in respect of references made to it;
- (e) reinstate a wrongfully evicted tenant;
- (f) grant injunctions;
- (g) enforce its own orders and to punish for contempt in the same manner as any court of law;
- (h) award compensation other than for misrepresentation;
- (i) Order for payment of rent arrears;
- (j) Review its decisions;
- (k) award compensation for any loss incurred by a

tenant on termination of a tenancy in respect of goodwill; and for improvements carried out by the tenant with the landlord's consent;

- (l) award compensation to the landlord for damage arising from the willful conduct of the tenant; and
 - (m) require a tenant or landlord to appear before it at a time and place specified by it and where such tenant or landlord fails to appear
- (2) Any person who-
- (a) without lawful excuse, fails to comply with any order, requirements or summons issued under subsection 1;
 - (b) having attended as a witness under summons, departs without the permission of the tribunal; or
 - (c) subsequent to any adjournment fails to attend after being ordered to do so,

Commits an offence and shall be liable to a fine not exceeding ten thousand shillings.

Officers of tribunals

7. (1)The Tribunal shall appoint registered valuers, rent inspectors, executive officers, process servers, clerks and such other officers as shall be necessary for the proper functioning of each tribunal.

(2) The Tribunal may engage persons other than its members or employees to provide professional, technical, administrative or other assistance to the Tribunal and may establish the duties and terms of engagement and provide for the payment of their remuneration and expenses.

Investigation of complaints by the tribunal.

8.(1) In addition to any other powers specifically conferred on it by this Act, the Tribunal may investigate any complaint relating to the tenancy of premises made to it by either a tenant or landlord of those premises.

(2) Any tenant or any landlord making any such complaint to the tribunal shall pay such fee as may be prescribed.

(3) Nothing in this section shall preclude the tribunal from taking cognizance of any infringement of this Act or of any dispute or matter likely to lead to a dispute between a tenant and a landlord of which no complaint has been made to the tribunal under the provisions of this Act.

(4) Where a complaint has been made against a tenant or a landlord, or against the agent or servant of either of them, or where the tribunal has taken cognizance of any dispute or of any facts which are likely to lead to a dispute between a landlord and a tenant, the tribunal may order the parties or the landlord or tenant, as the case may be, to appear before the tribunal at a specified time and place for the purpose of investigating the complaint or dispute.

(5) Where the Tribunal investigates any complaint or other matter under this section it may make such order in the matter, being an order which it is by this Act empowered to make, as the justice of the case may require.

Penalty for failure to comply with a lawful order of a tribunal

9. (1) Any person who fails to comply with any lawful order or decision of the tribunal after the expiration of the time allowed for an appeal, or, if an appeal has been filed, after such order or decision has been upheld, shall be guilty of an offence and liable to a fine not exceeding one hundred thousand or to imprisonment for a term not exceeding twelve months, or to both.

(2) Any person who-

- (a) fails to attend a tribunal after having been required to do so;
- (b) refuses to take oath or affirmation before a tribunal;
- (c) being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;
- (d) knowingly gives false evidence or information which is misleading before a tribunal; or
- (e) at any sitting of the Tribunal, willfully-
 - (i) threatens or ridicules any member or officer of a tribunal; or

- (ii) interrupts the proceedings or commits any contempt of the Tribunal

Commits an offence.

Appeals

10. (1) Except as provided by subsection (2), the decision of a tribunal under this Act shall be final and conclusive, and no appeal shall lie to any court.

(2) An appeal shall lie to the High Court from any such decision only on a point of law

(3) For the purpose of subsection (2), the determination of any rent or of any sum shall be a matter of fact.

Annual Reports

11. (1) At the end of each year, the Tribunal shall file with the Minister an annual report on its affairs.

(2) The Minister shall submit the annual report before parliament if it is in session or, if not, at the next session.

PART III- GENERAL PROVISIONS RELATING TO TENANCIES

Fair rent

12. (1) The rent payable for any premises shall be determined by mutual agreement of the parties to a tenancy agreement.

(2) Where an agreement cannot be reached by the parties at any time during the tenancy, a Tribunal, on reference by either of the parties, shall determine the fair rent of the premises.

(3) The comparables of similar lettings to be taken into consideration under subsection (2) shall not be more than two years older than the premises whose rent is under consideration.

(4) Where there are no comparables of similar lettings to be taken into consideration under subsection (3), a Tribunal shall determine fair rent for any premises based on the depreciated replacement cost of the premises and the market value of the land.

(5) Subject to this Act, the landlord is not entitled to recover any rent in excess of the fair rent, notwithstanding any tenancy agreement or lease executed between the landlord and the tenant or any other agreement, in writing or otherwise, as to the amount of rent payable made between the landlord and the

tenant prior to or after the assessment of the fair rent.

Permitted increase of rent **13** (1) A landlord shall not increase the rent charged to a tenant for a rented premises without giving the tenant at least ninety (90) days written notice of intention to do so.

(2) The notice shall be in a prescribed form and must set out the:

(a) landlord's intention to increase the rent; and

(b) the amount of the new rent.

(3) an increase in rent is void if the landlord has not given the notice required by this section.

Lawful increase of rent **14.** (1) A landlord may increase rent in accordance with section 13 if the landlord has,

(a) carried out or undertakes to carry out a specified capital expenditure in exchange for the rent increase;

(b) provided or undertakes to provide a new or additional service in exchange for the rent increase; or

(c) taken into account inflationary trends in the economy.

(2) For purposes of this section, capital expenditure is eligible if it is necessary to,

(a) protect or restore the physical integrity of the rented premises;

(b) Maintain the provision of a plumbing, electrical, ventilation or air conditioning system;

(c) Provides access to persons with disabilities;

(d) promote energy or water conservation; or

(e) Maintain or improve the security of the premises or part of it.

(3) An increase based on inflation under subsection (1) (c) shall be based on the percentage change from year to year in the Consumer Price Index for prices of goods and services as

reported monthly by the Central Bureau of Statistics, averaged over the 12-month period that ends at the end of December of the previous calendar year, rounded to the first decimal point.

Decrease in services, etc **15.** (1) A landlord shall decrease the rent charged to a tenant if the landlord ceases to provide any prescribed service with respect to the tenant's occupancy of the rental premises.

(2) A decrease under subsection (1) must be proportionate to the decrease of the services.

Deemed acceptance where no notice of termination. **16.** A tenant who does not give a landlord notice of termination of a tenancy under section 19 after receiving notice of an intended rent increase under section 13 is deemed to have accepted whatever rent increase would be allowed under this Act.

12 – Month Rule. **17.** (1) A landlord who is lawfully entitled to increase the rent charged to a tenant for the premises may do so only if at least 12 months have elapsed,

(a) since the day of the last rent increase for that tenant in that rental premises, if there has been a previous increase; or

(b) Since the day the premises were first rented to that tenant.

Penalty for false statement in notice. **18.** If a notice served under the provisions of subsection (1) of section 13 contains any statement or representation which is false or misleading in any material respect, the landlord is, upon conviction guilty of an offence and liable to a fine not exceeding twenty thousand shillings.

Form of tenancy agreement **19.** (1) Parties to a tenancy agreement may adopt any form upon which they may mutually agree to relate.

(2) All tenancies shall be subject to the implied terms and conditions set out in the Schedule.

(2) The landlord in a tenancy agreement shall keep a record

stating the;

- (a) Particulars of the parties to a tenancy;
- (b) Premises comprised therein; and
- (c) Details of all payments of rent and of all repairs carried out to the premises.

(3) The landlord must provide to the tenant a copy of the record kept under this section.

(4) Whenever a landlord appoints an agent for the purposes of effecting transactions relating to a tenancy, the particulars and the scope of such agency must be in writing and must be made available to the tenant.

(5) Any agreement relating to a condition in a tenancy is void in so far as it purports to-

- (a) preclude the operation of this Act;
- (b) provide for the termination or surrender of the tenancy in the event of the tenant making an application to the tribunal under this Act;
- (c) provide for the imposition of any penalty liability on the tenant on making any such application; or
- (d) Terminate a tenancy without, notice to either party.

Termination of tenancy without reference to a tribunal.

20. (1) A landlord is entitled to terminate a tenancy without reference to the tribunal where—

- (a) the period of the tenancy has expired; or
- (b) an event upon which the tenancy is expressed to determine has happened.

(2) The termination of a tenancy under this section shall not bar the tenant from challenging the termination in the Tribunal.

(3) Where a tenant makes a reference to the tribunal under this section, the tribunal may upon determination;

- (a) award damages;

(b)reinststate the tenant; or

(c) award such other remedy as it deems appropriate if the termination was unjustified.

Notice of termination.

21. (1) Where this Act permits a landlord or tenant to give notice of termination, the notice must be in a prescribed form and must,

(a) Identify the premises for which the notice is given;

(b) State the date to which the tenancy is to terminate; and

(c) Be signed by the person giving the notice, or the person's agent.

(2) If the notice is given by a landlord, it shall also set out the reasons and details respecting the termination and inform the tenant that,

(a) if the tenant vacates the premises in accordance with the notice, the tenancy terminates on the date set out in section (1)(b);and

(b) if the tenant does not vacate the premises, the landlord may apply to the tribunal for an order terminating the tenancy and evicting the tenant;

Effect of payment.

22. Unless a landlord and tenant agree otherwise, the landlord does not waive a notice of termination, reinstate a tenancy or create a new tenancy,

(a) by notice of rent increase; or

(b) by accepting arrears of rent or compensation for the use or occupation of the premises after,

(i) the landlord or the tenant gives notice of termination of the tenancy;

(ii) the landlord and the tenant enter into an agreement to terminate the tenancy; or

(iii) the Tribunal makes an eviction or an order terminating the tenancy.

Where notice void.

23. (1) A notice of termination becomes void thirty (30) days after the termination date specified in the notice unless,

(a) the tenant vacates the premises before that time; or

(b) the landlord applies for an order terminating the tenancy and evicting the tenant before the time.

(2) Subsection (1) does not apply with respect to a notice based on a tenant's failure to pay rent.

Notice by tenant.

24. A tenant may terminate a tenancy at the end of a period of the tenancy or at the end of the term of a tenancy for a fixed term by giving notice of termination to the landlord in accordance with this Act.

Notice by landlord for use of premises.

25. (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the premises for occupation by,

(a) the landlord;

(b) the landlord's spouse; or

(c) a child or parent of the landlord or the landlord's spouse.

(2) The date for termination specified in the notice shall be at least sixty (60) days after the notice is given and shall be the day a period of the tenancy ends, or, where the tenancy is for a fixed term, the end of the term.

(3) A tenant who receives notice of termination under subsection (1) may, at any time before the date specified in the notice, terminate the tenancy, effective on a specified date earlier than the date set out in the landlord's notice.

(4) The date for termination specified in the tenant's notice shall be at least ten (10) days after the date the tenant's notice is given.

Notice, demolition, conversion or repairs.

26. (1) A landlord may give notice of termination of a tenancy if the landlord requires possession of the premises in order to,

(a) demolish it;

(b) convert it to use for a purpose other than change of user;

or

- (c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the premises.

(2) The date for termination specified in the notice shall be at least 120 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.

(3) A tenant who receives notice of termination of termination under subsection (1) may, at any time before the date specified in the notice, terminate the tenancy, effective on a specified date earlier than the date set out in the landlord's notice.

Additional grounds for termination notice. **27.** (1) A landlord may give a tenant notice of termination of their tenancy on any of the following grounds:

- (a) the tenant has persistently failed to pay rent on the date it becomes due and payable;
- (b) the tenant was an employee of an employer who provided the tenant with the premises during the tenant's employment and the employment has terminated;
- (c) the tenancy arose by virtue of or collateral to an agreement of purchase and sale of a proposed premise in good faith and the agreement of purchase and sale has been terminated.
- (d) If the tenant or another occupant of the premises commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rented premises;
- (e) If the tenant or a person whom the tenant permits in the premises willfully or negligently causes damage to the rental unit;
- (f) If the conduct of the tenant or a person permitted in the premises is such that it substantially interferes with reasonable enjoyment of the premises for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant;

- (g) If an act or omission of the tenant or a person permitted in the premises by the tenant seriously impairs or has seriously impaired the safety of any person, and the act or omission occurs in the rented premises;
- (h) If the number of persons occupying the rented premises on a continuing basis results in a contravention of health, safety or housing standards required by law;

(2) Except as provided for under this Act, the notice of termination under this section is void if the tenant rectifies the situation complained of within seven (7) days from the date when the notice was issued.

Notice of termination,
further contravention.

28. (1) A landlord may give a tenant notice of termination of the tenancy if,

- (a) a notice of termination under section 27(1) (a), (e), (f) and (h) has become void as a result of the tenant's compliance with the terms of the notice; and
- (b) within six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct or a situation arises that constitutes grounds for a notice of termination under section 25, other than an activity, conduct or a situation that is described in subsection (1) (d) and that involves an illegal act, trade, business or occupation described in clause.

(2) The notice under this section shall set out the date it is to be effective and that date shall not be earlier than the fourteenth (14th) day after the notice is given.

Assignment of a tenancy

29(1) Subject to subsections (2), (3) and (6), and with the consent of the landlord, a tenant may assign a rented premise to another person.

(2) If a tenant asks a landlord to consent to an assignment of a premises, the landlord may,

(a) consent to the assignment of the premises; or

(b) refuse consent to the assignment of the said premises.

(3) If a tenant asks a landlord to consent to the assignment of

the rented premises to a potential assignee, the landlord may,

(a) consent to the assignment of the said premises to the potential assignee; or

(b) refuse consent to the assignment.

(4) A tenant may give the landlord notice of termination under section 29 Within thirty days (30) days after the date of the request if;

(a) the tenant asks the landlord to consent to an assignment of the premises and the landlord refuses to consent; or

(b) the tenant asks the landlord to consent to an assignment and the landlord does not respond within seven days after the request is made;

(4) A landlord shall not unreasonably refuse consent to an assignment of the rented premises.

(5) If a tenant has assigned a rental premises to another person, the tenancy agreement continues on the same terms and conditions and,

(a) the assignee is liable to the landlord for any breach of the tenant's obligations and may enforce against the landlord any of the landlord's obligations under the tenancy agreement or this Act, if the breach or obligation relates to the period after the assignment, whether or not the breach or obligation also relate to the period before the assignment;

(b) the former tenant is liable to the landlord for any breach of the tenant's obligations and may enforce against the landlord any of the landlord's obligations under the tenancy agreement or this Act, if the breach or obligation relates to the period before the assignment;

(c) If the former tenant has started a proceeding under this Act before the assignment and the benefits or obligations of the new tenant may be affected, the new tenant may join or continue the proceeding.

Subletting

30(1) A tenant may sublet a rented premise to another person with the consent of the landlord.

(2) A landlord shall not unreasonably withhold consent to the subletting.

(3) If a tenant has sublet a premises to another person,

(a) the tenant remains entitled to the benefits, and is liable to the tenant for the breaches, of the tenant's obligations under the tenancy agreement or this Act during the sub tenancy; and

(b) the subtenant is entitled to the benefits, and is liable to the tenant for the breaches, of the subtenant's obligations under the subletting agreement or this Act during the sub tenancy.

Application for refusal to assign or sublet

31 (1) A tenant or former tenant may apply to the Tribunal for an order determining that the landlord has unreasonably withheld consent to the assignment or subletting.

(2) No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.

(3) If the Tribunal determines that a landlord has unlawfully withheld consent to an assignment or sublet in an application under subsection (1), the Tribunal may do one or more of the following:

(i) order that the assignment or subletting is authorized;

(i) where appropriate by order authorize another assignment or sublet proposed by the tenant;

(ii) order that the tenancy be terminated;

(iii) Order an abatement of the tenant's or former tenant's rent.

(2) The Tribunal may establish terms and conditions of the assignment or sublet.

(3) If an order is made under paragraph (i) or (ii) of subsection (3), the assignment or sublet shall have the same legal effect as if the landlord had consented to it.

- (4) If an order is made terminating the tenancy under paragraph (iii) of subsection (3), the Tribunal may order that the tenant be evicted, effective not earlier than the termination date specified in the order.

Alteration of terms and conditions in a tenancy.

32 (1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a tenancy, no term or condition in, or right or service enjoyed by the tenant of any such tenancy shall be altered, otherwise than in accordance with this section.

(2) A landlord who wishes to alter any;

(a) term or condition in; or

(b) right or service enjoyed by the tenant;

under a tenancy to the detriment of the tenant, must give notice to the tenant in the prescribed form.

(3) A tenant who wishes to obtain a reassessment of the rent of a tenancy or the alteration of any term or condition in, or of any right or service enjoyed by the tenant under such a tenancy, must give notice in that behalf to the landlord in the prescribed form.

(4) Except as may be provided for under this Act, no tenancy notice shall take effect until such date, not being less than;

(a) thirty (30) days in the case of residential tenancies; and

(b) sixty (60) days in the case of business premises;

after receipt of the notice by the receiving party, as specified in the notice:

(5) Notwithstanding the provisions of subsection (4),

(i) where notice is given of the termination of a tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;

(ii) where the terms and conditions of a tenancy provide for a period of notice

exceeding the period provided for in this section, that period shall be substituted for the period provided for in this section, after the receipt of the tenancy notice;

- (iii) the parties to the tenancy may agree in writing to any lesser period of notice.

(6) A tenancy notice is not effective for any of the purposes of this Act unless it specifies the grounds upon which the requesting party seeks the termination, alteration or reassessment concerned and requires the receiving party to notify the requesting party in writing, within one month after the date of receipt of the notice, whether or not the receiving party agrees to comply with the notice.

(7) (1) A tenancy notice may be given to the receiving party –

(a) by delivering it to;

(i) the receiving party personally;

(ii) an adult member of the receiving party's Family who ordinarily resides there.; or

(iii) any servant residing or employed in the premises concerned; or

(iv) Affixing somewhere with permission of the Tribunal.

(b) By sending it by prepaid registered post to the receiving party's last known address.

(2) A notice delivered or sent in accordance to subsection (1) is deemed to have been given on the date on which it was so delivered, or on the date of the postal receipt given by a person receiving the letter from the postal authorities, as the case may be.

Reference to tribunal

33 (1) A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 32 that the receiving party does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a tribunal.

(2) where a reference has been made pursuant to subsection (1), the notice shall not have effect in the case of business premises until the Tribunal determines the reference;

(3) Notwithstanding the provisions of subsection (2) the Tribunal may, for sufficient reason and on such conditions as it may think fit, permit such a reference notwithstanding that the receiving party has not complied with any of the requirements of this section.

(4) A tribunal to which a reference is made shall, within seven days after the receipt thereof, give notice of such reference to the requesting party concerned.

(5) A tribunal shall determine a reference made to it within six months of receipt of the reference unless special circumstances to be stated in writing by the tribunal necessitate a longer period.

Decision of a Tribunal

34 (1) Upon a reference, a tribunal may, after such inquiry as may be required by or under this Act, or as it deems necessary-

(a) approve the terms of the tenancy notice concerned, either in its entirety or subject to such amendment or alteration as the Tribunal thinks just having regard to all the circumstances of the case; or

(b) order that the tenancy notice shall be of no effect; and in either case make such further or other order as it thinks appropriate.

(2) Without prejudice to the generality of this section, the Tribunal may, upon any reference-

(a) determine or vary the rent to be payable in respect of the tenancy, having regard to its terms and to the rent at which the premises concerned might reasonably be expected to be let in the open market, and disregarding-

(i) any effect on rent of the fact that the tenant has, or the tenant's predecessors in title have, been in occupation of the premises;

(ii) any goodwill attached to the premises by reason of

the carrying on in the premises of the trade, business or occupation of the tenant or any such predecessor;

(iii) any effect on rent of any improvement carried out by the tenant or any predecessor otherwise than in pursuance of an obligation to the immediate landlord;

(b) Terminate or vary any of the terms or conditions of the tenancy, or any of the rights or services enjoyed by the tenant, upon such conditions, if any, as it deems appropriate.

(3) Where the Tribunal has made a determination upon a reference, no further tenancy notice shall be given in respect of the premises concerned, which is based on any of the matters affected by the determination-

(a) in the case of an assessment of rent, until after the expiration of two years in the case of business premises and one year in the case of residential premises; or

(b) in any other case, until after the expiration of twelve months, after the date of the determination, unless the Tribunal, at the time of the determination, specifies some shorter period.

Effect of notice where tenant fails to refer to tribunal

35 Where a landlord has served a notice on a tenant under section 20 and the tenant fails to;

(a) notify the landlord within the appropriate time of the tenant's unwillingness to comply with such notice, or

(b) refer the matter to a Tribunal,

then, subject to section 6 of this Act, such notice shall have effect from the date specified in the notice to terminate the tenancy, or terminate or alter the terms and conditions, thereof or the rights or services enjoyed thereunder.

Compensation for misrepresentation.

36 Where the Tribunal makes any order in respect of a tenancy under this Act and it is subsequently made to appear to the tribunal that it was induced to make the order by the misrepresentation or the concealment of material facts by either party, the tribunal may order the offending party to pay to the other party such sum as appears sufficient as compensation for the damage or loss suffered by such other party as a result of

such order.

Recovery of certain sums
paid on account of rent.

37 (1) Where any sum has been paid on account of any rent, being a sum which is, under this Act, irrecoverable by the landlord, the sum so paid shall be recoverable from the landlord who received payment, or from the landlord's legal or personal representative, by the tenant by whom it was paid, and any such sum, and any other sum which under the provisions of this Act is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant from any rent payable by the tenant to the landlord.

(2) If-

(a) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrears in respect of any sum which under this Act is irrecoverable; or

(b) where an entry referred to in paragraph (a) has been made by or on behalf of any landlord, the landlord on being requested by or on behalf of the tenant so to do refuses or neglects to cause the entry to be deleted within seven days,

that person or landlord commits an offence and is liable to a fine not exceeding ten thousands shillings unless that person or landlord proves that at the time of the making of the entry or the neglect or refusal to cause it to be deleted the landlord had a bona fide claim that the sum was recoverable.

(3) Any sum paid by a tenant which under subsection (1) is recoverable by the tenant shall be recoverable at any time within two years from the date of its payment.

(4) Nothing in this section shall revive any claim which was barred by limitation at the commencement of this Act.

Statement to be supplied as
to rent.

38 (1) A landlord of any premises must, on being requested in writing by the tribunal or the tenant of the premises, supply to the tribunal or tenant a statement in writing as to the amount of the standard rent of the premises;

(2) A landlord who without reasonable excuse fails to comply

with a request under subsection (1) within fourteen days (14), or supplies a statement which is false in any material particular, is guilty of an offence and liable to a fine not exceeding one month's rent of the premises.

(3) Subsection (1) shall apply only in cases where the premises were on the 1st January, 1981, let or where the standard rent has been determined by the tribunal.

(4) In subsection (1), "landlord" includes an agent, clerk or other person employed by the landlord, and if any such agent, clerk or other person fails to supply the tribunal or the tenant with a statement in writing as to the amount of the rent of the premises in accordance with this section the landlord shall be answerable for that omission, and the landlord and the agent, clerk or other person shall each be guilty of the offence created by subsection (1).

Record of the payment of rent.

39.(1) Every landlord or his agent must keep a rent book for the premises, in such form as the Minister may approve, and must provide each tenant with a copy.

(2) The rent book must contain;

(a) details of the parties to the tenancy

(b) the rented premises,

(c) the rent payable, and;

(c) a record of all payments of rent made.

(3) The landlord or his agent shall sign each entry in the rent book.

(4) A landlord who contravenes the provisions of this section commits an offence and is liable upon conviction to a fine not exceeding one month's rent of the rented premises.

Removal of furniture by the landlord.

40(1) Subject to any agreement between the parties to a tenancy, where a landlord of any furnished premises wishes to remove the furniture or soft furnishings, or any of them, with which the premises were let, the landlord must apply to the tribunal for permission to do so.

(2) Upon any application being made under subsection (1), the tribunal may;

(a) grant the application upon such terms and subject to such conditions as the tribunal may consider reasonable, or

(b) refuse the application.

(3) Where an application under subsection (1) has been granted and the furniture or the soft furnishings or any part thereof with which such premises were let is removed by the landlord, the rent of the premises shall be reduced-

(a) if the whole of the furniture or the soft furnishings or of both (as the case may be) are removed, by the percentage or by the respective percentages of the value thereof which was or were added to the rent;

(b) if part only of the furniture or the soft furnishings or of both (as the case may be) is removed, by such proportion as the tribunal may think reasonable of the percentage or of the respective percentages of the value thereof as was added to the rent.

(4) In this section, "soft furnishings" includes linen, cutlery, kitchen utensils, glassware and crockery.

Penalty for depriving
tenant of service.

41 (1) No landlord shall, except with the prior consent of the tribunal, and no person other than a landlord shall without lawful authority, do any act whereby-

(a) any tenant is or may be, either directly or indirectly, deprived, or

(b) any other person is or will be enabled, either directly or indirectly, to deprive any tenant of any water, light, conservancy, sweeper or other service.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding six months, or to both such fine and imprisonment.

Conditions of statutory tenancy

42(1) A tenant who, under the provisions of this Act, retains possession of any premises shall, so long as the tenant retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as they are consistent with this Act, and shall be entitled to give up possession of the premises only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, then, notwithstanding any provision to the contrary in any law in force, on giving not less than one month's notice:

(2) Notwithstanding the provisions of subsection (1) and anything in the contract of tenancy, a landlord who obtains an order for the recovery of possession of any premises or for the ejection of a tenant retaining possession shall not be required to give any notice to quit to the tenant.

(3) A tenant retaining possession shall not, as a condition of giving up possession, ask for or receive payment of any sum, or any other consideration, from the landlord or any other person; and a tenant who asks or receives any such sum or consideration commits an offence and is liable to a fine not exceeding one month's rent of the premises, and the court by which the tenant is convicted may order the payment or the value of the consideration to be returned to the person by whom it was given, and any such order shall be in lieu of any other method of recovery.

(3) Where the interest of a tenant of any premises is determined, either as the result of an order for possession or ejection or for any other reason, any subtenant to whom the premises or any part thereof have been lawfully sublet shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as those on which the subtenant would have held from the tenant if the tenancy had continued.

Notification of estimate of market cost of construction or market value of construction.

43 Where, for the purpose of determining fair rent, an estimate of the cost of construction or market value has been made by order of the tribunal, the tribunal shall send written notification to the landlord and the tenant, or their representatives, that the details of the estimate are available for their information and that before the fair rent is determined any such party or the party's representative may appear before the tribunal on a date to be specified in the notification and object to the estimate.

- Repairs
- 44** (1) In the absence of any provision to the contrary in the tenancy agreement, for the purposes of this Act it is deemed to be the obligation of the;
- (a) landlord of any premises to maintain and keep the premises in a state of good structural repair and in a condition suitable for human habitation; and
- (b) tenant of any premises, other than a tenement house, to maintain the premises in the same state as that in which the premises were at the commencement of the tenancy, fair wear and tear, damage arising from irresistible force and structural repairs for which the landlord is liable excepted.
- (2) Subject to subsection (1) the Tribunal may order either party to carry out the repairs at the cost of the party in default.

EVICITION ORDERS

- Effective date of Order
- 45** (1) If a notice of termination of tenancy has been given and the landlord has subsequently applied to the tribunal for an order evicting the tenant, the order of the Tribunal evicting the tenant may not be effective earlier than the date of termination setout in the notice.
- Expiry date of order
- 46(1)** An order of the Tribunal evicting a person from premises expires six months after the day on which the order takes effect if it is not executed within those six months.
- (2) The Tribunal may, upon application by the Landlord, extend an order under subsection (1) if it is not executed within six months.
- Power of Tribunal on Eviction
- 47 (1)** Upon application for an order evicting a tenant, the Tribunal may, despite any other provision of this Act or the tenancy agreement,
- (a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to **grant the order**; or
- (b) order that the enforcement of the eviction order be postponed for a period of time

(2) Without restricting the generality of subsection (1), the Tribunal shall refuse to grant the application where it is satisfied that,

(a) the landlord is in serious breach of the landlord's obligation under this Act or of any material covenant in the tenancy agreement;

(b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards;

(c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights;

(d) the reason for the application being brought is that the rented premises is occupied by children and the occupation by the children does not constitute overcrowding;

(f) the reason for the application being brought is that the tenant is a member of a tenant's association or is attempting to organize such an association; or

(g) any other reason that the Tribunal may consider to be justifiable in the circumstances.

Expedited eviction order

48 Subject to section 45(1) (b), the Tribunal shall, in an order made under section 47 based on a notice given under section 27(d) involving an illegal act, trade, business or occupation, or based on a notice given under section 27 (e) or (g) request the enforcement of the order be expedited.

PART VI – MISCELLANEOUS

Penalty for subjecting tenant to annoyance

49A landlord and any agent or servant of a landlord who –

(a) evicts a tenant without the authority of a tribunal; or

(b) willfully subjects a tenant to any annoyance

with the intention of inducing or compelling the tenant to vacate the premises or to pay, directly

or indirectly, a higher rent for the premises;

commits an offence and is liable to a fine not exceeding two months' rent of the premises or to imprisonment for a term not exceeding six months, or to both.

Enforcement of orders

50 (1) A Tribunal shall enforce its own decrees and execute its own orders in the same manner as a court.

(2) A copy of any determination or order of a tribunal shall be certified by the Chairperson of the tribunal or by public officer authorized by the minister by notice in the Gazette, to certify such copies.

Service of documents

51 (1) Where any summons or document is required to be served upon any person under this Act, it shall be sufficiently served on that person if it is served personally or, if it cannot be served personally, as the Chairperson of the tribunal may direct.

(2) Subject to subsection (1), the Civil Procedure Rules on service may apply.

Compensation in case of frivolous or vexatious applications

52 If, on the dismissal of any application, the tribunal is of opinion that the application was frivolous or vexatious, the tribunal may order the applicant to pay to any other party to the application a reasonable sum as compensation for the trouble and expense to which that party may have been put by reason of the application.

Right of entry

53 (1) The tribunal, and any person authorized by the tribunal in writing in that behalf, may, for the purpose of carrying out its duties and functions under this Act, at all reasonable times between 8.00 a.m and 6.00 p.m., enter upon and inspect any premises.

(2) Any person who knowingly obstructs or hinders any authorized officer in the exercise of the authorized officer's powers or the performance of duties under this section commits an offence.

Prosecution of offences

54 Criminal proceedings under this Act may without prejudice to any other power in that behalf, be instituted by an inspector or other officer of the tribunal and where proceedings are

instituted or brought in a magistrate's court, any such officer may prosecute or conduct the proceedings.

Liability of tribunal or officers thereof

55 (1) A member or officer of a tribunal shall be free from civil liability for anything done or said in the capacity of such member or officer.

(2) If any proceedings of a civil nature are brought against a tribunal, or against any member or officer of a tribunal in that behalf, the tribunal or that member or officer shall be represented by the Attorney-General for the purpose of those proceedings, and any costs and expenses incurred in those proceedings shall be borne by the Government.

Distress for rent

56 No landlord shall, without legal process, seize a tenant's property for default in the payment of rent or for the breach of any other obligation of the tenant.

Death of tenant

57(1) If a tenant of any premises dies and there are no other tenants of the said premises, the tenancy shall be deemed to be terminated sixty (60) days after the death of the tenant.

(2) The landlord shall, until the tenancy is terminated under subsection (1),

(a) preserve any property of a tenant who has died that is in the rented premises other than property that is unsafe or unhygienic; and

(b) Afford the executor or administrator of the tenant's estate, or if there is no executor or administrator, a member of the tenant's family reasonable access to the rented premises for the purpose of removing the tenant's property.

(3) Termination under this section shall be in accordance to section 48 of this Act.

Abandonment

58 (1) If a tenant of a rental premises abandons the premises and there are no other tenants of the said premises, the tenancy shall be deemed to be terminated sixty (60) days after the date of abandonment by the tenant.

(2) The landlord shall, until the tenancy is terminated under

subsection (1),

(a) preserve any property of a tenant that is in the rented premises other than property that is unsafe or unhygienic; and

(b) Afford the tenant, or a member of the tenant's family reasonable access to the rented premises for the purpose of removing the tenant's property.

(3) Subsection 2(b) shall apply only where the tenant or his representative has paid the rent arrears that may be due.

(4) For the purposes of this Act, a tenant has not abandoned a rented premise if the tenant is not in arrears of rent.

Landlord may dispose
property

59(1) where a tenant is dead or has abandoned the premises under sections 57 and 58 the landlord may upon application to the tribunal, sell or otherwise dispose of the tenant's property that is in a rented premises,

(a) if the property is unsafe or unhygienic, immediately; and

(b) Otherwise after the tenancy is terminated under sections 58 and 59.

(2) Subject to subsections (3) and (4), a landlord is not liable to any person for selling or otherwise disposing of the property of a tenant in accordance with subsection (1).

(3) If, within six months after the tenant's death, the executor or administrator of the estate of the tenant or, if there is no executor or administrator, a member of the tenant's family claims any property of the tenant that the landlord has sold, the landlord shall deposit with the Tribunal the amount by which the proceeds of sale exceed the sum of,

(a) the landlord's reasonable out-of-pocket expenses for moving, storing, securing or selling the property; and

(b) Any arrears of rent.

Government and local
authority premises.

60 This Act shall bind the Government, local Authorities and National Housing Cooperation.

- Power of exemption. **61**The Minister may by notice in the Gazette exempt certain categories of premises from all or any of the provisions of this Act.
- Regulations **62.** (1) The Minister may regulations for giving better effect to provisions of this Act.
- (2) Without prejudice to the generality of the powers conferred by subsection (1), regulations under that subsection may-
- (a) provide for the procedure of tribunals;
- (b) prescribe the circumstances and manner in which a tenant may, notwithstanding any contractual obligation, elect to pay and pay to the tribunal rent due to the tenant's landlord;
- (c) prescribe the manner in which rent so paid may be claimed from the tribunal by the landlord or, if not so claimed, may be disposed of by the tribunal, and the amount of commission which the tribunal may retain out of rent so paid to it; and
- (c) Prescribing the fees to be paid in respect of any matter or thing to be done under this Act.
- Repeal of Caps 293, 296, and Cap 301 **63.** The Distress for Rent Act, Rent Restriction Act; and the Landlord and Tenant (Shops, hotels and catering Establishments) Act are repealed.
- Transitional and savings **64.** Where any proceedings of this Act have been filed in the Tribunal at the commencement of this Act, the proceedings shall continue until the dispute has been settled and orders made by the tribunal in accordance with this Act.

**FIRST SCHEDULE (S.4) PROVISIONS AS TO THE
MEETINGS AND PROCEDURE OF THE TRIBUNAL**

1. Any member of the Tribunal may, at any time, by notice in writing to the Minister, resign his office.
2. (1) If a member of the Tribunal becomes is appointed to the service of the Government, his office shall become vacant.
(2) The Chairperson or a member of the Tribunal may be removed from office by the Minister if he is –
 - (a) unable to discharge the function of his office by reason of mental or physical infirmity;
 - (b) an undischarged bankrupt;
 - (c) convicted of an offence involving fraud or dishonesty; or
 - (d) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings.
- (3) In the event of the inability of any member of the Tribunal to attend for the purpose of any particular proceedings, the Minister may appoint another person to be a member of the Tribunal for die remainder of the term of the member whose vacancy caused the appointment.
3. If any member of the Tribunal has any interest in any particular proceedings before the Tribunal he shall so inform the Minister and the Minister may, after considering that interest, appoint another member in his place for the purpose of the particular proceedings.
4. Where the office of any member becomes vacant, whether by death or otherwise, the Minister may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy cause the appointment,
5. In the event of the inability of any member of the Tribunal Temporary members to attend for the purpose of any particular proceedings, the Minister may appoint a temporary member for the purposes of those Proceedings.

6. The decision of the Tribunal shall be that of the majority and shall be signed by the members thereof agreeing thereto.

7. No proceedings of the Tribunal shall be invalid by reason only of a vacancy among the members.

8. The Tribunal shall sit at such place as it may consider most convenient having regard to all the circumstances of the particular proceedings.

10. Subject to the provisions of this Schedule, the Tribunal shall have power to make rules governing its procedure-

11. A document purporting to be a copy of any order of the Tribunal, and certified by the Chairperson to be a true copy thereof, shall in any legal proceedings be prima facie evidence of the order.

MEMORANDUM OF OBJECT AND REASONS

The principal object of this Bill is to repeal the Rent Restriction Act (Cap 296), Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301 and the Distress for Rent Act (Cap 293). The Bill seeks to introduce a Legal Framework which balances the interests of landlords and tenants in free a market economy by ensuring that landlords earn reasonable income from their investments in housing and also protecting the tenant from exploitation.

PART I of provides for preliminary matters and more important the application of the Act.

PART II provides for the establishment, composition and jurisdiction of the Landlord and Tenant tribunal. It also provides for appeals from tribunals.

PART III provides for general matters relating to tenancies including permitted increase of rent, notice of termination, eviction orders and the right to assign or sublet.

PART IV contains miscellaneous provisions. The part provides for service of documents, enforcement of orders, prosecution of offences, distress for rent, disposal of property by landlord upon death or abandonment of premises by tenant and power to make rules and regulations. The part also provides that the Act binds the government.

The enactment of this Bill will occasion additional expenditure of public funds.

Dated the 17th June, 2007.