



THE REPUBLIC OF KENYA

LAWS OF KENYA

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

CHAPTER 301

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CHAPTER 301

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

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TERMS AND CONDITIONS TO BE IMPLIED IN TENANCIES

CHAPTER 301

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

[Date of assent: 4th June, 1965.]

[Date of commencement: 1st November, 1965.]

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

[Act No. 13 of 1965, Legal Notice 283 of 1966, Act No. 38 of 1968, Act No.
2 of 1970, Act No. 12 of 1971, Act No. 13 of 1988, Act No. 25 of 2015.]

1. Short title

This Act may be cited as the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act.

[Act No. 12 of 1971, s. 2.]

2. Interpretation

(1) For the purposes of this Act, unless the context otherwise requires—

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to commerce;

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

"controlled tenancy" means a tenancy of a shop, hotel or catering establishment

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- (a) which has not been reduced into writing; or
 - (b) which has been reduced into writing and which—
 - (i) is for a period not exceeding five years; or
 - (ii) contains provision for termination, otherwise than for breach of covenant, within five years from the commencement thereof; or
 - (iii) relates to premises of a class specified under subsection (2) of this section:

Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy;

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

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

"receiving party" means a tenant or a landlord of a controlled tenancy to whom a tenancy notice is given;

"reference" means a reference to a Tribunal under section 6 of this Act;

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

"requesting party" means a landlord or a tenant of controlled tenancy by whom a tenancy notice is given;

"service charge" means a charge for any services rendered;

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

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

"tenancy" means a tenancy created by a lease or underlease, by an agreement for a lease or underlease by a tenancy agreement or by operation of law, and includes a sub-tenancy but does not include any relationship between a mortgagor and mortgagee as such;

"tenancy notice" means a notice given under subsection (2) or subsection (3) of section 4 of this Act;

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

"Tribunal" means a Tribunal appointed under section 11 of this Act.

(2) The Cabinet Secretary may, by notice in the *Gazette*, specify, by reference to rent paid or rateable value entered in a valuation roll under the Valuation for Rating Act (Cap. 266), classes of shops, hotels or catering establishments tenancies of which shall be controlled tenancies regardless of the form or period of such tenancies.

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

[Act No. 2 of 1970, s. 3, Act No. 13 of 1988, Sch.]

3. Matters relating to controlled tenancies generally

(1) Without prejudice to the power of the parties to a tenancy to adopt any form upon which they may mutually agree, a controlled tenancy may be reduced to writing in the prescribed form.

(2) The terms and conditions set forth in the Schedule to this Act shall be implied in every controlled tenancy which is not reduced to writing or which is in the prescribed form.

(3) The landlord of a controlled tenancy shall keep a rent book in the prescribed form, of which he shall provide a copy for the tenant and in which shall be maintained a record, authenticated in the prescribed manner, of the particulars of the parties to the tenancy and the premises comprised therein, and the details of all payments of rent and of all repairs carried out to the premises.

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(4) Whenever a landlord appoints an agent for the purpose of effecting transactions relating to a controlled tenancy, the particulars of such agent shall be recorded in the rent book and authenticated by his signature.

(5) Any person who—

- (a) being a landlord, fails to keep a rent book or to provide a copy thereof as required by subsection (3) of this section; or
- (b) fails to make any prescribed entry in a rent book, or to authenticate any such entry in the prescribed manner; or
- (c) makes any entry in a rent book which he knows to be false or which he has no reasonable cause to be true; or
- (d) makes any alteration or erasure of an entry in a rent book which may be to the prejudice of the landlord or the tenant,

shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a period not exceeding two months, or to both such fine and imprisonment.

(6) Any agreement relating to, or condition in, a controlled tenancy shall be void in so far as it purports to—

- (a) preclude the operation of this Act; or
- (b) provide for the termination or surrender of the tenancy in the event of the tenant making an application to a Tribunal under this Act; or
- (c) provide for the imposition of any penalty or disability on the tenant on making any such application.

[Act No. 2 of 1970, s. 4.]

4. Termination of and alteration of terms and conditions in controlled tenancy

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

(2) A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.

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

(4) No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, as shall be specified therein:

Provided that—

- (i) where notice is given of the termination of a controlled tenancy, the date of termination shall not be earlier than the earliest date on which, but for the provisions of this Act, the tenancy would have, or could have been, terminated;
- (ii) where the terms and conditions of a controlled tenancy provide for a period of notice exceeding two months, that period shall be substituted

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for the said period of two months after the receipt of the tenancy notice;

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

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

(6) A tenancy notice may be given to the receiving party by delivering it to him personally, or to an adult member of his family, or to any other servant residing within or employed in the premises concerned, or to his employer, or by sending it by prepaid registered post to his last known address, and any such notice shall be deemed to have been given on the date on which it was so delivered, or on the date of the postal receipt given by a person receiving the letter from the postal authorities, as the case may be.

[Act No. 38 of 1968, Act No. 2 of 1970, s. 5.]

5. Effect on sub-tenancies

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

(2) Where a landlord gives a tenancy notice to his tenant, he may at the same time give a similar notice to any person to whom the tenant has sub-let the whole or any part of the premises concerned and thereupon the provisions of this Act shall apply to the sub-tenant, and his sub-tenancy, as if he were the tenant of such landlord.

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

[Act No. 2 of 1970, s. 6.]

6. Reference to Tribunal

(1) A receiving party who wishes to oppose a tenancy notice, and who has notified the requesting party under section 4(5) of this Act that he does not agree to comply with the tenancy notice, may, before the date upon which such notice is to take effect, refer the matter to a Tribunal, whereupon such notice shall be of no effect until, and subject to, the determination of the reference by the Tribunal:

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

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

[Act No. 2 of 1970, s. 7.]

7. Grounds on which landlord may seek to terminate tenancy

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

- (a) where, under the tenancy under which the tenant holds for the time being, the tenant has any obligations in respect of the repair and maintenance of the premises comprised in such tenancy, that the tenancy ought to be terminated in view of the state of repair of the premises, being a state resulting from the tenant's failure to comply with the said obligations;
- (b) that the tenant has defaulted in paying rent for a period of two months after such rent has become due or payable or has persistently delayed in paying rent which has become due or payable;
- (c) that the tenant has committed other substantial breaches of his obligations under the tenancy, or for any other reason connected with the tenant's use or management of the premises comprised in the tenancy;
- (d) that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his retail trade or business or enterprise and to the situation and extent of, and facilities afforded by, the premises comprised in the tenancy;
- (e) that the tenancy was created by the subletting of part only of the premises comprised in a superior tenancy of which the landlord is the owner of interest in reversion expectant on the termination of that superior tenancy, and that the aggregate of the rents reasonably obtainable on separate lettings of such premises in parts would be substantially less than the rent reasonably obtainable on a letting of such premises as a whole, and that on the termination of the tenancy the landlord requires possession of such premises as a whole for the purpose of letting or otherwise disposing of the same as a whole;
- (f) that on the termination of the tenancy the landlord intends to demolish or reconstruct the premises comprised in the tenancy, or a substantial part thereof, or to carry out substantial work of construction on such premises or part thereof, and that he could not reasonably do so without obtaining possession of such premises;
- (g) subject as hereinafter provided, that on the termination of the tenancy the landlord himself intends to occupy for a period of not less than one year the premises comprised in the tenancy for the purposes, or partly for the purposes, of a business to be carried on by him therein, or at his residence.

(2) The landlord shall not be entitled to oppose a reference to a Tribunal on the ground specified in subsection (1)(g) of this section if the interest of the landlord,

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or an interest which has merged in that interest and but for the merger would be the interest of the landlord, was purchased or created within the five-year period preceding the date of the tenancy notice seeking to terminate the tenancy, and at all times since such purchase or creation the premises concerned have been occupied wholly or mainly for the purposes of a shop, hotel or catering establishment.

(3) Subject to subsection (2) of this section, a requesting party may oppose a reference on any ground which has been specified in the tenancy notice concerned.

[Act No. 2 of 1970, s. 8.]

8.

[Repealed by Act No. 2 of 1970, s. 9.]

9. Decision of Tribunal and effect thereof

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

- (a) approve the terms of the tenancy notice concerned, either in its entirety or subject to such amendment or alteration as the Tribunal thinks just having regard to all the circumstances of the case; or
- (b) order that the tenancy notice shall be of no effect;
- (c) and in either case make such further or other order as it thinks appropriate.

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

- (a) determine or vary the rent to be payable in respect of the controlled tenancy, having regard to the terms thereof and to the rent at which the premises concerned might reasonably be expected to be let in the open market, and disregarding—
 - (i) any effect on rent of the fact that the tenant has, or his predecessors in title have, been in occupation of the premises;
 - (ii) any goodwill attached to the premises by reason of the carrying on thereof of the trade, business or occupation of the tenant or any such predecessor;
 - (iii) any effect on rent of any improvement carried out by the tenant or any such predecessor otherwise than in pursuance of an obligation to the immediate landlord;
- (b) terminate or vary any of the terms or conditions of the controlled tenancy, or any of the rights or services enjoyed by the tenant, upon such conditions, if any, as it deems appropriate.

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

- (a) in the case of an assessment of rent, until after the expiration of two years; or
- (b) in any other case, until after the expiration of twelve months,

after the date of the determination, unless the Tribunal, at the time of the determination, specifies some shorter period.

[Act No. 2 of 1970, s. 10.]

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

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

[Act No. 2 of 1970, s. 11.]

11. Establishment of Tribunals

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

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

12. Powers of Tribunals

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

- (a) to determine whether or not any tenancy is a controlled tenancy;
- (b) to determine or vary the rent to be payable in respect of any controlled tenancy, having regard to all the circumstances thereof;
- (c) to apportion the payment of rent payable under a controlled tenancy among tenants sharing the occupation of the premises comprised in the controlled tenancy;
- (d) where the rent chargeable in respect of any controlled tenancy includes a payment by way of service charge, to fix the amount of such service charge;
- (e) to make orders, upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a tenant, being at any material time in occupation of the premises comprised in a controlled tenancy;
- (f) for the purpose of enabling additional buildings to be erected, to make orders permitting landlords to excise vacant land out of premises of which, but for the provisions of this Act, the landlord could have recovered possession;
- (g) where the landlord fails to carry out any repairs for which he is liable—
 - (i) to have the required repairs carried out at the cost of the landlord and, if the landlord fails to pay the cost of such repairs, to recover the cost thereof by requiring the tenant to pay rent to the Tribunal for such period as may be required to defray the cost of such repairs, and so that the receipt of the Tribunal shall be a good discharge for any rent so paid;

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- (ii) to authorize the tenant to carry out the required repairs, and to deduct the cost of such repairs from the rent payable to the landlord;
- (h) to permit the levy of distress for rent;
- (i) to vary or rescind any order made by the Tribunal under the provisions of this Act;
- (j) to administer oaths and order discovery and production of documents in like manner as in civil proceedings before the High Court, to require any landlord or tenant to disclose any information or evidence which the Tribunal considers relevant regarding rents and terms or conditions of tenancies, and to issue summons for the attendance of witnesses to give evidence or produce documents, or both, before the Tribunal;
- (k) to award costs in respect of references made to it, which costs may be exemplary costs where the Tribunal is satisfied that a reference to it is frivolous or vexatious;
- (l) to award compensation for any loss incurred by a tenant on termination of a controlled tenancy in respect of goodwill, and improvements carried out by the tenant with the landlord's consent;
- (m) to require a tenant or landlord to attend before the Tribunal at a time and place specified by it, and if such tenant or landlord fails to attend, the Tribunal may investigate or determine the matter before it in the absence of such tenant or landlord;
- (n) to enter and inspect premises comprised in a controlled tenancy in respect of which a reference has been made to the Tribunal.

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

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

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

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

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

(6) Any person who, without lawful excuse, fails to comply with any order, requirement or summons given or issued under paragraph (j) of subsection (1) of this section, or who, having attended as a witness under summons, departs without the permission of the Tribunal or fails to attend after any adjournment after being ordered to attend, shall be guilty of an offence and liable to a fine not exceeding one thousand shillings.

[Act No. 2 of 1970, s. 12.]

13. Compensation for misrepresentation

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

14. Filing of determination or order in court

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

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

15. Appeal to court

(1) Any party to a reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination or order, appeal to the Environment and Land Court:

Provided that the Environment and Land Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.

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

(3) *Deleted by Act No. 2 of 1970, s. 13.*

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

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

[Act No. 2 of 1970, s. 13, Act No. 25 of 2015, Sch.]

16. Regulations and rules

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

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

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(e) the scale and taxation of costs and expenses of witnesses in proceedings before a Tribunal.

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

[Act No. 25 of 2015, Sch.]

SCHEDULE

[s. 3]

TERMS AND CONDITIONS TO BE IMPLIED IN TENANCIES

[Act No. 2 of 1970, s. 14.]

- (i) That the premises are fit for habitation and comply with the laws relating to health in all respects.
 - (ii) That where the premises are destroyed by fire, civil commotion, or accident, through no negligence on the part of the lessee, any liability to pay rent shall be suspended until the premises are again made fit and habitable.
 - (iii) The lessee shall have quiet enjoyment of premises provided that he complies with express or implied covenants.
 - (iv) The lessor shall not use adjoining land or premises in a way which would render leased premises unfit for the purpose for which they were let.
 - (v) The lessor shall be responsible for all repairs to roofs, main walls, main drains, main electric wiring and structures, and shall be responsible for all necessary renewals to the premises.
 - (vi) The lessee shall be responsible for all internal repairs and decorations, fair wear and tear excepted.
 - (vii) The lessor shall be responsible for the repair, maintenance, cleaning and lighting of common parts where part of a building is let.
 - (viii) The lessee shall pay rent for the premises in advance.
 - (ix) The lessor shall pay all rates, taxes and similar outgoings, unless the lessee is responsible therefor under any written agreement.
 - (x) The lessee shall keep the fixtures and fittings in good and tenantable repair.
 - (xi) The lessee shall permit the lessor or his agent and his workmen to enter the premises and to examine or repair the same at all reasonable times after giving reasonable notice thereof.
 - (xii) The lessee shall not transfer, part with possession, or sublet the premises or any part thereof without the consent of the lessor, which consent shall not be unreasonably withheld.
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