

**THE LANDLORD AND TENANT (SHOPS, HOTELS AND  
CATERING ESTABLISHMENTS) (AMENDMENT) ACT,  
1970**

**No. 2 of 1970**

*Date of Assent: 3rd April, 1970*

*Date of Commencement: 6th April, 1970*

**An Act of Parliament to amend the Landlord and Tenant  
(Shops, Hotels and Catering Establishments) Act**

ENACTED by the Parliament of Kenya, as follows:—

Short title.

**1.** This Act may be cited as the Landlord and Tenant (Shops, Hotels and Catering Establishments) (Amendment) Act, 1970.

Amendment of  
section 1 of  
Cap. 301.

**2.** Section 1 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (hereinafter referred to as the principal Act), is hereby amended by the deletion of everything after "operation of this Act".

Amendment of  
section 2 of  
Cap. 301.

**3.** Section 2 of the principal Act is hereby amended—

(a) by the insertion of the following in their correct alphabetical positions—

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

(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;

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“Minister” means the Minister for the time being responsible for matters relating to commerce;

“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;

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

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

- (b) in the definition of “tenancy”, by the deletion of the words “for a period not exceeding five years”;
- (c) by renumbering the existing section as subsection (1) and by the addition of the following—

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

Cap. 266.

(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.

4. The principal Act is hereby amended by the repeal of section 3 and the substitution therefor of the following—

Replacement of section 3 of Cap. 301.

Matters relating to controlled tenancies generally.

3. (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.

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(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.

(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.

5. The principal Act is hereby amended by the repeal of section 4 and the substitution therefor of the following—

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

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

Replacement of  
section 4 of  
Cap. 301.

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(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 servant residing with him 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.

Amendment of  
section 5 of  
Cap. 301.

6. Section 5 of the principal Act is hereby amended—

(a) in subsection (1), by the insertion of the word “controlled” before the word “sub-tenancy” wherever it occurs;

(b) by the deletion of subsection (2) and the substitution therefor of the following—

(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.

Replacement of  
section 6 of  
Cap. 301.

7. The principal Act is hereby amended by the repeal of section 6 and the substitution therefor of the following—

Reference to  
Tribunal.

6. (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.

8. Section 7 of the principal Act is hereby amended—

Amendment of  
section 7 of  
Cap. 301.

(a) in subsection (1), by the insertion of the word “controlled” before the word “tenancy” where it occurs for the first time;

(b) in subsection (2), by the deletion of all the words after “purchased or created” and the substitution therefor of the words “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”;

(c) by the deletion of subsection (3) and the substitution therefor of the following—

(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.

9. The principal Act is hereby amended by the repeal of section 8.

Repeal of  
section 8 of  
Cap. 301.

10. The principal Act is hereby amended by the repeal of section 9 and the substitution therefor of the following—

Replacement of  
section 9 of  
Cap. 301.

Decision of  
Tribunal and  
effect thereof.

9. (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

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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; and in either case
- (c) 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 thereat 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

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(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.

**11.** Section 10 of the principal Act is hereby amended—

Amendment of section 10 of Cap. 301.

(a) by the deletion of the figure and brackets “(2)”;

(b) by the deletion of the words “and may be enforced by a court of competent jurisdiction”.

**12.** Section 12 of the principal Act is hereby amended—

Amendment of section 12 of Cap. 301.

(a) in subsection (1)—

(i) in paragraph (a) by the deletion of the words “tenancy to which this Act applies” and the substitution therefor of the words “controlled tenancy”;

(ii) by the insertion of the word “controlled” before the word “tenancy” wherever it occurs in paragraphs (b), (c), (d), (e), (l) and (n);

(iii) in paragraph (f), by the deletion of all words appearing after the word “possession”;

(iv) by the deletion of paragraph (j) and the substitution therefor of the following—

(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;

(b) in subsection (4), by the insertion of the word “controlled” before the word “tenancy”;



(c) by the addition of the following new subsection—

(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.

Amendment of  
section 15 of  
Cap. 301.

**13.** Section 15 of the principal Act is hereby amended—

(a) by the deletion of subsection (1) and the substitution therefor of the following—

(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 High Court:

Provided that the High 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;

(b) by the deletion of subsection (3).

Amendment of  
Schedule to  
Cap. 301.

**14.** Paragraph (iv) of the Schedule to the principal Act is hereby amended by the deletion of the words “shall not derogate from his agreement” by using” and the substitution therefor of the words “shall not use”.