



# Landlord and Tenant (War Damage) Act 1939

## 1939 CHAPTER 72

### PART II

#### DISCLAIMER AND RETENTION OF LEASES

##### *Notices affecting leaseholds*

#### **4 Power to disclaim leases or to retain on altered terms**

- (1) Where the land comprised in a lease is unfit by reason of war damage, the following provisions of this section shall have effect, whether the lease was made before or after the commencement of this Act.
- (2) The tenant may serve on the landlord either—
  - (a) a notice (hereafter in this Act referred to as a "notice of disclaimer") stating that he elects to disclaim the lease ; or
  - (b) a notice (hereafter in this Act referred to as a "notice of retention ") stating that he elects to retain the lease on the terms hereafter specified in this Act.
- (3) The landlord may, if no such notice has been served by the tenant, serve upon the tenant a notice (hereafter in this Act referred to as a "notice to elect ") requiring the tenant to serve on him, within the period allowed under this Act, either a notice of disclaimer or a notice of retention.
- (4) Where a notice to elect is served and the tenant does not comply therewith within the said period, he shall, unless the notice is of no effect under this Part of this Act, be deemed for the purpose of this Act to have served on the landlord at the expiration of the said period a notice of retention.
- (5) Where a notice of disclaimer is served (whether in pursuance of a notice to elect or not) the landlord may, within the period allowed under this Act, serve upon the tenant

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a notice (hereafter in this Act referred to as a "notice to avoid disclaimer") requiring the tenant to retain the lease on the terms hereafter specified in this Act.

## **5 Period for complying with notice to elect or serving notice to avoid disclaimer**

(1) The period allowed under this Act—

- (a) within which a tenant upon whom a notice to elect has been served must comply therewith; and
- (b) within which a landlord upon whom a notice of disclaimer has been served by a tenant may serve on the tenant a notice to avoid disclaimer ;

shall, unless it is extended or abridged under this Part of this Act, be a period of one month from the date when the notice to elect or the notice of disclaimer, as the case may be, was served.

(2) If, in the case of a notice to elect,—

- (a) the tenant on whom it is served, or his predecessor in title, has granted an underlease which comprises the land to which the notice relates or any part thereof; and
- (b) the said tenant, before the expiration of a period of fourteen days from the service of the notice, serves a notice to elect on the tenant under that underlease (hereafter in this section referred to as "the sub-tenant") and informs the landlord in writing that such a notice has been served;

the said period of one month shall—

- (i) in a case where the sub-tenant complies with the notice to elect within the period allowed under this Act, and the said period of one month expires before the expiration of a period of seven days from the date when he complies with the notice, be extended until the expiration of those seven days; and
- (ii) in a case where the sub-tenant fails to comply with the notice to elect within the period so allowed, and the said period of one month expires before the expiration of a period of seven days from the end of the period so allowed, be extended until the expiration of those seven days.

(3) If, in the case of a notice of disclaimer, the landlord on whom it is served—

- (a) is himself a tenant of the land to which the notice relates under a superior lease; and
- (b) before the expiration of a period of fourteen days from the service of the notice, serves on his landlord (hereinafter in this subsection referred to as "the superior landlord") a notice of disclaimer in respect of that superior lease and informs his tenant in writing that such a notice has been served;

the said period of one month shall—

- (i) in a case where the superior landlord serves on the landlord within the period allowed under this Act a notice to avoid disclaimer, and the said period of one month expires before the expiration of a period of seven days from the date when that notice was served, be extended until the expiration of those seven days; and
- (ii) in a case where no such notice is served by the superior landlord within the period allowed under this Act, and the said period of one month expires before the expiration of a period of seven days from the end of the period so allowed, be extended until the expiration of those seven days.

- (4) Any period mentioned in this section may be extended or abridged by the court, on such terms as it thinks fit, on the application of any person affected by the extension or abridgment.
- (5) An application to the court under the last foregoing subsection for the extension of any such period may be made at any time whether before or after the expiration of that period, but where it is made after the expiration of the period, the court shall not extend the period unless it is satisfied that the interests of persons affected by the extension other than the applicant will be adequately protected by the terms imposed by the court or on the terms of an agreement or otherwise.

## **6 Determination of disputes as to unfitness of premises**

- (1) Where a notice of disclaimer is served—
  - (a) any person having an interest in or derived out of the term created by the lease to which the notice relates; or
  - (b) any person having an interest in the reversion immediately expectant on the determination of that lease;may, at any time within one month from the service of the notice, apply to the court to determine whether the notice is of no effect on the ground that the land comprised in the lease was not unfit by reason of war damage at the time when the notice was served.
- (2) Within one month from the service of a notice to elect on a tenant, he may serve on the landlord a notice (hereafter in this section referred to as a "counter-notice")—
  - (a) claiming that the notice to elect is of no effect on the ground that the land to which it relates was not unfit by reason of war damage at the time when the notice was served; and
  - (b) stating the effect of the next following subsection.
- (3) Where a counter-notice is served, the notice to elect shall be of no effect unless the court, on the application of the landlord made within fourteen days from the service of the counter-notice, determines that the land in question was unfit by reason of war damage at the time when the notice to elect was served.
- (4) If on any application made under this section the court determines that the land in question was unfit by reason of war damage at the time when the notice of disclaimer or notice to elect was served, the period allowed under this Act within which a notice to avoid disclaimer may be served by the landlord, or the notice to elect is to be complied with by the tenant, as the case may be, may be extended to such date as the court may fix.
- (5) Unless it is decided by the court on an application made under this section that a notice of disclaimer or a notice to elect is of no effect on the ground that the land to which it relates was not unfit by reason of war damage at the time when the notice was served, the land shall be deemed for the purpose of any proceedings pursuant to the notice to have been unfit by reason of war damage at that time.

### *Notices of disclaimer*

#### **7 Particulars to be included in notices of disclaimer, and c**

- (1) A tenant serving a notice of disclaimer shall include therein such of the following particulars with respect to the lease disclaimed as are known to him, or can reasonably be ascertained by him, namely—
  - (a) the term of and the rent reserved by any immediate underlease of the land comprised in the lease or any part thereof;
  - (h) the name and address of the person to whom that underlease was granted and of the person (if any) to whom it has been assigned;
  - (c) if the term created by the lease is mortgaged, the fact of the mortgage and the name and address of the mortgagee and his successor in title (if any).
- (2) Within seven days from the service of a notice of disclaimer, the tenant serving the notice shall serve upon any person claiming immediately under him (whether as assignee, mortgagee or lessee) in respect of an interest in the land comprised in the lease a notice stating that he has served the notice of disclaimer and the name and address of the landlord on whom it was served and such other particulars as are necessary to identify the lease disclaimed.
- (3) Every person upon whom a notice is served in pursuance of the last preceding subsection or this subsection shall, within seven days from the receipt of the notice, serve upon every person (other than the person from whom he has received the notice) —
  - (a) who has immediately derived from him an interest in the land comprised in the lease; or
  - (b) to whom he has immediately assigned such an interest;a notice stating the date on which the first-mentioned notice was served on him and the terms thereof and the effect of this and the next following subsection.
- (4) If any person fails to comply with the provisions of this section, he shall be liable to make good to any other person any damage suffered by that other person by reason of the failure.

#### **8 Effect of notice of disclaimer**

- (1) Where a notice of disclaimer is served, the following provisions of this section shall have effect, subject to any order of the court under the next following section, at the expiration of the period allowed under this Act within which notice to avoid disclaimer may be served, unless a notice to avoid disclaimer is served within that period or the notice of disclaimer is otherwise of no effect under this Part of this Act.
- (2) As from the date when the notice of disclaimer was served—
  - (a) the lease disclaimed shall be deemed to have been surrendered; and
  - (b) all sub-leases derived out of the term created by the lease disclaimed shall also be deemed to have been surrendered, except a sub-lease—
    - (i) by virtue whereof any person is entitled to the actual occupation of the land comprised in the disclaimed lease or of any part thereof; and
    - (ii) in respect of which no notice of disclaimer has been served; and

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- (c) all interests in the term created by the lease disclaimed or any sub-lease which is deemed to have been surrendered as aforesaid shall be deemed to have been extinguished.
- (3) Any notice of disclaimer, notice of retention or notice to elect served in respect of any sub-lease which is deemed to have been surrendered by virtue of this section shall be of no effect.

## **9 Power of court to modify effect of notice of disclaimer**

- (1) On an application duly made under this section, the court shall have power to modify the operation of a notice of disclaimer as stated in the last foregoing section as follows :—
- (a) by varying the date on which subsection (2) of that section takes effect or the date as from which any lease or sub-lease is deemed to have been surrendered or any interest therein is deemed to have been extinguished;
  - (b) by excepting from the operation of that section, on such terms as the court thinks just, any sub-lease and any interest therein which would otherwise be deemed to have been surrendered or extinguished;
  - (c) by vesting on such terms as the court thinks just the lease disclaimed, or any sub-lease which would otherwise be deemed to have been surrendered, in any person having an interest in the lease or sub-lease other than the tenant thereunder;
  - (d) by imposing such terms and making such orders as to the removal of fixtures and otherwise as the court thinks just.
- (2) The terms imposed by the court under paragraph (b) or paragraph (c) of the last foregoing subsection may include such alterations as the court thinks just of the terms of the lease or sub-lease in question.
- (3) An application under this section may be made by any person—
- (a) having an interest in or derived out of the term created by the lease disclaimed; or
  - (b) having an interest in the reversion immediately expectant upon the determination of that lease;
- at any time within the period allowed under this Act for serving a notice to avoid disclaimer.
- (4) Unless the court otherwise directs, no application under this section and no order of the court thereon shall prejudice the right of a landlord to serve a notice to avoid disclaimer within the period allowed by this Act.

*Notices of retention and notices to avoid disclaimer*

## **10 Effect of notice of retention**

- (1) Where a notice of retention is served or is deemed to have been served in respect of a lease, then, unless the notice of retention is of no effect under this Part of this Act or the notice to elect by virtue whereof the notice of retention is deemed to have been served is of no effect under this Part of this Act, the lease shall have effect subject to the following modifications :—

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- (a) There shall be implied in the lease, notwithstanding anything in Part I of this Act, a covenant by the tenant with the landlord that the land comprised in the lease shall be rendered fit as soon as is reasonably practicable after the date when the notice was served or is deemed to have been served :

Provided that where before that date any person has guaranteed the performance of the covenants in the lease, the guarantee shall be deemed not to extend to the covenant implied in the lease by virtue of this paragraph.

- (b) Subject to the powers of the court under the following provisions of this subsection, no rent shall be payable by the tenant under the lease in respect of the period beginning with the date when the notice was served or is deemed to have been served and ending with the date on which the land is rendered fit:
- (c) Where the court is satisfied, on the application of the landlord made at any time before the land has been rendered fit, that part of the land is capable of beneficial occupation, the court may direct that there shall be payable by the tenant such rent, at such times and in respect of such period as the court may fix:

Provided that the amount of the rent fixed by the court under this paragraph shall not exceed such proportion of—

- (i) the annual value at the time of the application of so much of the land as is at that time capable of beneficial occupation; or  
(ii) the full annual rent reserved by the lease;

whichever is the less, as the period in respect of which the rent is payable bears to a year :

- (d) Where the court is satisfied, on the application of the landlord made at any time, that there has been unreasonable delay on the part of the tenant in rendering the land fit, the court may direct that there shall be payable by the tenant such rent (not exceeding the rent reserved by the lease) at such times and in respect of such period as the court may fix.

- (2) In this section the expression " rent ", in relation to a lease, includes any periodical sum payable by the tenant in connection with the occupation of the land comprised in the lease, whether for services, fighting, heating, board, use of furniture or otherwise, and references to rent reserved by a lease include references to any such sum contracted to be paid by any agreement.

## **11 Effect of notice to avoid disclaimer**

- (1) Where a notice to avoid disclaimer is served in respect of a notice of disclaimer, the notice of disclaimer shall be of no effect and, unless the notice of disclaimer is of no effect by reason of some other provision of this Part of this Act, the lease to which it relates shall have effect subject to the following modifications:—

- (a) There shall be implied in the lease, notwithstanding anything in Part I of this Act, a covenant by the landlord with the tenant that the land comprised in the lease shall be rendered fit as soon as is "reasonably practicable after the service of the notice to avoid disclaimer :

Provided that where before the service of the said notice any person has guaranteed the performance of the covenants in the lease, the guarantee shall be deemed not to extend to the covenant implied in the lease by virtue of this paragraph:

- (b) Subject to the powers of the court under the next following paragraph, no rent shall be payable by the tenant under the lease in respect of the period beginning with the date of the service of the notice of disclaimer and ending with the date on which the land is rendered fit:
  - (c) If the court is satisfied, on the application of the landlord made at any time before the land has been rendered fit, that any part of the land is capable of beneficial occupation, the court shall have the same powers as it has under paragraph (c) of subsection (1) of the last foregoing section.
- (2) In this section the expression " rent " has the same meaning as in the last foregoing section.

## **12 Recurrence of war damage after service of notice**

- (1) Where land comprised in a lease has been rendered unfit by war damage, and further war damage occurs to the land before it has been rendered fit and after notice of retention has been or is deemed to have been served, or notice to avoid disclaimer has been served, in respect of the lease, the tenant or the landlord, as the case may be, may apply to the court for leave to withdraw the notice.
- (2) On any such application the court shall grant leave to withdraw the notice if it is satisfied that the liability of the tenant or the landlord, as the case may be, in respect of repairs under the lease as modified in pursuance of the notice has been materially increased by the further war damage.
- (3) As from the date on which the notice is withdrawn—
  - (a) any notice to elect served on the tenant or notice of disclaimer served on the landlord before that date shall be of no effect; and
  - (b) the lease shall have effect as if the notice withdrawn had never been served, or been deemed to have been served :

Provided that nothing in this subsection shall, unless the court having regard to all the circumstances of the case otherwise determines, impose on the tenant a liability for rent under the lease in respect of any period before that date.

- (4) In this section the expression " rent " has the same meaning as it has in the two last foregoing sections.

### *Special provisions as to certain leases*

## **13 Provision as to ground leases**

- (1) In relation to a ground lease, this Part of this Act shall have effect subject to the modifications specified in this section.
- (2) The tenant shall not be entitled to serve a notice of retention nor, unless the court otherwise orders, a notice of disclaimer, and the landlord shall not be entitled to serve a notice to elect.
- (3) If, where the land comprised in a ground lease has suffered war damage, the court is satisfied on the application of the tenant, having regard to the extent of the war damage suffered by the land comprised in the lease as a whole and all the circumstances of the case, including—

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- (a) the length of the unexpired part of the term of the lease, and the relation of the amount of the rent payable thereunder to the annual value, immediately before the occurrence of the war damage, of the land comprised in the lease; and
- (b) any offers made by the landlord for an extension of the term of the lease or for an alteration of the rent reserved thereby, or for any other modification of the terms of the lease;

that it is equitable to allow the tenant to disclaim the lease, the court may order that he be at liberty to serve a notice of disclaimer under this Part of this Act, on such conditions as to the payment of compensation and otherwise as the court thinks fit to impose, and that subsection (1) of section six of this Act shall not apply with respect to the notice.

- (4) Where a notice of disclaimer is served in pursuance of an order of the court made under the last foregoing subsection, the provisions of this Act authorising the landlord to serve a notice to avoid disclaimer within the period allowed by this Act shall not have effect, but any other provision of this Act relating to that period shall have effect as if the landlord were entitled to serve such a notice.

#### **14 Determination of question whether a lease is a ground lease**

- (1) Where in respect of a lease a notice of retention or a notice to elect is served, or a notice of disclaimer is served otherwise than under an order of the court under the last foregoing section—
  - (a) the person serving the notice or the person on whom it is served; or
  - (b) any other person having an interest in or derived out of the term created by the lease, or having an interest in the reversion immediately expectant on the determination of the lease;

may, at any time within one month from the service of the notice, apply to the court to determine whether the notice is of no effect on the ground that the lease is a ground lease.

- (2) If, on an application made under this section, the court determines that the lease in respect of which a notice of disclaimer or a notice to elect has been served is not a ground lease, the period allowed under this Act within which a notice to avoid disclaimer may be served on the landlord or the notice to elect is to be complied with by the tenant, as the case may be, may be extended to such date as the court may fix.
- (3) Unless it is decided by the court on an application made under this section that a notice is of no effect on the ground that the lease to which it relates is a ground lease, the lease shall be deemed for the purpose of any proceedings pursuant to the notice not to be a ground lease.

#### **15 Provisions as to leases comprising two or more separate tenements**

- (1) In relation to a multiple lease (not being a ground lease) section six of this Act shall not apply and the other provisions of this Part of this Act shall have effect subject to the modifications specified in this section.
- (2) Where a notice of disclaimer or a notice to elect is served with respect to the lease—
  - (a) the person serving the notice or the person on whom it is served; or



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- (b) any other person having an interest in or derived out of the term created by the lease, or having an interest in the reversion immediately expectant on the determination of the lease;

may apply to the court, within one month from the service of the notice, to determine the question whether the tenant should be allowed to disclaim the lease, whether wholly or as respects one or more of the separate tenements comprised therein or at all.

- (3) If on such an application the court is satisfied that, having regard to the extent of the war damage suffered by the land comprised in the lease as a whole and all the circumstances of the case (including any offers made by the landlord for an extension of the term of the lease or for an alteration of the rent reserved thereby or for any other modification of the terms of the lease) it is equitable to allow the lease to be wholly disclaimed, the court—
  - (a) in a case where a notice of disclaimer has been served (whether in compliance with a notice to elect or not), shall order that the notice of disclaimer shall have effect under this Part of this Act, and may extend to such date as it may fix the period allowed under this Act within which a notice to avoid disclaimer may be served by the landlord; or
  - (b) in a case where a notice to elect has been served and has not been complied with, shall order that the tenant be at liberty to serve a notice of disclaimer and may extend to such date as it may fix the period allowed under this Act within which the notice to elect must be complied with or, on the application of the tenant, order that a notice of disclaimer shall be deemed to have been served by him on the date of the order.
- (4) If on such an application the court, having regard to the matters referred to in the last foregoing subsection, is not satisfied that it is equitable to allow the lease to be wholly disclaimed, but is satisfied that it is equitable to allow it to be disclaimed as regards one or more of the separate tenements comprised therein (hereafter referred to as "the disclaimable tenements"), the court—
  - (a) shall order that the lease shall be treated as if it were two separate leases, one comprising the disclaimable tenement or tenements, and the other comprising the remainder of the tenements ; and
  - (b) shall give such consequential directions as to the apportionment of the rent and otherwise as it thinks just, including directions as respects any sub-lease comprising a disclaimable tenement and a tenement which is not disclaimable; and
  - (c) shall order that the tenant shall be at liberty to serve a notice of disclaimer as respects the lease comprising the disclaimable tenement or tenements but not as respects the other lease; and
  - (d) where a notice of disclaimer has been served (whether in compliance with a notice to elect or not), shall order that the notice of disclaimer shall be of no effect; and
  - (e) where a notice to elect has been served (whether a notice of disclaimer has been served in compliance therewith or not), may extend to such date as it may fix the period allowed under this Act within which the notice to elect must be complied with; and
  - (f) may empower the landlord, if the tenant serves a notice of disclaimer as respects the lease comprising the disclaimable tenement or tenements, to enter upon the land comprised in the other lease for the purpose of doing work on the land comprised in the disclaimed lease.

- (5) If on such an application the court, having regard to the matters referred to in subsection (3) of this section, is not satisfied that it is equitable to allow the lease to be disclaimed either wholly or as respects one or more of the separate tenements comprised therein, the court—
- (a) where a notice of disclaimer has been served (whether in compliance with a notice to elect or not), shall order that the notice of disclaimer shall be of no effect;
  - (b) where a notice to elect has been served and no notice of disclaimer has been served in compliance therewith, shall order that any notice of disclaimer thereafter served by the tenant in compliance with the notice shall be of no effect;
  - (c) where a notice to elect has been served and no notice of retention has been served in compliance therewith, may on the application of the tenant order that, notwithstanding any failure to comply with the notice to elect, the tenant shall not be deemed to have served a notice of retention.
- (6) Unless an application is made to the court under this section with respect to a notice of disclaimer or a notice to elect served with respect to a multiple lease, the land comprised in the lease shall be deemed for the purpose of any proceedings pursuant to the notice to have been unfit by reason of war damage at the time when the notice was served.

## **16 Power of landlord to recover possession of whole property comprised in ground lease or multiple lease**

- (1) Where under this Part of this Act—
- (a) a ground lease has been disclaimed or a multiple lease has been disclaimed as respects all or some of the separate tenements comprised therein; and
  - (b) the landlord is not entitled to possession of the whole of the land comprised in the lease free from any interest in or derived out of the term created by the lease;

the court may, on the application of the landlord made at any time, grant to him the right to such possession on such terms as to payment of compensation or otherwise as appears just.

- (2) Where—
- (a) land comprised in a ground lease which has not been disclaimed under this Part of this Act is unfit by reason of war damage; and
  - (b) the term of the lease will expire before the expiration of five years from the date of an application under this section ;

the court may, if it is satisfied on the application of the landlord, having regard to all the circumstances of the case, that it is equitable so to do, grant to him the right to possession of the land comprised in the lease on such terms as to payment of compensation or otherwise as appear just.

## **17 Exclusion of agricultural and mining leases**

Nothing in this Part of this Act shall apply to an agricultural lease or a mining lease.