

Act No. 66, 1901.

FORFEITURE OF
LEASES.

An Act for granting relief against forfeiture of leases and for otherwise amending the law as to property. [24th December, 1901.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring the lessee to make compensation in money for the breach, and the lessee fails within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

(2) Where a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture, the lessee may in any suit brought by himself in the Supreme Court of New South Wales in its equitable jurisdiction apply to that Court for relief; and that Court

Restrictions on and relief against forfeiture of leases. 44 & 45 Vic. c. 41, s. 14.

Approved
Command

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Court may grant or refuse relief as that Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the Court in the circumstances of each case thinks fit.

(3) For the purpose of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

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

(6) This section does not extend—

- (a) to any Crown lease or to any lease granted by an owner under section eleven of the Mining Laws Amendment Act, 1896, or to any lease or tenancy for a term of one year or less; or
- (b) to a covenant or condition against the assigning, under-letting, parting with the possession or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest.

(7) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

2. (1) The notice mentioned in section one shall be in writing, ^{Regulations} and in the form set out in the Schedule or to a similar effect. _{respecting notice.}

(2) Such notice shall be sufficient, although only addressed to the lessee by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3) Such notice shall be sufficiently served if it is left at the last-known place of abode or business in the Colony of the lessee, or affixed or left for him on the land or any house or building comprised in the lease, or, in the case of a mining lease, is left for the lessee at the office or counting-house of the mine. (4)

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(4) Such notice shall also be sufficiently served if it is sent by post in a registered letter addressed to the lessee by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5) Such notice shall also be sufficiently served on any person who is absent from the Colony if it is served personally on his attorney or agent within the Colony.

Merger.

36 & 37 Vic. c. 66, s. 25, subs. (4).

3. There shall not after the commencement of this Act be held or deemed to be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Application of Act.
44 & 45 Vic. c. 41,
s. 14, subs. (9).

4. This Act applies to leases made either before or after the commencement of this Act, and to any merger by operation of law only arising before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Judges may make
rules.

5. The Judges of the Supreme Court, or any three of them, may make general rules for regulating the times and form and mode of procedure and the forms to be used in connection therewith, and generally the practice of the Court in respect of the several matters to which this Act relates.

Short title.

6. This Act may be cited as the "Forfeiture of Leases Act of 1901."

SCHEDULE.

Notice to lessee to
remedy breach.

To
The lessee of [*here describe premises with reasonable certainty, as for instance, "No. 369, George-street, Sydney"*].

Having reference to the lease of the abovementioned premises, dated the day of , 1 , from A.B. to C.D., and the covenant by the lessee therein contained [*here state concisely the nature of the covenant or covenants breach of which is complained of, as for instance, "to repair,"*] and the breach by you of that covenant I hereby give you notice and require you to remedy that breach by [*here set out the remedy as, for instance, "by forthwith putting the said premises in repair by doing and executing the repairs in and upon the said premises which are specified in the Schedule hereto annexed"*]. And I further require you to make reasonable compensation to my satisfaction for the breach already committed, which compensation I assess at the sum of £

Dated the day of , 19 .

Lessor.

Act