



ANNO UNDECIMO

## ELIZABETHAE II REGINAE

A.D. 1962

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### No. 55 of 1962

An Act to provide for relief to tenants from excessive rents and for other purposes.

[Assented to 22nd November, 1962.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Excessive Rents Act, 1962". Short title.
  
2. This Act shall come into operation on the first day of January, one thousand nine hundred and sixty-three. Commencement.
  
3. (1) In this Act unless the context otherwise requires— Interpretation.

"dwellinghouse" means any premises the whole or a substantial part of which is let for the purpose of residence, and includes—

  - (a) any part of any premises let separately for the purposes of residence ;
  - (b) any part of any premises let separately for the purposes of residence the letting of which includes or provides for the use by the tenant of any other part of the premises or any fittings therein ;
  - (c) the premises of any lodging house ;

but does not include any premises any part of which is let for the purpose of being used as a shop, storeroom, workshop, stable, or any similar purpose :

“landlord” and “tenant” mean the parties to a letting agreement and respectively include—

- (a) a mesne landlord and mesne tenant; and
- (b) a sub-landlord and a sub-tenant;

“letting agreement” means every agreement for the letting or subletting of any premises for any period whether the agreement is made orally, in writing, or by deed, and includes an agreement for the letting or subletting of any premises together with the use of furniture or other goods and also includes an agreement for the letting or subletting of any premises together with the supply or provision of any domestic service but does not include any agreement in writing and signed by the parties for the letting or subletting for a period of one year or more of any premises whether with or without the use of furniture goods or services (not being any such agreement made at any time after the commencement of this Act after the giving to the tenant of a notice to terminate an existing tenancy or in consequence of a threat by the landlord to give a notice to terminate an existing tenancy):

“local court” means the local court of full jurisdiction nearest to the premises in respect of which an application is made under the provisions of this Act:

“premises to which this Act applies” means any premises being a dwellinghouse the subject of a letting agreement:

“rates” means any charges levied by the Minister of Works or by any municipal council or district council:

“rent” means the actual rent payable under a letting agreement and includes—

- (a) the value to the landlord of any covenants, conditions or other provisions of, or relating to, the letting agreement to be performed by the tenant other than covenants, conditions and provisions usually entered into by a tenant;
- (b) any rates or taxes (other than excess water rates) payable by the tenant in respect of the premises to which the letting agreement relates;
- (c) any amount payable by the tenant to the landlord for the use of any furniture or other goods or the supply or provision of any domestic

service in connection with the letting of the premises to which the letting agreement relates ;

- (d) any amount payable by the tenant to the landlord in respect of the supply of any electricity, gas, water, fuel, or other domestic commodity in connection with the letting of the premises to which the letting agreement relates or in respect of any sanitary service for such premises ;
- (e) any amount payable by the tenant to the landlord for the use of any fittings in the premises to which the letting agreement relates or, if the letting agreement relates to a part of any premises, any amount payable by the tenant to the landlord for the use of any fittings in any other part of the premises ; and
- (f) if the letting agreement relates to a part of any premises, any amount payable by the tenant to the landlord for the use of any other part of the premises :

“tax” includes any tax, whether on land or income derived from land, which is imposed by any Act of the State or the Commonwealth.

(2) For the purpose of this Act “tenant” includes a person who remains in possession of premises after the termination of the letting agreement in respect of the premises, and “landlord” has a corresponding meaning.

**4.** This Act shall bind the Crown.

Act to bind  
Crown.

**5.** This Act shall not apply to any premises during the time any notice fixing the maximum rental thereof is in force under Part VII of the Housing Improvement Act, 1940-1961.

Act not to  
apply to  
certain  
premises.

**6.** The tenant of any premises to which this Act applies may from time to time apply to the local court to determine whether the rent of the premises is excessive.

Application to  
determine  
whether rent  
excessive.

**7. (1)** The local court shall hear and inquire into the application and shall either dismiss the application or, if it is of the opinion that the rent is excessive, make an order fixing the rent of the premises from a date not being a date prior to

Powers of  
Local Court.

the date of the application : Provided that the local court may, notwithstanding that it is not of the opinion that the rent is excessive, make an order that the landlord shall not, during such period not exceeding one year as is specified in the order, without the leave of the local court, give any notice to terminate the tenancy.

(2) On any such application the local court may do all such acts, matters and things relating thereto and in the same manner and to the same extent that it is empowered to do in the exercise of its ordinary jurisdiction.

(3) The decision of the local court shall be final and conclusive.

(4) Any order of a local court fixing a rent under this Act shall remain in force for a period of one year from the date specified in the order.

Criteria to be considered.

8. In the exercise of its powers under this Act in respect of any premises to which this Act applies the local court shall have regard to—

- (a) the capital value of the premises used as a dwelling-house at the date of the application ;
- (b) the annual rates, taxes and insurance premiums ;
- (c) the estimated annual cost of reasonable repairs, maintenance and renewals of the premises and fixtures thereon and the services provided by the landlord or tenant in connection with the letting agreement ;
- (d) any obligation on the part of the tenant to effect any improvements, alterations, repairs or renovations of the premises at his own expense ;
- (e) the estimated amount of annual depreciation in the value of the premises ;
- (f) the rate of interest charged upon overdrafts by the Commonwealth Trading Bank of Australia ;
- (g) if the letting agreement provides for the use of furniture or other goods in connection with the letting of the premises, the nature and value of such furniture or other goods ;
- (h) the accommodation and amenities provided in the premises and the state of repair and the general condition thereof ;
- (i) the use to which the premises are put by the tenant ;

- (j) the justice and merits of the case and the circumstances and conduct of the parties.

9. (1) While an order fixing the rent of any premises under this Act is in force then and notwithstanding any alterations, additions, repairs or renovations to the premises whether structural or otherwise or any change of ownership or tenancy of the premises or in the nature or value of the services supplied by the landlord or in any furniture or goods let with the premises the rent fixed by such order shall be the rent payable in respect of the premises unless the landlord agrees to the payment of any lesser rent. Duration of order.

(2) Any amount by which the rent charged in respect of the premises is in excess of the rent as fixed as aforesaid shall, notwithstanding any agreement to the contrary, be irrecoverable.

(3) Where any sum has been paid on account of any rent being a sum which under this Act would have been irrecoverable by the landlord the sum so paid shall be recoverable as a debt in any court of competent jurisdiction from the landlord who received the payment by the tenant by whom it was paid and may without prejudice to any other method of recovery be deducted by that tenant from any rent payable by him to such landlord.

10. Any person who, whether as principal or agent or in any other capacity— Demand of irrecoverable rent.

- (a) in any rent book or similar document, without reasonable excuse, makes any entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of this Act is irrecoverable ;  
or
- (b) without reasonable excuse, demands or, receives, as rent in respect of any premises to which this Act applies, any sum which by virtue of this Act is irrecoverable

shall be guilty of an offence.

Penalty : Fifty pounds.

11. (1) Any person who, whether as principal or agent, receives any payment of rent of any premises to which this Act applies shall, at the time of receiving the payment or within twenty-four hours of the making of the payment, give or cause to be given to the person making the payment a receipt (whether by way of an entry in a rent book or by a separate document) for the payment specifying the amount paid, the period in respect of which the payment is made, and the premises in respect of which the payment is made. Duty to give receipt for rent.

(2) Any person who commits any contravention of this section shall be guilty of an offence.

Penalty : Twenty pounds.

Proper records  
of rent to be  
kept.

**12.** (1) Any landlord of any premises to which this Act applies who fails, by himself or his agent, to keep or cause to be kept, a record showing the rent received in respect of those premises shall be guilty of an offence.

(2) Any landlord of any premises to which this Act applies or any agent of any such landlord who, without reasonable excuse, makes or, without reasonable excuse, allows to be retained in any record showing the rent of those premises, any false entry in a material particular shall be guilty of an offence.

Penalty : Fifty pounds.

Threatening  
tenant, etc.

**13.** (1) Any person who—

(a) by any threat, endeavours to dissuade or prevent a tenant from making or prosecuting any application to the local court under this Act, shall be guilty of an offence ;

(b) does or procures to be done, any act or thing for the purpose of imposing any detriment or disadvantage upon a tenant because the tenant has made an application to the local court under this Act shall be guilty of an offence.

Penalty : Fifty pounds.

Arrangements  
to evade Act.

**14.** Any contract or arrangement whether oral or in writing the purpose or effect of which is either directly or indirectly to defeat, evade or prevent the operation of this Act shall be null and void.

Restriction on  
termination of  
tenancy.

**15.** (1) The landlord of any premises in respect of which an application to the local court under this Act is pending or an order under this Act is in force shall not, without the leave of the local court, give any notice to terminate the tenancy or take or continue any proceedings to recover possession of the premises from the tenant or for the ejection of the tenant therefrom.

Penalty : Fifty pounds.

(2) A notice to quit given in contravention of this section shall not operate so as to terminate the tenancy in respect of which the notice was given.

(3) The local court shall not grant leave to a landlord to give notice to terminate a tenancy of any premises in respect of which an order fixing the rent is in force except upon any of the following grounds—

(a) that the tenant has failed to pay the rent in respect of a period—

(i) where the tenant's period of occupation does not exceed six months—of not less than seven days ;

(ii) where the tenant's period of occupation exceeds six months but does not exceed twelve months—of not less than fourteen days ;

(iii) in any other case—of not less than twenty-eight days,

or that the tenant has failed to pay any rent which has been due and payable for more than twenty-eight days ;

(b) that the tenant has failed to perform or observe some other term or condition of the letting agreement and the performance or observance of that other term or condition has not been waived or excused by the landlord ;

(c) that the tenant has failed to take reasonable care of the premises, or of any furniture or other goods therewith or has committed waste ;

(d) that the tenant or any person residing or lodging in the premises has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers ;

(e) that the tenant or any other person has been convicted, during the currency of the letting, of any offence arising out of the use of the premises for any illegal purpose or that a court has found or declared that the premises have, during the currency of the letting, been used for some illegal purpose ;

(f) that there are special reasons deemed by the court to be sufficient to justify the grant of leave.

16. (1) No person shall levy or make any distress for rent of any dwellinghouse.

Abolition of  
distress for  
rent.

(2) Any person who commits any contravention of subsection (1) shall, without limitation of any other liability occasioned thereby, be guilty of an offence.

Penalty : Fifty pounds.

**Regulations.**

**17.** The Governor may make regulations providing for the execution of any matter or thing arising under and consistent with this Act and not expressly provided for in this Act, and for more fully carrying out the objects and purposes of this Act, and for guarding against evasions and violations of this Act.

**Rules of Court.**

**18.** The powers conferred by section 28 of the Local Courts Act, 1926-1959, shall include power to make rules for carrying into effect or supplementing the provisions of this Act relating to applications to local courts and for regulating the procedure to be followed and otherwise for carrying this Act into effect.

**Evidence.**

**19.** If any premises to which any letting agreement relates are used for the purpose of residence, then for the purposes of this Act, the premises shall, unless the contrary is shown, be deemed to have been let for the purposes of residence.

**Summary proceedings.**

**20.** All proceedings for offences against this Act shall be disposed of summarily.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

- J. M. NAPIER, Governor's Deputy.