

UNEDITED

The Landlord and Tenant Act

being

Chapter 160 of *The Revised Statutes of Saskatchewan, 1920*
(assented to November 10, 1920).

FOR HISTORICAL REFERENCE ONLY

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER 160

An Act respecting the Law of Landlord and Tenant

SHORT TITLE

Short title

- 1 This Act may be cited as *The Landlord and Tenant Act*.

1918–19, c.79, s.1; R.S.S 1920, c.160, s.1.

INTERPRETATION

Interpretation

- 2 In this Act, unless the context otherwise requires, the expression:

“Crops”

1. “**Crops**” includes all sorts of grain, grass, hay, hops, fruits, pulse and other products of the soil;

“Landlord”

2. “**Landlord**” means lessor, owner, the person giving or permitting the occupation of the premises in question, and includes his and their assigns and legal representatives, and in Part IV also includes the person entitled to the possession of the premises;

“Standing crops”

3. “**Standing crops**” means crops standing or growing on the demised premises;

“Tenant”

4. “**Tenant**” means and includes lessee, occupant, sub-tenant, under tenant, and his or their assigns and legal representatives.

1918–19, c.79, s.2; R.S.S 1920, c.160, s.2.

PART I

Covenants and Conditions

COVENANTS RUNNING WITH REVERSION, ETC.

Remedies available to assignee of reversion/32 Hen. VIII, c.34, s.1

3 All persons being grantees or assignees of land under lease and their executors, administrators and assigns, shall have and enjoy like advantage against the lessees, their executors, administrators and assigns, by entry for nonpayment of the rent or for doing of waste or other forfeiture, and also shall have and enjoy all and every such like and the same advantage, benefit and remedies, by action, for the nonperformance of other conditions, covenants, or agreements, contained and expressed in the indentures of their leases, demises or grants against all and every of the said lessees, their executors, administrators and assigns, as the lessors or grantors themselves or their legal representatives might have had and enjoyed at any time or times.

1918–19, c.79, s.3; R.S.S 1920, c.160, s.3.

Lessee's covenant to run with reversion notwithstanding severance

4(1) Rent reserved by a lease and the benefit of every covenant or provision therein contained, having reference to the subject matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained shall be annexed and incident to and shall go with the reversionary estate in the land or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by any person from time to time entitled subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(2) In the case of rent reserved and the reversion having been severed, subsection (1) shall apply only where the rent has been legally apportioned.

1918–19, c.70, s.4; R.S.S 1920, c.160, s.4.

Action against assigns of grantors and lessors/Imp. Act, 44-45 Vic., c.41, s.10

5 All lessees and grantees of lands, tenements, rents or any other hereditaments for term of years, life or lives, their executors, administrators and assigns, shall and may have like action, advantage and remedy against all and every grantee or assignee of the reversion of the same lands, tenements and other hereditaments so let, or any parcel thereof, for any condition, covenant, or agreement, contained or expressed in the indentures of their leases, as the same lessees or any of them, might and should have had against their said lessors and grantors or their legal representatives.

1918–19, c.79, s.5; R.S.S 1920, c.160, s.5.

Lessor's covenants to run with reversion notwithstanding severance/Imp. Act, 44-45 Vic., c.41, s.11

6 The obligation of a covenant entered into by a lessor with reference to the subject matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and so far as the lessor has power to bind the person from time to time entitled to that reversionary estate, such obligation may be taken advantage of and enforced against any person so entitled.

1918-19, c.79, s.6; R.S.S 1920, c.160, s.6.

APPORTIONMENT OF CONDITION OF RE-ENTRY

Apportionment of conditions on severance

7(1) Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been, surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2) In the case of rent reserved and the reversion having been severed, subsection (1) shall apply only where the rent has been legally apportioned.

1918-19, c.79, s.7; R.S.S 1920, c.160, s.7.

MERGER, ETC., OR REVERSIONS

Effect of surrender or merger of reversion expectant on a lease in certain cases/Imp. Act, 8-9 Vic., c.106, s.9

8 Where the reversion expectant on a lease of land merges or is surrendered, the estate which for the time being confers as against the tenant under the lease the next vested expectant right to the land shall, to the extent of and for preserving such incidents to and obligations on the reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the lease.

1918-19, c.79, s.8; R.S.S 1920, c.160, s.8.

PART II

Leases

RIGHT OF RE-ENTRY

Right of re-entry on nonpayment of rent

9(1) In every lease, whether verbal or in writing and whenever made, unless it is otherwise agreed, there shall be deemed to be included an agreement that if the rent reserved, or any part thereof, shall remain unpaid for the space of two calendar months after any of the days or which the same ought to have been paid, although no formal demand thereof has been made, or in case default is made in the performance of any covenant or agreement on the part of the lessee, whether express or implied, and such default is continued for the space of two calendar months, it shall be lawful for the landlord at any time thereafter, into and upon the demised premises, or any part thereof in the name of the whole, to re-enter and the same to have again, repossess and enjoy as of his former estate.

Implied agreement for re-entry on conviction of tenant for keeping disorderly house

(2) In every such lease as aforesaid there shall be deemed to be included an agreement that if the tenant or any other person is convicted of keeping a disorderly house, within the meaning of *The Criminal Code*, on the demised premises, or any part thereof, it shall be lawful for the landlord at any time thereafter, into and upon the demised premises to re-enter and the same to have again, repossess and enjoy as of his former estate.

1918–19, c.79, s.9; R.S.S 1920, c.160, s.9.

FORFEITURE OF LEASES

Interpretation

10(1) In this section and sections 11, 12 and 13, the expression:

“Lease”

1. **“Lease”** includes an original or derivative under lease, and an agreement for a lease where the lessee has become entitled to have his lease granted;

“Lessor”

2. **“Lessor”** includes an original or derivative under lessor and the executors, administrators and assigns of a lessor;

“Lessee”

3. **“Lessee”** includes an original or derivative under lessee and the executors, administrators and assigns of a lessee;

“Under lease”

4. **“Under lease”** includes an agreement for an under lease where the under lessee has become entitled to have his under lease granted;

“Under lessee”

5. **“Under lessee”** includes any person deriving title under or from a lessee or an under lessee.

Restrictions on and relief against forfeitures of leases

(2) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, shall not be enforceable by action or otherwise, unless and until:

Imp. Act, 44-45 Vic., c.41, s.14(1); 55-56 Vic., c.13, s.5

(a) the lessor serves on the lessee a notice specifying the particular breach complained of and if the breach is capable of remedy requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach; and

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

Relief against forfeiture

(3) Where a lessor is proceeding by action or otherwise to enforce any right of re-entry or forfeiture, whether for nonpayment of rent or for other cause, the lessee may in the lessor's action, if any, or if there is no such action pending, then in an action brought by himself, apply to the court for relief; and the court may grant such relief, as having regard to the proceedings and conduct of the parties under the foregoing provisions of this section and to all the other circumstances the court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court deems just.

Lease until breach

(4) For the purpose of this section a lease limited to continue so long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

Where proceedings may be stayed

(5) Where action is brought to enforce a right of re-entry or forfeiture for nonpayment of rent and the lessee, at any time before judgment, pays into court all the rent in arrear and the costs of the action, the proceedings in the action shall be forever stayed.

Position of lessee

(6) Where relief is granted under the provisions of this section the lessee shall hold and enjoy the demised premises according to the lease thereof made without any new lease.

Application of section

(7) This section shall apply to all leases, and shall apply notwithstanding any stipulation in the lease to the contrary.

Exceptions generally

(8) This section shall not extend to a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's goods or interest in the term.

LEASES, UNDER LEASES, FORFEITURE

Protection of under lessees on forfeiture of superior lease/Imp. Act, 55-56 Vic., c.13, s.4

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

1918-19, c.79, s.11; R.S.S 1920, c.160, s.11.

Parties to an action enforce right of re-entry or forfeiture

12 Where a lessor is proceeding by action to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lessee, if it is known to the lessor that he claims such right or interest or if the instrument under which he claims is registered in the proper land titles office, shall be made a party to the action.

1918-19, c.79, s.12; R.S.S 1920, c.160, s.12.

License to assign not to be unreasonably withheld

13 In every lease containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without license or consent, such covenant, condition or agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that such license or consent shall not be unreasonably withheld.

1918-19, c.79, s.13; R.S.S 1920, c.160, s.13.

LICENSES

Restriction of effect of license under power contained in lease/Imp. Act, 22-23 Vic., c.35, s.1

14 Where a license to do any act which, without such license, would create a forfeiture, or give a right to re-enter under a condition or power reserved in a lease as given to a lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant, or to the actual assignment, under lease or other matter thereby specifically authorised to be done, but shall not prevent a proceeding for any subsequent breach unless otherwise specified in such license; and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, under lease, or other matter not specifically authorised or made dispunishable by such license, in the same manner as if no such license had been given; .and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorised to be done.

1918-19, c.79, s.14; R.S.S 1920, c.160, s.14.

Restricted operation of partial licenses/Imp. Act 22-23 Vic., c.35, s.2

15 Where in a lease there is a power or condition of re-entry on assigning or underletting or doing any other specified act without license, and a license has been or is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or has been or is given to a lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners of the other shares or interest in the property, or by the lessee or owner of the rest of the property, over or in respect of such shares or interest or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

1918–19, c.79, s.15; R.S.S 1920, c.160, s.15.

WAIVER OF COVENANT**Restriction of effect of waiver of covenant/Imp. Act, 23-24 Vic. c.38, s.6**

16 Where an actual waiver of the benefit of a covenant or condition in a lease, on the part of a lessor or his executors, administrators or assigns, is proved to have taken place in any one particular instance such actual waiver shall not be asumed or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears.

1918-19, c.79, s.16; ; R.S.S 1920, c.160, s.16.

COVENANT TO PAY TAXES**Covenant to pay taxes not to include taxes for local improvements**

17 Unless it is otherwise specifically provided in a lease made on or after the first day of May, 1919, a covenant by a lessee for payment of taxes shall not be deemed to include an obligation to pay taxes assessed for local improvements.

1918–19, c.79, s.17; R.S.S 1920, c.160,
s.17.

LENGTH OF NOTICES TO QUIT**Notice to quit in case of weekly or monthly tenancies**

18 A week's notice and a month's notice to quit, respectively, ending with the week or the month, shall be sufficient notice to determine, respectively, a weekly or monthly tenancy.

1918–19, c.79, s.18; R.S.S 1920, c.160, s.18.

PART III

Distress

EXTENSION OF THE REMEDY

Distress for rents seck/4 Geo. II, c.28, s.5

19 Every person may have the like remedy by distress, and by impounding and selling the property distrained in cases of rent seck, as in case of rent reserved upon lease.

1918–19, c.79, s.19; R.S.S 1920, c.160, s.19.

Distress for arrears on leases determined/8 Anne, c.18, ss.6 and 7

20 A person having rent due and in arrear, upon any lease for life or lives or for years or at will, ended or determined, may distrain for such arrears, after the determination of the lease, in the same manner as he might have done if the lease had not been ended or determined, if such distress be made within six months after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears become due.

1918–19, c.79, s.20; R.S.S 1920, c.160, s.20

Right of persons entitled to rent during life of another to recover the same after death/32 Hen. VIII, c.37, s.4

21 A person entitled to any rent or land for the life of another may recover by action or distress the rent due and owing at the time of the death of the person for whose life such rent or land depended as he might have done if the person by whose death the estate in such rent or land determined had continued in life.

1918–19, c.79, s.21; R.S.S 1920, c.160, s.21.

Distress to be reasonable 52 Hen. III, c.4, part

22 Distress whether for a debt due to the Crown or to any person, shall be reasonable.

1918–19, c.79, s.22; R.S.S 1920, c.160, s.22.

PROPERTY LIABLE TO DISTRESS

Right to distrain grain, etc./2 W. & M., sess. 1, c.5, s.3 in part

23 A person having rent due and in arrear upon any demise, lease, or contract may seize and secure any sheaves or cocks of grain, or grain loose, or in the straw, or hay, lying or being in any barn or granary or otherwise upon any part of the land charged with such rent, and may lock up or detain the same, in the place where the same is found, for or the nature of a distress until the same is replevied; and, in default of the same being replevied, may remove and sell the same.

1918–19, c.79, s.23; R.S.S 1920, c.160, s.23.

Right to distrain cattle or live stock/11 Geo. II, c.19, ss.8 and 9

24(1) A landlord may take and seize, as a distress for arrears of rent, any cattle or live stock of his tenant feeding or pasturing upon any highway, or on any way belonging to the demised premises or any part thereof.

Right to distrain standing crops/Disposal thereof

(2) Subject to the provisions of subsection (4) a landlord may take and seize standing crops as a distress for arrears of rent, and may cut, gather, make, cure, thresh, carry and lay up the same, when ripe, in the barns or other proper place on the demised premises, and if there is no barn or proper place on the demised premises, then in any other barn or proper place which the landlord hires or otherwise procures for that purpose as near as may be to the premises, and may in convenient time sell or otherwise dispose of the same towards satisfaction for the rent for which such distress is made, and of the charge of such distress and sale in the same manner as other goods and chattels may be seized, distrained and disposed of.

Tenant's right to notice of place of keeping

(3) Notice of the place where the goods and chattels so distrained are lodged or deposited shall, within one week after the lodging or depositing thereof, be given to the tenant or left at his last place of abode.

Satisfying distress of standing crops

(4) If, after a distress of standing crops so taken for arrears of rent, and at any time before the same are ripe and cut, cured, threshed or gathered, the tenant pays to the landlord for whom the distress is taken the whole rent then in arrear, with the full costs and charges of making such distress and occasioned thereby, then, upon such payment or lawful tender thereof, the same and every part thereof shall cease. and the standing crops so distrained shall be delivered up to the tenant.

Sale of standing crops

(5) Where standing crops are distrained for rent they may, at the option of the landlord, be advertised and sold in the same manner as other goods; and it shall not be necessary for the landlord to reap, thresh, gather or market the same.

Liability of purchaser of standing crops

(6) Any person purchasing standing crops at such sale shall be liable for the rent of the land upon which the same are standing at the time of the sale, and until the same are removed, unless the rent has been paid or has been collected by the landlord, or has been otherwise satisfied, and the rent shall, as nearly as may be, be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land, and to the time during which the purchaser occupies it.

1918–19, c.79, s.24; R.S.S 1920, c.160, s.24.

Goods on premises not property of tenant to be exempt

25(1) A landlord, shall not distrain for rent on the goods and chattels of any person except the tenant or person who is liable for the rent, although the same are found on the premises; but this restriction shall not apply:

- (a) in favour of a person claiming title under an execution against the tenant; or
- (b) in favour of a person whose title is derived by purchase, gift, transfer or assignment from the tenant, whether absolute or in trust, or by way of mortgage, or otherwise; or

Exceptions

(c) to the interest of the tenant in any goods or chattels on the premises in the possession of the tenant under a contract for purchase, or by which he may or is to become the owner thereof upon performance of any condition; or

(d) where goods or chattels have been exchanged between tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord;

nor shall the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the tenant, or by any person whose title is derived by purchase, gift, transfer or assignment from any other relative of his in case such other relative lives on the premises as a member of the tenant's family.

(2) **"Tenant"** in this section means a person holding directly of the landlord.

1918–19, c.79, s.25; R.S.S 1920, c.160, s.25.

Right of set off

26(1) A tenant may set off against the rent due a debt due to him by the landlord.

Notice thereof

(2) Notice of the claim of set off (form A) may be given before or after the seizure.

Effect of notice

(3) When the notice is given the landlord shall be entitled to distrain, or to proceed with the distress, only for the balance of the rent after deducting any debt justly due by him to the tenant which is mentioned in the notice.

1918–19, c.79, s.26; R.S.S 1920, c.160, s.26.

Service of notices as exemptions or set-off

27(1) Service of notices under subsection (2) of section 10, and under sections 18 and 26 shall be made either personally or by leaving the same with a grown up person in and apparently residing on the premises occupied by the person to be served.

Posting up notice in lieu of service

(2) If the tenant cannot be found and his place of abode is not known, or admission thereto cannot be obtained, the posting up of a notice on some conspicuous part of the premises shall be good service.

1918–19, c.79, s.27; R.S.S 1920, c.160, s.27.

WHERE DISTRESS MAY BE TAKEN**Chattels not to be distrained off the premises/52 Hen. III, c.15**

28 Save as herein otherwise provided, goods or chattels which are not, at the time of the distress, upon the premises in respect of which the rent distrained for is due shall not be distrained for rent.

1918–19, c.79, s.28; R.S.S 1920, c.160, s.28.

FRAUDULENT REMOVAL

Landlords may distrain goods fraudulently carried off the premises/11 Geo. II, c.19, ss.1 and 2

29(1) Where any tenant for life or lives, term of years, at will, sufferance or otherwise, of any messuages, lands, tenements or hereditaments, upon demise or holding whereof any rent is reserved, due, or made payable, fraudulently or clandestinely conveys away, or carries off or from such premises his goods and chattels to prevent the landlord from distraining the same for arrears of rent so reserved, due, or made payable, the landlord or any person by him for that purpose lawfully empowered, may, within sixty days next ensuing such conveying away or carrying off, take and seize such goods and chattels wherever the same are found, as a distress for such arrears of rent, and the same sell or otherwise dispose of in the same manner as if such goods and chattels had actually been distrained by the landlord upon such premises for such arrears of rent.

Exception

(2) No landlord or other person entitled to such arrears of rent shall take or seize, as a distress for the same, any such goods or chattels which have been sold in good faith and for a valuable consideration, before such seizure made, to any person not privy to such fraud.

1918–19, c.79, s.29; R.S.S 1920, c.160, s.29.

Rights of landlord to break open houses where goods fraudently secured/11 Geo. II, c.19, s.7

30 Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant, his servant, or agent, or other person aiding or assisting therein are or are believed to be in any house, barn, stable, outhouse, yard, close or place, locked up, fastened, or otherwise secured so as to prevent them from being taken and seized as a distress for arrears of rent, the landlord or his agent may take and seize, as a distress for rent, such goods and chattels, first calling to his assistance a constable or peace officer who is hereby required to aid and assist therein, and, in case of a dwelling house, oath being also first made of a reasonable ground to believe that such goods or chattels are therein and, in the daytime, break open and enter into such house, barn, stable, outhouse, yard, close or place and take and seize such goods and chattels for the arrears of rent as he might have done if they were in an open field or place upon the premises from which they were so conveyed or carried away.

1918–19, c.79, s.30; R.S.S 1920, c.160, s.30.

Penalty for fraudulently removing or assisting to remove goods/11 Geo. II, c.19, s.3

31 If a tenant so fraudulently removes, conveys away or carries off his goods and chattels, or if any person and knowingly aids or assists him in so doing, or in concealing the same, every person so offending shall forfeit and pay to the landlord double the value of such goods, to be recovered by action in any court of competent jurisdiction.

1918–19, c.79, s.31; R.S.S 1920, c.160, s.31.

IMPOUNDING DISTRESS

Goods may be impounded/11 Geo. II, c.19, s.19

32 Any person lawfully taking any distress for any kind of rent may impound, or otherwise secure the distress so made in such place or on such part of the premises chargeable with the rent as is most fit and convenient for that purpose, and may sell and dispose of the same upon the premises; and it shall be lawful for any person to come and go to and from such place or part of the premises where any distress for rent is so impounded and secured to view and buy, and to carry off or remove the same on account of the purchaser thereof.

1918–19, c.79, s.32; R.S.S 1920, c.160, s.32.

Pound breach or rescue, damages for/2 W. & M. sess. 1, c.5, s.4

33 Upon any pound breach or rescue of goods or chattels distrained for rent the person offending, or the owner of the goods distrained, in case the same are afterwards found to have come to his use or possession, shall forfeit to the person aggrieved a sum not exceeding \$20 in addition to the damages sustained by him.

1918–19, c.79, s.33; R.S.S 1920, c.160, s.33.

SALE OF GOODS DISTRAINED

Sale of distress/2 W. & M., sess. 1, c.5, s.1

34 Where any goods or chattels are distrained for rent reserved and due upon any demise, lease or contract, and the tenant or owner of there does not within five days next after such distress taken and notice thereof, with the cause of such taking, left at the dwelling house or other most conspicuous, place on the premises charged with the rent distrained for, replevy the same, then after such distress and notice and the expiration of such five days, the person distraining may lawfully sell the goods and chattels so distrained from the best price that can be got for the same towards satisfaction of the rent for which the same were distrained and of the charges of such distress and sale, and shall hold the overplus, if any, for the owner's use and pay the same over to him on demand.

1918–19, c.79, s.34; R.S.S 1920, c.160, s.34.

WRONGFUL OR IRREGULAR DISTRESS

Irregularities not to make distress void *ab initio*/11 Geo. II, c.19, s.19

35 Where any distress is made for any kind of rent justly due and any irregularity or unlawful act shall afterwards be done by the person distraining, or by his agent, the distress itself shall not be therefore deemed to be unlawful, nor the person making it be deemed a trespasser *ab initio*, but the person aggrieved by such unlawful act or irregularity may recover by action full satisfaction for the special damage sustained thereby.

1918–19, c.79, s.35; R.S.S 1920, c.160, s.35.

Wrongful distress 52 Hen. III, c.4, in part; 3 Edw. I, c.16

36(1) A distrainer who takes an excessive distress, or takes a distress wrongfully, shall be liable in damages to the owner of the goods or chattels distrained.

Where no rent due/2 W. & M., sess. 1, c.5, s.4

(2) Where a distress and sale are made for rent pretended to be in arrear and due when, in truth, no rent is in arrear or due to the person distraining, or to the person in whose name or right such distress is taken, the owner of the goodsr chattels distrained and sold, his executors or administrators shall be entitled, by action to be brought against the person so distraining, to recover full satisfaction for the damage sustained by the distress and sale.

1918–19, c.79, s.36; R.S.S 1920, c.160, s.36.

Burden of proof

37 In any action, suit or matter in which the legality of a distress is called in question, the proceedings in connection with such distress shall be taken to have been valid and regular until the contrary is shown.

1918–19, c.79, s.37; R.S.S 1920, c.160, s.37.

CROPS SEIZED UNDER EXECUTION**Liability of growing crops seized and sold under execution for accruing rent/Imp. Act, 14-15 Vic., c.25, s.2**

38 Where all or any part of the standing crops of the tenant of any land is seized and sold by a sheriff or other officer by virtue of a writ of execution, such crops, so long as the same remain on the land in default of sufficient distress of the goods and chattels of the tenant, shall be liable for the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, and that notwithstanding any bargain and sale or assignment which may have been made or executed of such crops by such sheriff or other officer.

1918–19, c.79, s.38; R.S.S 1920, c.160, s.38.

EXECUTORS OR ADMINISTRATORS**Right of personal representatives to distrain for arrears**

39 The executors or administrators of a landlord may distrain for the arrears of rent due to such landlord in his lifetime, and may sue for the same in like manner as such landlord might have done if living, and the powers and provisions contained in this Act relating to distresses for rent shall be applicable to the distresses so made.

1918–19, c.79, s.39; R.S.S 1920, c.160, s.39.

PART IV

Overholding Tenants

LIABILITY OF TENANTS OVERHOLDING

Penalty of double value for overholding

40 Where a tenant for any term for life, lives or years, or other person who comes into possession of any land, by, from, or under, or by collusion with such tenant, wilfully holds over such land or any part thereof after the determination of such term, and after notice in writing given for delivering the possession thereof by his landlord or the person to whom the remainder or reversion of such land belongs or his agent thereunto lawfully authorised, such tenant or other person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to such person or his assigns at the rate of double the yearly value of the land so detained for so long as the same is detained, to be recovered by action in any court of competent jurisdiction, against the recovering of which penalty there shall be no relief.

1918–19, c.79, s.40; R.S.S 1920, c.160, s.40.

Penalty of double rent for overholding after tenant gives notice to quit/11 Geo. II, c.19, s.18

41 Where a tenant gives notice of his intention to quit the premises by him holden at a time mentioned in such notice and does not accordingly deliver the possession thereof at the time mentioned in such notice the tenant shall from thenceforward pay to the landlord double the rent or sum which he should otherwise have paid, to be levied, sued for, and recovered at the same time and in the same manner as the single rent or sum before the giving such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid while such tenant continues in possession.

1918–19, c.79, s.41; R.S.S 1920, c.160, s.41.

PROCEEDINGS AGAINST OVERHOLDING TENANTS

Application to court against overholding tenant

42(1) Where a tenant after his lease or right of occupation, however created, has expired or been determined, either by the landlord or by the tenant, by a notice to quit or notice pursuant to a proviso in any lease or agreement in that behalf, or has been determined by any other act whereby a tenancy or right of occupancy may be determined or put an end to, wrongfully refuses or neglects to go out of possession of the land demised to him, or which he has been permitted to occupy, his landlord may apply upon affidavit to the judge of the district court of the district in which the land or part of the land lies to make the inquiry hereinafter provided for.

(2) The judge shall in writing appoint a time and place at which he will inquire and determine whether the person complained of was tenant to the complainant for a term or period which has expired or has been determined by a notice to quit or for default in payment of rent or otherwise, and whether the tenant holds the possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses or neglects to go out of possession.

(3) Notice in writing of the time and place appointed stating briefly the principal facts alleged by the complainant as entitling him to possession, shall be served upon the tenant or left at his place of abode at least three days before the day so appointed, if the place appointed is not more than twenty miles from the tenant's place of abode, and one day in addition for every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles, to which notice shall be annexed a copy of the judge's appointment and of the affidavit on which it was obtained, and of the documents to be used upon the application.

1918–19, c.79, s.42; R.S.S 1920, c.160, s.42.

Proceeding how intituled

43 The proceedings under this Part shall be intituled in the district court of the district in which the land or part thereof lies, and shall be styled:

“In the matter of (*giving the name of the party complaining*) landlord, against (*giving the name of the party complained against*) tenant”

1918–19, c.79, s.43; R.S.S 1920, c.160, s.43.

Proceedings in default of appearance

44(1) If, at the time and place appointed, the tenant fails to appear, the judge, if it appears to him that the tenant wrongfully holds against the right of the landlord, may order a writ of possession (form B) directed to the sheriff of the district in which the land lies to be issued, commanding him forthwith to place the landlord in possession of the land.

(2) If the tenant appears the judge shall, in a summary manner, hear the parties and their witnesses and examine into the matter, and if it appears to the judge that the tenant wrongfully holds against the right of the landlord he may order the issue of the writ.

1918–19, c.79, s.44; R.S.S 1920, c.160, s.44.

Appeal

45 An appeal shall lie to a judge of the Court of King's Bench sitting in chambers from the order of the judge granting or refusing a writ of possession, and the proceedings upon such appeal shall, subject to section 46, be similar to those provided in the case of an appeal from an interlocutory order, judgment or decision of the district court.

1918–19, c.79, s.45; R.S.S 1920, c.160, s.45.

Evidence

46 When any question of fact is involved in the appeal, the evidence taken by the judge appealed from bearing upon the question shall, subject to any special order, be brought before the judge who hears the appeal as follows:

(a) as to any evidence taken by affidavit, by the production of copies of the affidavits;

(b) as to any evidence given orally, by the production of the judge's or stenographer's notes, or such other material as the judge hearing the appeal deems expedient.

1918–19, c.79, s.46; R.S.S 1920, c.160, s.46.

Discharge of order

47(1) If the judge hearing the appeal is of opinion that the right to possession should not be determined in a proceeding under this part he may discharge the order granting or refusing the writ, and the landlord may in that case proceed by action for the recovery of possession.

Restoration of tenant

(2) When the order is discharged, if possession has been given to the landlord under a writ of possession, the judge hearing the appeal may direct that possession, be restored to the tenant.

1918–19, c.79, s.47; R.S.S 1920, c.160, s.47.

PART V

Miscellaneous Provisions

ATTORNMEN

Nullity of, attornment to stranger/11 Geo. II, c.19, s.11

48 Every attornment of a tenant of any land to a stranger claiming title to the estate of his landlord shall be absolutely null and void, and the possession of his landlord shall not be deemed to be changed, altered or affected by such attornment; but nothing herein shall vacate or affect an attornment made:

- (a) pursuant to and in consequence of a judgment or order of a court; or
- (b) with the privity and consent of the landlord.

(2) Nothing herein contained shall alter, prejudice or affect any rights which a mortgagee or incumbrancee may now possess under any law or statute.

1918–19, c.79, s.48; R.S.S 1920, c.160, s.48.

Attornment of tenant, not necessary/4-5 Anne, c.3, ss.9 and 10

49(1) Every grant on conveyance of any reversion or of the reversion or remainder of any land shall be good and effectual without any attornment of the tenant of the land out of which such rent issued, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

(2) A tenant shall not be prejudiced or damaged by the payment of rent to any grantor or by breach of any condition for nonpayment of rent, before notice to him of such grant by the grantee.

1918–19, c.79, s.49; R.S.S 1920, c.160, s.49.

RENEWAL OF LEASE, WITHOUT SURRENDER OR UNDER LEASE

Chief leases renewed without surrendering under leases/1 Geo. II, c.28, s.6

50(1) Where a lease is duly surrendered in order to be renewed, and a new lease is made and executed by the chief landlord, the new lease shall, without a surrender of all or any of the under leases, be as good and valid as if all the under leases derived thereout had been likewise surrendered at or before the time of taking of such new lease.

(2) Every person in whom any estate for life or lives, for years, is from time to time vested by virtue of such new lease shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and under lessees shall hold and enjoy the land in the respective under leases comprised as if the original lease had been kept on foot and continued, and the chief landlord shall have and be entitled to such and the same remedy by distress or entry in and upon the land comprised in any such under lease for the rents and duties reserved by such new lease, so far as the same do not exceed the rents and duties reserved in the lease out of which such under lease was derived, as he would have had if the former lease had been still continued or as he would have had if the respective under leases had been renewed under such new principal lease.

1918–19, c.79, s.50; R.S.S 1920, c.160, s.50.

RENEWAL OF LEASE BY ABSENTEES

Renewal on behalf of persons out of province/11 Geo. IV, and 1 W. IV, c.65, ss. 18, 20, 21 and 35

51(1) Where any person, who, in pursuance of any covenant or agreement in writing, if within Saskatchewan and amenable to the process of the Court of King's Bench might be compelled to execute any lease by way of renewal, is not within Saskatchewan or is not amenable to the process of the court, the court, upon the application of any person entitled to such renewal whether such person is or is not under any disability, may direct such person as the court thinks proper to appoint for that purpose to accept a surrender of the subsisting lease, and to make and execute a new lease in the name of the person who ought to have renewed the same.

Validity of such new lease

(2) A new lease executed by the persons so appointed shall be as valid as if the person in whose name the same was made were alive and not under any disability and had himself executed it.

Discretion of court to direct action to be brought

(3) In every such case it shall be in the discretion of the court to direct an action to be brought to establish the right of the person seeking the renewal, and not to make the order for such new lease unless by the judgment to be made in such action, or until after it shall have been entered.

Conditions

(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant or agreement unless the sum or sums of money, if any, which ought to be paid on such renewal and the things, if any, which ought to be performed in pursuance of such covenant or agreement by the tenant be first paid and performed, and counterparts of every such renewal lease shall be duly executed by the tenant.

Premiums

(5) All sums of money which are had, received or paid for or on account of, the renewal of any lease by any person out of Saskatchewan or not amenable to the process of the court, after a deduction of all necessary incidental charges and expenses, shall be paid to such person or in such manner or into the court to such account, and be applied and disposed of as the court directs.

Costs

(6) The court may order the costs and expenses of and relating to the applications, orders, directions, conveyances and transfers, or any of them to be paid and raised out of or from the land, or the rents in respect of which the same are respectively made, in such manner as the court deems proper.

1918–19, c.9; R.S.S 1920, c.160, s.51.

LIEN FOR RENT AS AGAINST AN EXECUTION

Goods taken in execution not to be removed till rent paid/8 Anne, c.18, s.1

52(1) Goods or chattels lying or being in or upon any land leased for life or lives, or term of years, at will, or otherwise shall not be liable to be taken by virtue of any execution issued out of the Court of King's Bench or out of a district court on any pretence whatsoever, unless the party at whose suit the execution issued out before the removal of such goods or chattels from the premises by virtue of such execution pays to the landlord or his bailiff all money due for rent of the premises at the time of the taking of such goods or chattels by virtue of such execution if the arrears of rent do not amount to more than one year's rent.

When execution may be proceeded with

(2) If such arrears exceed one year's rent the party at whose suit such execution is sued out, on paying the landlord or his bailiff one year's rent, may proceed to execute his judgment.

What to be paid to execution creditor

(3) The sheriff or other official shall levy and pay to the execution creditor as well the money so paid for rent as the ired execution money.

1918–19, c.79, s.55; R.S.S 1920, c.160, s.52.

GENERAL

Practice and procedure under Part IV

53 Except as therein otherwise provided the practice and procedure under Part IV shall be in accordance with the practice and procedure in the district courts.

1918–19, c.79, s.56; R.S.S 1920, c.160, s.53.

SCHEDULE

FORM A

(Section 26)

NOTICE TO LANDLORD

Take notice, that under *The Landlord and Tenant Act*, I wish to set off against rent due by me to you, the debt which you owe to me on your promissory note for _____ dated _____ (or as the case may be).

Dated this _____ day of _____, 19____.

C. D. (tenant)

FORM B

(Section 44)

WRIT OF POSSESSION

SASKATCHEWAN,

To wit:

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith Emperor of India.

[L.S.]

To the sheriff of the _____

_____ Greeting:

Whereas _____ judge of the _____ court of _____, by his order dated the _____ day of _____, 19____, made in pursuance of *The Landlord and Tenant Act*, on the complaint of _____ against _____, adjudged that _____ was entitled to the possession of _____ with the appurtenances in your bailiwick, and that a writ should issue out of our said court accordingly (*if costs are awarded add*, and also ordered and directed that the said _____ should pay the costs of the proceedings had under the said Act, which have been taxed at the sum of _____).

Therefore, we command you that without delay you cause the said _____ to have possession of the said land and premises, with the appurtenances (*if costs are awarded add*, and we also command you that of the goods and chattels and land and tenements of the said _____ in your bailiwick, you cause to be made _____ being the said costs so taxed and have that money in our said court immediately after the execution hereof, to be rendered to the said _____).

And in what manner you shall have executed this writ make appear to our said court, immediately after the execution hereof, and have there then this writ.

Witness _____ judge of our said court at _____, this _____ day of _____ 19____.

.....
Clerk.

Issued from the office of the clerk of the district court for the Judicial District of _____.

.....
Clerk.

FOR HISTORICAL REFERENCE ONLY