

Malawi

Temporary Control of Premises Act Chapter 60:01

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Malawi

Temporary Control of Premises Act Chapter 60:01

Commenced on 1 January 1956

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to Make Provision for the Temporary Control of Certain Premises and for Purposes connected therewith

1. Short title

This Act may be cited as the Temporary Control of Premises Act.

2. Application

This Act shall apply to all premises to which the Rent and Mortgage Interest (Restriction) Ordinance, 1944 (now repealed) applied on the 31st December, 1955, and which were subject to a tenancy at such date:

[13 of 1944]

Provided that this Act shall not apply to any such premises which are, on the 1st January, 1956, let under a tenancy agreement which—

- (a) has been drawn by a legal practitioner; and
- (b) has been duly stamped and registered before such date; and
- (c) has, at such date, at least one year to run.

3. Interpretation

In this Act, unless the context otherwise requires—

“**landlord**” means any person other than a tenant who is, or would be but for this Act, entitled to possession of the premises and any other person from time to time deriving title under the original landlord, and includes a sublessor;

“**let**” includes sublet;

“**order**” includes any decision, determination judgment or finding;

“**premises**” means any premises to which this Act applies;

“**prescribed date**” means the date prescribed by the Minister in accordance with [section 11](#);

“**statutory tenancy**” means a tenancy created by operation of [section 9](#);

“**tenancy agreement**” means any agreement between a landlord and a tenant whereby premises are let or agreed to be let;

“**tenant**” includes a subtenant and any person from time to time deriving title under the original tenant;

“**tribunal**” means a rent tribunal established under [section 4](#).

4. Establishment, membership and protection of tribunals

- (1) The Minister may, by notice published in the *Gazette*, establish a rent tribunal for any area of Malawi.
- (2) A tribunal shall consist of a chairman and such other members as the Minister may, by notice published in the *Gazette*, from time to time appoint.
- (3) The Minister may appoint, either generally or for any period, a deputy chairman of a tribunal to act as chairman of such tribunal in the absence of the chairman.
- (4) A tribunal may appoint and employ officers, valuers, inspectors, clerks and other staff for the better carrying out of this Act.
- (5) No matter or thing done by any chairman, member, officer, or agent of a tribunal, if done *bona fide* in the execution or purported execution of this Act, shall subject any such person to any action, claim, liability or demand whatsoever.

5. Proceedings of tribunal

- (1) The chairman, or in his absence the deputy chairman, shall preside at all meetings of a tribunal.
- (2) Three members shall constitute a quorum at any meeting of a tribunal.
- (3) All matters considered by a tribunal shall be decided by the votes of a majority of the members present. In the event of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.
- (4) A tribunal may take into consideration any evidence which it considers relevant, notwithstanding that such evidence would not be admissible in a court of law.
- (5) All notices or other documents issued under the hand of the chairman of a tribunal shall be deemed to have been issued by such tribunal.
- (6) The proceedings of a tribunal shall ordinarily be open to the public, but a tribunal may, in its discretion, direct that the public be excluded from any proceedings or part thereof.
- (7) A record shall be kept of all proceedings of a tribunal, including a summary of any evidence given before it.
- (8) A tribunal shall give at least seven days' notice of the date appointed for the hearing of any matter to all parties concerned.
- (9) Before any decision of a tribunal is made, any person having an interest therein, or his representative, shall be given an opportunity to be heard.
- (10) Any interested party may be represented before a tribunal by a legal practitioner or by any person whom the tribunal may, in its discretion, admit to be heard on his behalf.
- (11) The proceedings of a tribunal shall be deemed to be judicial proceedings.
- (12) In so far as no sufficient provision is made by Rules made in accordance with [section 17](#) a tribunal may regulate its own procedure.

6. General powers of tribunal

A tribunal shall have power to do all things which it is required or empowered to do by or under this Act, and in particular shall have power—

- (a) to enter and inspect, or to authorize any person in writing under the hand of the chairman to enter and inspect, any premises for the purpose of enabling it to determine any question being considered by it;

- (b) to administer oaths and to order persons to attend and give evidence or to produce or give discovery and inspection of documents in like manner as in proceedings in the High Court;
- (c) to award costs of any proceedings before it and to direct that such costs shall be taxed upon such scale and in such manner as may be prescribed or to award a specific sum as costs, provided that each party to any such proceedings shall bear his own costs unless the tribunal shall for special reasons otherwise determine;
- (d) to determine whether or not any premises are premises to which this Act applies;
- (e) to determine the terms and conditions of a tenancy agreement or statutory tenancy;
- (f) to make an order for the recovery of possession of premises, subject to [section 12](#);
- (g) upon such grounds as it may consider sufficient, to review once any order made by it within one month of the making of such order, except where an appeal or reference by way of case stated has been entered in the High Court, and on such review the tribunal may reopen and rehear wholly or in part the proceedings in respect of which such order was made and take fresh evidence and may reverse, vary or confirm its previous order.

7. Orders of tribunal

- (1) A certified copy of any order of a tribunal shall be admissible in evidence in the proceedings of any tribunal or any court as *prima facie* proof of such order.
- (2) Any person, upon application to a tribunal, shall be entitled to a certified copy of any order made by such tribunal, upon payment of such fee as may be prescribed.
- (3) Any order made by a tribunal under [section 11](#) and [12](#) shall be registrable under the Deeds Registration Act as a document affecting land. The tribunal making such order shall cause the original order and a certified copy thereof to be transmitted to the Deeds Registrar for registration together with the appropriate fee. The original order shall, after registration, be returned to the Deeds Registrar to the tribunal. No stamp duty shall be chargeable upon such order.

[Cap. 58:02]

- (4) A certified copy of an order made by a tribunal may be filed in the High Court by any party to the proceedings before the tribunal in respect of which the order was made or by the tribunal of its own motion. Any such order, when filed, may be enforced in the same manner as an order of the High Court.

8. Appeals

- (1) Except as otherwise provided by [section 6](#) (g) and by this section any order made by a tribunal shall be final and conclusive.
- (2) An appeal shall lie to the High Court from any order of a tribunal on any point of law. Upon such appeal the High Court may make such order as it thinks proper, including any direction as to costs.
- (3) A tribunal may, of its own motion, and shall, if so requested by a party to proceedings before it, state a case for the opinion of the High Court on any point of law. The High Court, upon delivering its opinion, shall have power to make such order as it thinks fit, including any direction as to costs.
- (4) The High Court may make Rules governing appeals or references by way of case stated to the High Court providing for fees to be paid, scales of costs and the practice and procedure to be followed.
- (5) An appeal shall lie to the Supreme Court of Appeal from the High Court on any point of law.
- (6) Any order made by the High Court or the Supreme Court of Appeal shall, for the purposes of this Act, have the same effect as if it were the order of a tribunal.

9. Statutory tenancies

Subject to this Act every tenancy of premises shall, on the 1st January, 1956, become a statutory tenancy for a term of four years certain from the said date upon the same terms and conditions as were subsisting on the 31st December, 1955.

10. Implied covenants in statutory tenancies

There shall be implied in every statutory tenancy the covenants set out in the Schedule:

Provided that where such covenants are inconsistent with the terms and conditions of a tenancy agreement, the tenancy agreement shall prevail.

11. Powers of tribunal to vary terms of statutory tenancies

Notwithstanding this Act a tribunal, upon the application, before such date as shall be prescribed by the Minister, of a landlord or tenant of any premises, or of its own motion shall have power—

- (a) to alter the rent payable and fix such rent as it may consider reasonable;
- (b) to alter the terms and conditions of a statutory tenancy in such manner as it may consider reasonable;
- (c) to alter the term of a statutory tenancy to such period, not being less than two years not more than six years unless both landlord and tenant agree to the contrary, as it may consider reasonable:

Provided that where premises are, on the 1st January, 1956, let under a tenancy agreement for a term which would, but for this Act, have expired on or before the 31st December, 1957, a tribunal may order that the statutory tenancy of such premises shall determine upon the date upon which, but for this Act, the term granted under the tenancy agreement would have expired;

- (d) where a landlord has failed to carry out any repairs for which he is liable—
 - (i) to have such 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 or to the High Court for such period as is necessary to defray the cost of such repairs, and the receipt of the tribunal or the High Court shall be a good discharge for any rent so paid; or
 - (ii) to authorize the tenant to carry out such repairs and to deduct the cost thereof from the rent payable to the landlord.

12. Order for possession of premises

- (1) Notwithstanding [section 9](#) an order for possession of premises may be made by a tribunal, upon application by a landlord before the prescribed date, upon any of the following grounds—
 - (a) that the rent lawfully due from the tenant has not been paid, or that any other covenant or obligation of the statutory tenancy has been broken or not performed;
 - (b) that the tenant or any licensee of or any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose;
 - (c) that the condition of the premises has deteriorated owing to acts of waste by or the neglect or default of the tenant or any licensee of or any person residing with the tenant;
 - (d) that the tenant has given notice to quit;
 - (e) that, in the case of a dwelling-house, it is reasonably required by the landlord for occupation as a residence for himself or for his wife or children and the tribunal is satisfied that suitable

alternative accommodation, which is reasonable as regards rent, is available or will be available to the tenant at the time the order takes effect or that the tenant owns a dwelling-house suitable for his own accommodation which is available to him or will be available at the time the order takes effect, or would have been so available but for his own act;

- (f) that the landlord owns premises which he has previously occupied as a residence and which he reasonably required for occupation as a residence for himself or his wife or his children and that he has complied with any term or condition of the tenancy agreement relating to notice or, if there is no such term or condition, has given the tenant one month's notice to quit in writing;
- (g) that, in the case of a dwelling-house, it is reasonably required for occupation by some person in the whole time employment of the landlord;
- (h) that, in the case of business premises, they are reasonably required by the landlord for his own occupation and the tribunal is satisfied that suitable alternative accommodation, which is reasonable as regards rent, is available or will be available to the tenant at the time the order takes effect or that the tenant owns business premises suitable for his own accommodation which are available to him or will be available to him at the time the order takes effect or would have been so available but for his own act;
- (i) that, in the case of a dwelling-house, it was let by the landlord before the 1st January, 1956, during the temporary absence of the landlord from Malawi either for a definite term which has expired or upon the condition that it should be vacated by the tenant upon the return of the landlord to Malawi;
- (j) that the landlord requires possession of the premises to enable the reconstruction or rebuilding thereof to be carried out, in which case a tribunal may include in any order for possession an order requiring the landlord to grant to the tenant a new lease of the reconstructed or rebuilt premises or part thereof on such terms and conditions and for such period not exceeding three years as the tribunal thinks fit;
- (k) that the tenant, where the same is his liability, has failed to keep the premises in good and tenantable repair:

Provided that no order for possession of such premises shall be made unless the tenant has failed to effect such repairs within one month of being requested in writing by the landlord to do so;

- (l) that the tenant has, since the 1st January, 1954, assigned, sublet or transferred possession of the premises or any part thereof without the consent of the landlord;
 - (m) that the premises are reasonably required for the purpose of the execution of the statutory duties or powers of a local authority, planning committee or other statutory body or for any purpose which, in the opinion of the tribunal, is in the public interest.
- (2) No order for possession of premises shall be made in the exercise of the powers conferred by subsection (1) unless the tribunal considers it reasonable to make such an order.
 - (3) An order made against a tenant for possession of premises under this section shall not affect the rights under this Act of any subtenant to whom the premises or any part thereof have been lawfully sublet before proceedings for the recovery of possession were commenced nor be in any way operative against such subtenant who shall, subject to this Act, be deemed to become, from the date of such order, the tenant of the landlord upon the terms and conditions of his previous subtenancy.
 - (4) Upon the making of an order for the recovery of possession of premises, a tribunal may stay or suspend the execution of such order or postpone the date of possession for such period, not exceeding six months, as it thinks fit, and subject to such conditions, if any, in regard to payment by the tenant of arrears of rent or otherwise, as the tribunal thinks fit.

13. Determination of statutory tenancy by tenant

The tenant of any premises may, at any time before the 1st April, 1956, or within three months of any order made in accordance with [section 11](#), determine his statutory tenancy of such premises by giving one month's notice in writing to the landlord.

14. Jurisdiction of courts

No order for possession of premises, except on the ground that rent lawfully due from the tenant has not been paid, shall be made by any court until after the prescribed date or until after the determination of any application made to a tribunal in respect of such premises, whichever is the later.

15. General law of landlord and tenant applicable

Except as otherwise provided by this Act, the law relating to landlord and tenant for the time being in force in Malawi shall apply to all statutory tenancies.

16. Penalties

- (1) Any person who contravenes or fails to comply with any order made by a tribunal shall be liable to a fine of £100 and to imprisonment for six months.
- (2) Any person convicted of an offence under subsection (1) may, in addition to or in lieu of any other punishment, be ordered to pay compensation to any person who has suffered loss or damage by reason of such offence.

17. Power of High Court to make Rules

The High Court may make Rules prescribing anything which, under this Act, may be or is to be prescribed and generally for the better carrying out of the purposes of this Act.

18. Duration of Act

This Act shall expire upon such date as the Minister may declare by order published in the *Gazette*.

Schedule (Section 10)

A. Covenants by the tenant

1. To pay the rent on the first day of every calendar month in advance.
2. To bear, pay and discharge all existing and future rates, taxes, assessments, duties, impositions, outgoings and burdens whatsoever assessed, charged or imposed upon the premises or any part or parts thereof taken separately, or upon the owner or occupier in respect thereof.
3. To bear the cost of all electric light consumed upon the premises as and when supplied thereto.
4. To keep the interior of the premises and all additions thereto erections and structures, and the landlord's fixtures therein, in good and substantial repair and condition (fair wear and tear excepted).
5. Not to make or permit to be made any alteration in, or addition to, the premises without the previous written consent of the landlord, or to cut, maim or injure or suffer to be cut, maimed or injured any walls or timbers thereof.

6. To permit the landlord and his surveyor and agents at all reasonable times to enter on the premises and to view the condition thereof, and upon notice being given by the landlord, to repair in accordance with the covenant hereinbefore contained.
7. To permit the landlord and his agents, together where necessary with workmen and appliances, at all reasonable times to enter upon the premises to take inventories of the fixtures thereof and to carry out repairs thereto or to adjoining premises.
8. Not to assign, underlet or part with the possession of the premises, or any part thereof, without the previous written consent of the landlord which consent shall not be unreasonably withheld in the case of a respectable and responsible person.
9. Not to permit or suffer any part of the premises to be used so as to cause a nuisance or annoyance to the occupier of adjoining premises or the neighbourhood.
10. To yield up the premises with all additions thereto being fixtures at the determination of the tenancy in good and substantial repair and condition in accordance with the covenants hereinbefore contained.
11. To pay all costs, charges and expenses (including legal practitioners costs and surveyors fees) incurred by the landlord for the purpose of or incidental to the preparation and service of a notice under section 14 of the Conveyancing and Law of Property Act, 1881, of the United Kingdom requiring the tenant to remedy a breach of any of the stipulations hereinbefore contained, notwithstanding that forfeiture for such breach shall be avoided otherwise than by relief granted by the Court.
[44 & 45 Vict. 4i]
12. In the case of a dwelling-house, not to use the premises for business, trade or professional purposes without the consent of the landlord.

B. Covenants by the landlord

1. That the tenant paying the rent and rates hereby reserved and observing and performing the several stipulations herein on his part contained shall peaceably hold and enjoy the premises during the term, without interruption by the landlord or any person rightfully claiming under and in trust for him.
2. To keep the walls, main timbers, roof and structures of the premises in good and substantial repair and condition.

C. General covenants

1. If any part of the rent shall be unpaid for twenty-one days after becoming payable (whether formally demanded or not) or if the tenant shall become bankrupt or make any assignment for the benefit of, or enter into any arrangement for composition with, his creditors, or if any covenant on the tenant's part herein contained shall not be performed or observed then, and in any of the said cases, it shall be lawful for the landlord at any time thereafter to re-enter in and upon the premises or any part thereof in the name of the whole and thereupon the lease shall absolutely determine, but without prejudice to the right of the landlord in respect of any breach of the tenant's covenants herein contained.
2. In the event of the premises being destroyed or damaged by fire then if the same shall be absolutely destroyed or so damaged as to render them unfit for occupation for a period of more than fourteen days, the rent therefor shall be suspended until the premises shall have been so far repaired by the landlord as to enable the same to be re-occupied.
3. Any request, consent or notice required to be made, given or served in the terms of the lease shall be sufficiently made, given or served to or upon the tenant if left addressed to the tenant on the premises, or forwarded by post to the tenant to his last known address in Malawi, and shall be sufficiently made, given or served to or upon the landlord if delivered to him personally or forwarded by post to his last known

address in Malawi, and a request, consent or notice sent by post shall be deemed to be made, given or served at the time when, in due course of post, it would be delivered at the address to which it is sent.