

LAWS OF DOMINICA

SMALL TENEMENTS ACT

CHAPTER 54:71

Act

13 of 1891

Amended by

13 of 1939

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**Note
on
Subsidiary Legislation**

This Chapter contains no Subsidiary Legislation.

CHAPTER 54:71

SMALL TENEMENTS ACT

ARRANGEMENT OF SECTIONS

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FIRST SCHEDULE.

SECOND SCHEDULE.

CHAPTER 54:71**SMALL TENEMENTS ACT****AN ACT relating to small tenements.**1961 Ed.
Cap. 120.
13 of 1891.

[1st March 1892]

Commencement.

1. This Act may be cited as the –

Short title.

SMALL TENEMENTS ACT.

2. In this Act –

Interpretation.

“land” includes houses and buildings and all other corporeal hereditaments;

“landlord” includes the attorney or agent of any landlord and also any person appointed to act on behalf of the State in dealing with any lands, buildings or corporeal or incorporeal hereditaments vested in the State;

“rent” includes any part of any crop rendered or any equivalent given in kind or in labour in consideration of which a landlord has permitted any person to use and occupy any land, house or other corporeal hereditament.

3. When and as soon as the term or interest of the tenant of any land held by him at will or for any term not exceeding seven years either without being liable to the payment of any rent or at a rent not exceeding the rate of one thousand dollars per annum has ended or has been duly determined by a notice to quit as hereinafter prescribed or otherwise and the tenant or (if the tenant does not actually occupy the premises or only occupies a part thereof) any person by whom the same or any part thereof are then actually occupied neglects or refuses to quit and deliver up possession of the premises or any part thereof respectively the tenant or person shall be deemed to be a person holding over.

Tenant where term has expired or been determined by notice and neglecting to give up possession to be deemed holding over.

4. Where a person whose tenancy has ended or been determined otherwise than by a notice to quit is holding over, the landlord may cause a notice in writing to be served upon him calling upon him to quit and deliver up possession of the premises held over by him within seven days of the service of the notice.

Landlord may serve notice to quit on tenant holding over where tenancy has expired.

Person holding over and neglecting to give possession may be summoned. First Schedule.

5. Upon the expiration of the time limited in any notice to quit as mentioned in sections 3 and 4, if the person holding over neglects or refuses to quit and deliver up possession of the premises mentioned in the notice to quit a Magistrate may, on the application of the landlord, issue a summons in the form set out in the First Schedule, calling on the person holding over to appear on the day fixed in the summons and show cause why possession should not be given to the landlord under this Act.

Magistrate to hear and determine the matter.

6. On the day of appearance as mentioned in section 5, if the person holding over appears, or if he does not appear, then on proof of the due service of the summons, the landlord shall give evidence of the end or other determination of the tenancy with the time and manner thereof and of the holding over, and (where the title of the landlord has accrued since the letting of the premises) of the right by which he claims possession, and of the service of the notice to quit, and the Magistrate may determine the matter and give such judgment and make such orders therein under this Act as to him seems fit.

Magistrate to issue warrant of possession.

7. If the Magistrate gives judgment for the recovery by the landlord of the possession of the land, he may forthwith issue a warrant of possession in the form set out in the First Schedule.

Outgoing tenant may claim for unexhausted improvements by custom of the country. Magistrate may hear cross claim with claim to recover the land.

8. Where by the custom of the country or otherwise, the outgoing tenant is entitled to any compensation or allowance in respect of any unexhausted improvements which he has made on the subject-matter of the tenancy, he may at any time make any claim or cross claim before a Magistrate against the landlord in respect thereof; and the Magistrate may, if he thinks it expedient, hear and determine any cross claim together with any claim to recover possession of the subject-matter in respect of which the cross claim is made. However, in the case of a cross claim notice in writing of the particulars of the cross claim shall be given to the landlord three clear days before the day fixed for the hearing of the claim to recover possession; and the Magistrate at the hearing shall have power to enlarge the time for the delivery of the notice as aforesaid, or for the hearing of the cross claim.

Landlord may claim for mesne profits.

9. The landlord may, either together with his claim to recover possession of any premises or in answer to any claim or cross claim made in respect of any unexhausted improvements as aforesaid, claim to recover or to set off all arrears of rent and also mesne profits accruing in respect of the premises since the ending or determination of the tenancy.

- 10.** The amount claimed under any claim or cross claim or for arrears of rent or mesne profits shall not exceed in the whole the following sums:
- | | | |
|------------------------------------|-------|--|
| For arrears of rent | \$480 | Limit of Magistrate's jurisdiction in claims for improvements, arrears or mesne profits. |
| For mesne profits | \$480 | |
| For unexhausted improvements | \$480 | |
- 11.** Where a landlord is entitled to possession of any premises, the Magistrate may issue his warrant of possession notwithstanding that the cross claim is undetermined or unsatisfied.
- Warrant of possession may issue at any time.
- 12.** A Magistrate may from time to time and at any time appoint one or more persons to estimate the value of any unexhausted improvements in respect of which a claim or cross claim is made and to report in writing to the Magistrate thereon; and also to make such order as he thinks fit in respect of the expenses and remuneration of such persons.
- Magistrate may appoint person to value improvements.
- 13.** The report in writing purporting to be signed by the person or persons appointed by the Magistrate as provided in section 12 shall be received in evidence in all courts until it is shown that the report was not so signed.
- Report of valuers to be evidence.
- 14.** The officer to whom the warrant of possession is directed shall with all convenient speed enter (by force if necessary) into the premises described in the warrant and give possession of the same to the landlord, and may if necessary by force demolish or remove or demolish and remove any building on such premises.
- Officer executing warrant of possession to give possession to landlord.
- 15.** Any person who resists or molests or assaults such officer as aforesaid when engaged in the execution of such warrant as aforesaid or any estimator engaged in carrying out an order of a Magistrate's Court is liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months.
- Penalty for resisting or assaulting officer.
- 16.** Any person who has been put out of possession under a warrant of possession and who unlawfully retakes possession of the premises after possession has been given to the landlord is liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months.
- Penalty on person unlawfully retaking possession.

Appeal from order of possession in all cases.

17. Either party to any proceedings to recover possession of any premises under this Act may appeal from the decision of the Magistrate whatever may be the value of the subject-matter in dispute.

Service of documents.

18. Service of any notice to quit or any summons or other process may be effected either personally on the person affected by the same or by leaving the same with some adult person at his last or most usual place of abode, or if the person to be served cannot be found, and the place of his abode either is not known or admission thereto cannot be obtained, then by posting the same on some conspicuous place on the subject-matter of the claim.

Jurisdiction of Magistrate not ousted where question of title arises.

19. Except as hereinafter provided the jurisdiction of the Magistrate shall not be ousted by the defendant bona fide setting up the title of a third person, unless he holds under or claims through such third person.

No claim for improvements made without sanction of landlord.

20. No person is entitled to make any claim for any unexhausted improvements unless the improvements have in all material particulars been made with the consent of the landlord.

Essentials of notice to quit.

21. Every notice to quit served under this Act shall be in writing and signed by the landlord or his agent or solicitor. It shall describe clearly the premises which are sought to be recovered and the proper day on which possession is to be given and shall not be ambiguous or optional.

Length of notice to quit in certain cases.

22. Where there is no agreement as to notice by deed or in writing between the parties the following provisions shall take effect:

- (a) in the case of a monthly tenancy, or a tenancy for any shorter term than one month, a clear weeks' notice shall be given;
- (b) in the case of a quarterly tenancy, or a tenancy for any term shorter than three months and longer than one month, a clear months' notice shall be given;
- (c) in the case of a half-yearly tenancy, or a tenancy for any term shorter than six months and longer than three months, a clear two months' notice shall be given;
- (d) in the case of a yearly tenancy, or any term shorter than one year and longer than a half year, a clear three months' notice shall be given;

- (e) in the case of any term longer than one year and not longer than seven years, a clear six months' notice shall be given;
- (f) in the case of any person being lawfully let into possession of any land by any other person without any period of tenancy whether limited or continuing being agreed upon either expressly or impliedly, a clear three months' notice shall be given;
- (g) in the absence of any evidence to the contrary the time when the rent is paid or rendered shall be deemed to determine the nature of the tenancy as to whether it be monthly, quarterly or otherwise.

23. It is not necessary that a notice to quit under section 22 should expire at the end of the current term of the tenancy but it may be given at any time provided that the notice does not expire before the time when any crop growing on the subject-matter of the tenancy would in the ordinary course be taken, gathered or reaped.

Notice to quit may be given at any time.

24. Where any person unlawfully obtains possession of and remains in occupation of any lands the value of which does not exceed one thousand dollars, the person lawfully entitled to the immediate possession of the lands may recover possession thereof under the provisions of this Act as though he were a landlord and as though the person unlawfully occupying the premises were a person holding over; and in such a case it is not necessary for the person seeking to recover possession of the premises to serve or prove the service of any notice to quit and such person is only required to prove that he is entitled to the immediate possession of the premises.

Ejection in case of trespass.

25. Any Judge of the High Court upon application made to him, and on being satisfied that in any proceedings commenced under this Act a bona fide question of title is involved may, if he thinks it expedient, order that the claim of the plaintiff be heard and determined in the Court of Summary Jurisdiction or in the High Court, and thereupon all proceedings under this Act shall be stayed and the plaintiff shall be at liberty to prosecute his claim accordingly.

Power of Judge of High Court to stay proceedings in Magistrate's Court where question of title involved.

26. All proceedings under this Act whether civil or criminal shall be taken and had in the manner and form prescribed by the Magistrate's Code of Procedure Act, and all the provisions of the last mentioned Act shall apply to all such proceedings as aforesaid except so far as they are repugnant to the provisions of this Act.

Procedure. Ch. 4:20.

Forms. **27.** The forms set out in the First Schedule may be used in proceedings under this Act and shall be valid and effectual therein.

Fees.
[12 of 1990]. **28.** The fees to be taken in respect of any proceedings under this Act are set out in the Second Schedule.

Amendment of Schedules.
[12 of 1990]. **29.** The Minister may by Order amend the First and Second Schedules.

FIRST SCHEDULE

FORM OF NOTICE TO QUIT UNDER SECTION 3

To C. D.

Sir,

I HEREBY (as Agent or Solicitor for X. Y. your landlord and on his behalf) give you notice to quit and deliver up possession of the land (*or house as the case may be*) and premises with the appurtenances situate at _____ in the parish of _____ in the State of Dominica of _____ which you hold of him (*or which E. F. holds of him*) as tenant thereof (by a lease or agreement in writing bearing date the _____ day of _____, 19____) and which are now in your possession on the _____ day of _____, 19____.

Yours &c.

A. B. (Agent or Solicitor of the above-named X. Y.)

Dated the _____ day of _____, 19____.

FORM OF NOTICE TO QUIT UNDER SECTION 4

To C. D.

Sir,

I HEREBY (as Agent or Solicitor for X. Y. and on his behalf) give you notice to quit and deliver up possession of the land (*or house as the case may be*) and premises with the appurtenances situate at _____ in the parish of _____ in

the State of Dominica of _____ and now in your possession within seven days from the day on which this notice is served upon you.

Yours &c.

A. B. (Agent or Solicitor for the above-named X. Y.)

Dated the _____ day of _____, 19 ____ .

FORM OF SUMMONS UNDER SECTION 5

In the Magistrate's Court (Civil Side)

District

No. _____ of 19 ____

{ Between A. B. of

and

{ C. D. of

Plaintiff

Defendant

To C. D. of _____

YOU ARE HEREBY summoned to appear at the Magistrate's Court, District at _____

_____ in this State at _____ o'clock in the forenoon and to show cause why an order should not be made against you according to the prayer of the plaintiff as set forth in the particulars of claim annexed hereto.

AND TAKE NOTICE that if you fail to attend at the time and place aforesaid or at any adjourned hearing of this suit, the Court may give leave to the plaintiff to proceed *ex parte* to judgment and execution and may order that possession of the said premises be given by you to the plaintiff forthwith, and that if such order be not obeyed a warrant may issue to give possession to the plaintiff.

Signed

Magistrate for District

Given under my hand

this _____ day of _____, 19 ____ .

Given under my hand
this day of , 19 .
Signed

Magistrate for District

To

TO THE DEFENDANT

TAKE NOTICE that if you do not give such possession a warrant may issue requiring the bailiff of the Court to give possession of the said premises to the plaintiff and to levy the sum above-mentioned together with further costs.

FORM OF WARRANT OF POSSESSION UNDER SECTION 7

In the Magistrate's Court (Civil Side)

District

{ Between A. B. of Plaintiff
and
C. D. of Defendant

To the Bailiff of the Magistrate's Court, District

WHEREAS at a Court holden on the day of , 19 , it was ordered that the defendant should give to the plaintiff possession of a certain (as in summons) situate at in the parish of in the State of Dominica.

AND WHEREAS the defendant has not obeyed the said order: These are therefore to authorise and require you forthwith between the hours of 9 a.m. and 5 p.m. to enter (by force if needful) the said hereinbefore mentioned premises and to eject therefrom any person and of the said premises to give full and peaceable possession to the plaintiff.

Given under my hand this day of , 19 .

Signed

Magistrate for District

FORM OF APPOINTMENT OF ESTIMATORS UNDER SECTION 12

In the Magistrate's Court (Civil Side)
District

{	Between A. B. of	Plaintiff
	and	
	C. D. of	Defendant

UPON HEARING the plaintiff and the defendant herein it is ordered that E. F. of (or E. F. of and G. H. of) do enter upon the premises at in the parish of in this State lately in the occupation of the plaintiff and do estimate the present value of (here set out and describe sufficiently for identification the things claimed by the plaintiff as improvements) and do report to the Court in writing thereon on or before the day of , 19 .

AND IT IS FURTHER ORDERED that the plaintiff (or the defendant or the plaintiff and the defendant or as the case may be) do pay to the said E. F. and G. H. (here set out the terms of remuneration to be made to the estimators).

Given under my hand
this day of 19 .
Signed
Magistrate for District

FORM OF REPORT OF ESTIMATORS UNDER SECTIONS 12 AND 13

In the Magistrate's Court (Civil Side)
District

{	Between A. B. of	Plaintiff
	and	
	C. D. of	Defendant

We E. F. of and G. H. of the estimators appointed herein under an order dated the day of , 19 , having viewed the premises

