

CHAPTER 43:09 RENT CONTROL

ARRANGEMENT OF SECTIONS

SECTION

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Schedule - Assessment of Controlled Rent

Act 8, 1977.

An Act to provide for the control of rents chargeable in respect of certain premises, and for matters incidental thereto and connected therewith.

[Date of Commencement: 7th January, 1977]

1. Short title

This Act may be cited as the Rent Control Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"agent" means a person who lets premises on behalf of a landlord or collects rents in respect of premises on behalf of a landlord or is authorized by such landlord to do so;

"agricultural land" does not include the garden of a house or building or land within the curtilage of a house or building;

"commercial building" means a building or part of a building separately let or a room separately let which is used mainly for business, trade or professional purposes, and includes land occupied therewith under a tenancy, but does not include a building, part of a building or a room when let with agricultural land;

"controlled rent" means the controlled rent of premises as ascertained and certified by the Tribunal under section 6;

"dwellinghouse" means a building or part of a building separately let or a room separately let which is used mainly as a dwelling or place of residence, and includes land occupied therewith under a tenancy, but does not include a building, part of a building or a room when let with agricultural land;

"landlord" includes-

- (a) any person from time to time deriving title under the original landlord; and
- (b) in relation to any dwellinghouse or commercial building, any person other than the tenant who is entitled to possession of such dwellinghouse or commercial building, and shall, for the purpose of the enforcement of any provision of this Act whereby any liability is imposed on a landlord, include any agent having charge, control or management of the premises on behalf of the landlord;

"let" includes sublet;

"premium" includes any fine or other like sum and any other pecuniary consideration in addition to rent;

"tenancy" includes sub-tenancy;

"tenant" includes a sub-tenant and any person deriving title from the original tenant or sub-tenant, as the case may be;

"Tribunal" means the Rent Control Tribunal established under section 4.

3. Application

This Act shall apply to such areas of Botswana and to such premises in such areas as the Minister may from time to time, by order published in the *Gazette*, specify.

4. Establishment of Tribunal

There is hereby established a Rent Control Tribunal which shall consist of-

- (a) a Chairman, who shall be a public officer qualified as a legal practitioner; and
- (b) two other members,

all of whom shall be appointed by the Minister.

5. Application for assessment

(1) The landlord of any premises to which this Act applies shall, on application made by him to the Tribunal in accordance with the provisions of this Act, have the controlled rent of the premises ascertained and certified.

(2) A tenant of any premises to which this Act applies may, in the absence of a pending application before the Tribunal in respect thereof, make a like application to the Tribunal for the purpose provided in subsection (1).

6. Proceedings in application for assessment

(1) Where an application under section 5 has been made, the Tribunal shall cause notice of the date, time and place fixed for the holding of the investigation of the application to be given, by registered post, to the landlord and to the tenant:

Provided that, where an application is made by a tenant, the Tribunal may direct that the notice required under this subsection to be given to the landlord shall be given to the agent of the landlord.

(2) Where, on the date, time and place fixed for the holding of the investigation, the landlord or his agent, as the case may be, and the tenant appear, the Tribunal shall hold an investigation and shall, for such purpose, have the power to direct such adjournments and postponements as the Tribunal may from time to time think proper.

(3) Where notice under subsection (1) has been received by the landlord or his agent, as the case may be, and the tenant and either party fails to appear on the date and at the time fixed for the holding of the investigation the Tribunal may proceed with the holding of the investigation or may postpone it.

(4) Where notice under subsection (1) has been received by the tenant the Tribunal may, notwithstanding that no such notice was received by the landlord or his agent, proceed with the holding of the investigation-

- (a) where acceptance of delivery of such notice was refused by the landlord or his agent, as the case may be;
- (b) where the address in Botswana of the landlord or his agent, if any, is not known to the tenant and cannot be ascertained by the Tribunal; or
- (c) where the landlord resides elsewhere than in Botswana.

(5) At any investigation held by the Tribunal the landlord or his agent, as the case may be, and the tenant may give evidence, produce documents and call witnesses, and each party to the investigation may cross-examine the other party and witnesses.

(6) The Tribunal may summon any person to give oral evidence which it considers may assist in the investigation and may call for any written evidence or documents necessary in order to conduct such investigation.

(7) A member of the Tribunal or any other person duly authorized in that behalf by the

Chairman of the Tribunal may enter into any premises in respect of which an application has been made under subsection (1) in order to carry out an investigation and inspection of such premises:

Provided that seven days' notice of intention to enter shall be given to the tenant.

(8) The proceedings of the Tribunal shall be open to the public.

(9) The Tribunal, having heard the evidence called by the landlord or his agent, as the case may be, and the tenant, shall assess the controlled rent of the premises in accordance with the provisions of the Schedule.

7. Appeal from Tribunal

(1) Any landlord and any tenant who is dissatisfied with the decision of the Tribunal under this Act may appeal therefrom to the High Court in the manner and subject to the conditions hereinafter provided.

(2) An appellant shall, within 14 days after the announcement of the Tribunal of the controlled rent-

- (a) give written notice of the appeal and the grounds therefor to the Registrar of the High Court; and
- (b) send by registered post a copy of such written notice of appeal to the other party and to the Tribunal.

(3) Where an appellant has complied with the provisions of subsection (2), the Tribunal shall, within 21 days after the written notice of appeal was lodged with the Registrar of the High Court, transmit to the Registrar of the High Court-

- (a) one copy of the proceedings recorded by the Tribunal, duly authenticated by the signature of the Chairman; and
- (b) a copy of the reasons for the Tribunal's decision with regard to the controlled rent, duly authenticated by the signature of the Chairman.

(4) The Registrar of the High Court shall cause notice of the dates and the hour fixed for the appeal to be sent by registered post to the appellant and to the opposite party.

(5) Every appeal under this section shall be heard by a judge sitting in Chambers who shall have power-

- (a) to order that evidence be adduced before the judge on a day to be fixed for the purpose;
- (b) to refer the matter to the Tribunal to make a fresh investigation subject to such direction of law as the judge thinks fit; or
- (c) to affirm, increase or decrease the controlled rent.

(6) The decision of the judge shall be final.

8. Restriction on premiums

(1) No person shall-

- (a) as a condition of the grant, renewal or continuance of a tenancy of premises to which this Act applies require the payment of any premium; or
- (b) in connection with such grant, renewal or continuance receive any premium in addition to the rent.

(2) Where any such payment of a premium has been made or given, the amount or value thereof shall be recoverable by the person by whom it was made or given.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P5000 or to imprisonment for a term not exceeding one year, or to both.

9. Reassessment of controlled rent

(1) A landlord may apply to the Tribunal for a reassessment of the controlled rent in respect of any premises as a result of any improvements or other changes in the condition of such premises.

(2) An application under subsection (1) may be made by a landlord in advance of

improvements or other changes in the condition of the premises being effected, and on such application the Tribunal may agree to increase the controlled rent subject to the improvements or changes being effected.

(3) The provisions of section 5 shall apply *mutatis mutandis* to an application under subsection (1).

10. Agreement at rental less than controlled rent

(1) Where a landlord and a tenant have agreed on a rent less than the controlled rent of any premises, such lower rent shall continue to have effect until the lease expires and then, subject to subsection (2), the controlled rent shall have effect in respect of those premises.

(2) Nothing in this Act shall be deemed to preclude the making of an agreement between a landlord and a tenant in respect of premises to which this Act applies at a rental less than the controlled rent in respect of those premises.

11. Permitted increase in control of rent

If in respect of premises to which this Act applies, any amount allowable in paragraphs (b), (d), (e) and (g) of the Schedule suffers an increase, the landlord of such premises may raise the rent thereof by the amount of such increase:

Provided that-

- (i) if such premises form part of larger premises, such increase shall be in the proportion which the rent of such premises bears to the rent of such larger premises;
- (ii) the landlord shall give one month's notice in writing of such increase to the tenant; and
- (iii) the tenant may apply to the Tribunal for an order suspending or reducing such increase on the ground that such increase is not justified or is disproportionate to the premises let.

12. Regulations

The Minister may make regulations for the better carrying out of the purposes and provisions of this Act and, without prejudice to the generality of the foregoing, may make regulations-

- (a) prescribing any forms to be used in applications and in proceedings before the Tribunal under this Act;
- (b) prescribing the fees to be paid in respect of any application under this Act;
- (c) prescribing the procedure to be adopted by the Tribunal; and
- (d) requiring the issue of and prescribing the form and content of any rent book or receipt to be issued in respect of premises for which a controlled rent has been certified.

SCHEDULE ASSESSMENT OF CONTROLLED RENT

(section 6(9))

For the purposes of assessing and certifying the controlled rent of premises to which this Act applies, the Tribunal shall allow the following in ascertaining the annual rent-

- (a) a return of four per cent above the Bank of Botswana minimum advances rate applicable at the time of investigation on the market value of the premises;
- (b) the amount of any rates paid on the premises if paid by the landlord;
- (c) an amount, not exceeding two and a half per cent of the value of the premises, in respect of maintenance, repairs and depreciation, together with an amount of seven and a half per cent of the value of any plant or machinery supplied not forming part of the building;
- (d) if paid by the landlord, the amount paid in respect of water, power, sewerage or other public service in respect of the premises;
- (e) if paid by the landlord, the amount paid to clean, caretake or provide security services in respect of the premises;
- (f) such sums as the Tribunal may consider reasonable for the use of any furniture, fittings or equipment in the premises and any other services not specified in paragraphs (d) and (e);
- (g) the cost of any insurance on the premises paid by the landlord;

- (h) an amount equal to five per cent of the total of the sums allowed in paragraphs (a) to (g) inclusive, or one per cent of the value of the premises, whichever is the lesser, for collection and management charges; and
- (i) the value of any structural alterations or other improvement effected to the premises by agreement between the landlord and the tenant:

Provided that where the premises occupied by the tenant are only a part of larger premises and the landlord's costs in respect of paragraphs (a) to (i) inclusive are related to the whole of the premises, then the amount to be allowed shall be a *pro rata* proportion of the whole costs.