

**THE LANDLORD AND TENANT (SHOPS, HOTELS
AND CATERING ESTABLISHMENTS) ACT, 1965**

No. 13 of 1965

Date of Assent: 4th June 1965

Date of Commencement: By Notice

ARRANGEMENT OF SECTIONS

Section

- 1—Short title, commencement and application.
 - 2—Interpretation.
 - 3—Form of tenancy and rent books.
 - 4—Notice of termination, or alteration of terms of tenancy.
 - 5—Effect on sub-tenant and sub-tenancies.
 - 6—Reference by tenant to Tribunal.
 - 7—Grounds on which landlord may seek to terminate tenancy.
 - 8—Decision of Tribunal and effect thereof.
 - 9—Reference to Tribunal in respect of alteration in terms and conditions of tenancy, etc.
 - 10—Effect of notice where tenant fails to refer to Tribunal, etc.
 - 11—Establishment of Tribunals.
 - 12—Powers of a Tribunal.
 - 13—Compensation for misrepresentation.
 - 14—Filing of determination or order in court.
 - 15—Appeal to courts.
 - 16—Regulations and rules.
 - 17—Act not to apply to Government or a local authority.
- SCHEDULE—Terms and conditions to be implied in tenancies.

An Act of Parliament to make provision with respect to certain premises for the protection of tenants of such premises from eviction or from exploitation and for matters connected therewith and incidental thereto

ENACTED by the Parliament of Kenya, as follows:—

1. (1) This Act may be cited as the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, 1965, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint:

Short title,
commencement
and application.

Provided that the Minister may appoint different dates for different areas of Kenya, and may by notice in the Gazette exempt any area of Kenya from the operation of this Act.

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(2) This Act shall apply to any tenancy of a shop, hotel or catering establishment, in any area in which this Act is in operation, which was subsisting on such date whether before or after the date of coming into operation of this Act in such area as the Minister shall, in the notice by which the Act is brought into operation in such area, appoint, or which is created subsequently, and notwithstanding any provision in any other written law requiring a tenancy to be registered, evidence may be given of such tenancy whether registered or not.

Interpretation.

2. For the purposes of this Act, unless the context otherwise requires—

“catering establishment” means any premises on which is carried out the business of supplying food or drink for consumption on such premises, by persons other than those who reside and are boarded on such premises;

“hotel” means any premises in which accommodation or accommodation and meals are supplied or are available for supply to five or more adult persons in exchange for money or other valuable consideration;

“landlord” in relation to a tenancy, means the person for the time being entitled, as between himself and the tenant, to the rents and profits of the premises payable under the terms of the tenancy;

“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;

“service charge” means a charge for any services rendered;

“services” in respect of any tenancy means the use of water, light or power, conservancy, sewerage facilities, sweeper, watchman, telephone, or other amenity or facility available to the tenant, save and except the supplying of meals, and the right of access to any place or accommodation accorded to the tenant by reason of his occupation of the premises comprised in the tenancy;

“shop” means premises occupied wholly or mainly for the purposes of a retail or wholesale trade or business or for the purpose of rendering services for money or money’s worth;

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“tenancy” means a tenancy for a period not exceeding five years created by a lease or underlease, by an agreement for or assignment of a lease or underlease, by a tenancy agreement or by operation of law, and includes a sub-tenancy but does not include any relationship between a mortgagor and mortgagee as such;

“tenant” in relation to a tenancy means the person for the time being entitled to the tenancy whether or not he is in occupation of the holding, and includes a sub-tenant;

“Tribunal” means a Tribunal appointed in accordance with the provisions of section 11 of this Act.

3. (1) A tenancy may be a written tenancy or an unwritten tenancy, and if it is a written tenancy it may be in such form as the Minister may, by regulations made under this Act, prescribe:

Form of
tenancy and
rent books.

Provided that nothing in this section shall be deemed to prevent the parties to a written tenancy from adopting any form which they may jointly accept.

(2) The terms and conditions specified in the Schedule to this Act shall be implied in every tenancy other than a written tenancy such as that referred to in the proviso to subsection (1) of this section.

(3) There shall be kept by the landlord in respect of every tenancy a rent book which shall be in such form as the Minister may, by regulations made under this Act prescribe, of which he shall provide a copy for the tenant and in which shall be maintained a record signed, where therein provided, by the landlord of the particulars of the parties to the tenancy, the premises comprised in the tenancy, the details of all payments of rent, and the details of all repairs carried out to the premises.

(4) Any landlord who fails to keep a rent book in accordance with the provisions of subsection (3) of this section or who fails to supply a copy thereof to his tenant, or who fails to enter or cause to be entered therein any particulars required to be entered therein, or who knowingly or wilfully makes or causes to be made a false or incorrect entry therein, or who fails to sign any entry which he is required to sign, shall be guilty of an offence and shall be liable to imprisonment for a period not exceeding two months or to a fine not exceeding two thousand shillings or to both such imprisonment and such fine.

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(5) Any agreement relating to a tenancy, or any condition in a tenancy, shall be void in so far as it purports to preclude the operation of this Act, or provides for the termination or the surrender of the tenancy in the event of the tenant making an application to a Tribunal under this Act, or provides for the imposition of any penalty or disability on the tenant in such event.

Notice of
termination, or
alteration of
terms of
tenancy.

4. (1) A landlord wishing to terminate a tenancy, or wishing to terminate or alter the terms and conditions of a tenancy or the rights or services enjoyed by a tenant under a tenancy shall give notice thereof to the tenant in such form as the Minister may, by regulations made under this Act prescribe, and notwithstanding anything contained in any written law or in the terms and conditions of such tenancy no tenancy shall terminate or be terminated by the landlord, and the terms and conditions of a tenancy or the rights or services enjoyed by the tenant under a tenancy shall not terminate or be terminated or altered by the landlord, unless notice is given to the tenant in accordance with the provisions of this section or unless the parties to the tenancy so agree in writing.

(2) A notice under the provisions of subsection (1) of this section shall not take effect until a date to be specified in such notice which shall not be less than two months after the date of service of such notice:

Provided that—

- (a) the date of termination specified in a notice of termination of a tenancy shall not be earlier than the earliest date on which, but for the provisions of this Act the tenancy would have terminated, or could have been brought to an end by notice to quit given by the landlord on the date of service of the notice given under this section;
- (b) the period of notice given under this section shall not be less than the period of notice which may be required under the terms of the tenancy; and
- (c) the parties to the tenancy may agree in writing to a lesser period of notice.

(3) A notice under this section shall be of no effect unless it specifies the grounds on which the landlord seeks such termination or alteration, and it requires the tenant within one month after the giving of such notice, to notify

the landlord in writing whether or not the tenant agrees to give up possession of the premises comprised in the tenancy, or agrees to the proposed termination or alteration of the terms and conditions of the tenancy or the rights or services enjoyed by him under the tenancy as the case may be.

(4) A notice to a tenant required to be given under this section, may be served by delivering it to him personally, or to an adult member of his family, or to his servant residing with him, or to his employer, or by sending it by prepaid registered post to his last known address, and any such notice shall be deemed to have been served on the tenant on the date on which it was delivered as provided in this subsection or on the date on which the registered letter would in the ordinary course of post have been delivered.

5. (1) Where a landlord is himself a tenant, the termination of the landlord's tenancy shall not of itself terminate a sub-tenancy, but for the purposes of this Act the person entitled to the interest in reversion expectant on the termination of the landlord's tenancy shall be deemed to be the landlord of the sub-tenancy upon the terms and conditions thereof and subject to the provisions of this Act.

Effect on
sub-tenant and
sub-tenancies.

(2) Where a landlord serves a notice under section 4 of this Act upon a tenant he may also at the same time serve a similar notice upon any other person to whom the tenant has sub-let the whole or part of the premises comprising the tenancy and in any such event the provisions of this Act shall apply to the sub-tenant and the sub-tenancy as if he were the tenant of the landlord.

(3) Where a landlord, in accordance with the provisions of subsection (2) of this section serves notices on both the tenant and the sub-tenant, the Tribunal may consolidate any references made to it by the tenant and the sub-tenant, and may hear them simultaneously and may make such orders concerning the tenant and the sub-tenant as may be necessary.

6. (1) A tenant who wishes to oppose a notice of termination or alteration served on him by the landlord under the provisions of section 4 of this Act, and who has given notice in writing to the landlord of his unwillingness to give up possession of the premises comprised in the tenancy, or to agree to the proposed termination or alteration in the terms and conditions of the tenancy or the rights or services enjoyed by him under the tenancy in accordance with the

Reference by
tenant to
Tribunal.

provisions of section 4 (3) of this Act, may, before the period of notice of such termination or alteration has expired refer the matter to a Tribunal, and shall give notice of such reference in writing to the landlord, whereupon such notice of termination or alteration as aforesaid shall be of no effect until, and subject to, the determination of the matter by such Tribunal.

(2) A Tribunal may, for sufficient reason and on such conditions as it thinks fit, permit a tenant to refer a matter to it under subsection (1) of this section, notwithstanding that the period of notice has expired, or that the tenant has not given notice in writing to the landlord in accordance with the provisions of section 4 (3) of this Act.

7. (1) Where a landlord has in accordance with the provisions of section 4 of this Act served a notice of termination of a tenancy on the tenant, the grounds on which the landlord seeks to terminate such tenancy may be such of the following grounds as are stated in the aforesaid notice—

- (a) where, under the tenancy under which the tenant holds for the time being, the tenant has any obligations in respect of the repair and maintenance of the premises comprised in such tenancy, that the tenancy ought to be terminated in view of the state of repair of the premises, being a state resulting from the tenant's failure to comply with the said obligations;
- (b) that the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable;
- (c) that the tenant has committed other substantial breaches of his obligations under the tenancy, or for any other reason connected with the tenant's use or management of the premises comprised in the tenancy;
- (d) that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be

Grounds on which landlord may seek to terminate tenancy.

available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his retail trade or business or enterprise and to the situation and extent of, and facilities afforded by, the premises comprised in the tenancy;

- (e) that the tenancy was created by the subletting of part only of the premises comprised in a superior tenancy of which the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy and that the aggregate of the rents reasonably obtainable on separate lettings of such premises in parts would be substantially less than the rent reasonably obtainable on a letting of such premises as a whole, and that where on the termination of the tenancy the landlord requires possession of such premises as a whole for the purpose of letting or otherwise disposing of the same as a whole;
- (f) that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;
- (g) subject as hereinafter provided, that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence.

(2) The landlord shall not be entitled to oppose a reference to a Tribunal on the ground specified in subsection (1) (g) of this section if the interest of the landlord, or an interest which has merged in that interest and but for the merger would be the interest of the landlord, was purchased or created after the beginning of the period of five years which ends with the termination of the tenancy, and at all times since the purchase or creation thereof the premises comprised in the tenancy has been occupied wholly or mainly for the purposes of a retail trade or business, or a hotel, or catering establishment.

(3) Notwithstanding anything hitherto contained in this section a Tribunal may, in its discretion, permit a landlord to oppose a reference to it under section 5 of this Act in relation to a notice of termination of a tenancy, on any grounds, other than those set out in subsection (1) of this section, which have been specified by the landlord in such notice of termination, and if the landlord establishes such grounds to the satisfaction of the Tribunal, the Tribunal may make such order as it deems appropriate.

8. (1) Where a reference is made to a Tribunal in relation to a notice of termination of a tenancy, the Tribunal may, after such inquiry as may be required under this Act or any rules made thereunder, or as it deems necessary, approve the termination of the tenancy upon such terms as it considers appropriate or may refuse the termination of the tenancy in which event the notice of termination of the tenancy by the landlord shall be of no effect, or may make such other order as it deems appropriate.

(2) Where, as a result of a reference to it, a Tribunal has refused the termination of a tenancy the landlord shall not serve any other notice of termination of such tenancy on the tenant, on the same grounds as were specified in the notice in respect of which the reference was made, for a period of one year from the date of such refusal by the Tribunal, unless the Tribunal at the time of such refusal specifies a shorter period.

9. Where a reference is made to a Tribunal in respect of a notice of termination or alteration of the terms and conditions of a tenancy, or of the rights or services enjoyed by the tenant under a tenancy, the Tribunal may after such inquiry as may be required by or under this Act, or as it deems necessary, approve the termination or alteration sought by the landlord, or may make such order as it deems appropriate, and without prejudice to the generality of the foregoing may—

(a) determine or vary the rent to be payable in respect of the tenancy, having regard to the terms of the tenancy and the rent for which the premises comprised in the tenancy 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 his predecessors in title have been in occupation of the premises;

Decision of
Tribunal and
effect thereof.

Reference to
Tribunal in
respect of
alteration in
terms and
conditions of
tenancy, etc.

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- (ii) any goodwill attached to the premises by reason of the carrying on thereat of the trade, business or enterprise of the tenant (whether by himself or by a predecessor of his in that trade, business or enterprise; and
 - (iii) any effect on rent of any improvement carried out by the tenant or a predecessor in title of his otherwise than in pursuance of an obligation to his immediate landlord; and
- (b) terminate or vary any of the terms or conditions of the tenancy or any of the rights or services enjoyed by the tenant under the tenancy, upon such conditions as it deems appropriate.

10. Where a landlord has served a notice in accordance with the requirements of section 4 of this Act, on a tenant, and the tenant fails within the appropriate time to notify the landlord of his unwillingness to comply with such notice, or fails to refer the matter to a Tribunal then subject to the provisions of section 6 (2) of this Act such notice shall have effect from the date therein specified to terminate the tenancy, or terminate or alter the terms and conditions thereof or the rights or services enjoyed thereunder, and may be enforced by a court of competent jurisdiction.

Effect of notice where tenant fails to refer to Tribunal, etc.

11. (1) A Tribunal shall consist of a person or persons appointed as such by the Minister, and shall exercise such jurisdiction as is conferred on it by or under this Act, over such area as shall be specified in such appointment.

Establishment of Tribunals.

(2) Persons other than public officers appointed under the provisions of subsection (1) of this section shall be paid such emoluments or allowances as the Minister shall determine.

12. (1) A Tribunal shall, in relation to its area of jurisdiction have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in addition to and without prejudice to the generality of the foregoing shall have power—

Powers of a Tribunal.

- (a) to determine whether or not any tenancy is a tenancy to which this Act applies;
- (b) to determine or vary the rent to be payable in respect of any tenancy, having regard to all the circumstances thereof;

- (c) to apportion the payment of rent payable under a tenancy among tenants sharing the occupation of the premises comprised in the tenancy;
- (d) where the rent chargeable in respect of any tenancy includes a payment by way of service charge, to fix the amount of such service charge;
- (e) to make orders, upon such terms and conditions, as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a tenant, being at any material time in occupation of the premises comprised in a tenancy;
- (f) for the purpose of enabling additional buildings to be erected, to make orders permitting landlords to excise vacant land out of premises of which, but for the provisions of this Act, the landlord could have recovered possession, where such a course is in the opinion of the Tribunal desirable in the public interest;
- (g) where the landlord fails to carry out any repairs for which he is liable—
 - (i) to have the required repairs carried out at the cost of the landlord and, if the landlord fails to pay the cost of such repairs, to recover the cost thereof by requiring the tenant to pay rent to the Tribunal for such period as may be required to defray the cost of such repairs, and so that the receipt of the Tribunal shall be a good discharge for any rent so paid;
 - (ii) to authorize the tenant to carry out the required repairs, and to deduct the cost of such repairs from the rent payable to the landlord;
- (h) to permit the levy of distress for rent;
- (i) to vary or rescind any order made by the Tribunal under the provisions of this Act;
- (j) to require landlords or tenants to disclose information or evidence with regard to rents, and terms of conditions of tenancies which it considers relevant, and to administer oaths and order discovery and production of documents in like manner as in proceedings before the Supreme Court;

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- (k) to award costs in respect of references made to it, which costs may be exemplary costs where the Tribunal is satisfied that a reference to it is frivolous or vexatious;
- (l) to award compensation for any loss incurred by a tenant on termination of a tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent;
- (m) to require a tenant or landlord to attend before the Tribunal at a time and place specified by it, and if such tenant or landlord fails to attend the Tribunal may investigate or determine the matter before it in the absence of such tenant or landlord;
- (n) to enter and inspect premises comprised in a tenancy in respect of which a reference has been made to the Tribunal.

(2) A Tribunal shall not have or exercise any jurisdiction in any criminal matter, or entertain any criminal proceedings for any offence whether under this Act or otherwise.

(3) A Tribunal may employ officers, valuers, inspectors, clerks and other staff for the better carrying out of the purposes of this Act:

Provided that where a Tribunal has deputed a valuer, inspector, officer, or other person to inspect or view any premises, any report made in that behalf shall be communicated to the landlord or tenant or both.

(4) In addition to any other powers specifically conferred on it by or under the provisions of this Act, a Tribunal may investigate any complaint relating to a tenancy made to it by the landlord or the tenant, and may make such order thereon as it deems fit.

(5) No matter or thing done by a Tribunal, or any officer, valuer or inspector or other person deputed by the Tribunal shall, if done bona fide in the execution or purported execution of the provisions of this Act or any subsidiary legislation made thereunder, subject such Tribunal, officer, valuer, inspector or other person to any action, liability, claim or demand whatsoever.

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Compensation
for mis-
representation.

13. Where a 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.

Filing of
determination
or order in
court.

14. (1) A duly certified copy of any determination or order of a Tribunal may be filed in a competent subordinate court of the first class, by any party to the proceedings before such Tribunal or by the Tribunal, and on such copy being filed and notice thereof being served on the Tribunal by the party filing the same such determination or order may, subject to any right of appeal conferred by or under this Act, be enforced as a decree of the court.

(2) The Tribunal shall, upon being served with a notice under subsection (1) of this section, or upon its own filing of such copy in the court, transmit to the court its record of the proceedings before it and the same shall be filed by the court along with the certified copy of the determination or order.

Appeal to
courts.

15. (1) Any party aggrieved by the determination or order of a Tribunal may within fourteen days appeal against the same to a competent subordinate court presided over by a Senior Resident Magistrate or a Resident Magistrate, notwithstanding that by reason of the amount of penalty, claim or otherwise the case would not, but for this provision be within the jurisdiction of such court.

(2) In hearing appeals in accordance with subsection (1) of this section the court shall have all the powers conferred on a Tribunal by or under this Act, in addition to any other powers conferred on it by or under any written law.

(3) An appeal shall lie from a decision of the court under this section to the High Court, on any question of law or mixed law and fact, but not otherwise.

(4) The procedure in and relating to appeals in civil matters from subordinate courts to the High Court shall govern appeals under this Act:

Provided that the decision of the High Court on any appeal under this Act shall be final and shall not be subject to further appeal.

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Regulations
and rules.

16. (1) The Minister may make regulations for the better carrying out of the provisions of this Act and without prejudice to the generality of the foregoing such regulations may prescribe—

- (a) the manner in which a Tribunal shall conduct its business;
- (b) the procedure in connexion with any reference to a Tribunal, or the determination of any matter by a Tribunal;
- (c) the matters which a Tribunal shall take into account in exercising its powers under this Act;
- (d) the fees which shall be payable in respect of any matter or thing to be done under this Act; and
- (e) the scale and taxation of costs and expenses of witnesses in proceedings before a Tribunal.

(2) The Chief Justice may make rules prescribing any procedure, fees or costs in any proceedings in the High Court or any other court, under this Act.

17. The provisions of this Act shall not apply to any tenancy of which the Government or the Organization or any local authority is a party, whether as landlord or as tenant or sub-tenant.

Act not to
apply to
Government
or a local
authority.

SCHEDULE

(s. 3)

TERMS AND CONDITIONS TO BE IMPLIED IN TENANCIES

(i) That the premises are fit for habitation and comply with the laws relating to health in all respects.

(ii) That where the premises are destroyed by fire, civil commotion, or accident, through no negligence on the part of the lessee, any liability to pay rent be suspended until the premises are again made fit and habitable.

(iii) The lessee shall have quiet enjoyment of premises provided that he complies with express or implied covenants.

(iv) The lessor shall not "derogate from his agreement" by using adjoining land or premises in a way which would render leased premises unfit for the purpose for which they were let.

(v) The lessor shall be responsible for all repairs to roofs, main walls, main drains, main electric wiring and structure, and shall be responsible for all necessary renewals to the premises.

(vi) The lessee shall be responsible for all internal repairs and decorations, fair wear and tear excepted.

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SCHEDULE—(Contd.)

(vii) the lessor shall be responsible for the repair, maintenance, cleaning and lighting of common parts where part of a building is let.

(viii) The lessee shall pay rent for the premises in advance.

(ix) The lessor shall pay all rates, taxes and similar outgoings, unless the lessee is responsible therefor under any written agreement.

(x) The lessee shall keep the fixtures and fittings in good and tenantable repair.

(xi) The lessee shall permit the lessor or his agent and his workmen to enter the premises and to examine or repair the same at all reasonable times after giving reasonable notice thereof.

(xii) The lessee shall not transfer, part with possession, or sublet the premises or any part thereof without the consent of the lessor, which consent shall not be unreasonably withheld.