



# The Hongkong Government Gazette Extraordinary

Published by Authority.

TUESDAY, JULY 19, 1921.

The following Notification is published,

By command,

CLAUD SEVERN,  
*Colonial Secretary.*

## LEGISLATIVE COUNCIL.

No. 313.—His Excellency the Governor has given his assent, in the name and on behalf of His Majesty the KING, to the following Ordinance passed by the Legislative Council:—

Ordinance No. 13 of 1921.—An Ordinance to amend the law relating to the recovery of possession in certain cases and to restrict the rents of certain domestic tenements and to amend the Rating Ordinance, 1901.

HONGKONG.

No. 13 OF 1921.

I assent to this Ordinance.

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R. E. STUBBS,  
*Governor.*

19th July, 1921.

An Ordinance to amend the law relating to the recovery of possession in certain cases and to restrict the rents of certain domestic tenements and to amend the Rating Ordinance, 1901.

[19th July, 1921.]

Be it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

- Short title.      1. This Ordinance may be cited as the Rents Ordinance, 1921.
- Interpretation.      2. In this Ordinance:—
- (a) "Court" means the Supreme Court in its summary jurisdiction.
- (b) "Domestic tenement" includes every bed space, cubicle, room, portion of a floor, floor, or building, which is the subject of a separate letting, and which is used wholly or in part for human habitation, and every hotel and boarding house falling within any one of the classes of boarding houses specified in Rule 1 of the rules made by the Governor in Council under the Asiatic Emigration Ordinance, 1915, and the Boarding House Ordinance, 1917, and published in the *Gazette* of the 19th day of October, 1917, provided that the following shall not be deemed to be domestic tenements within the meaning of this definition:—
- (i) Any building or portion of a building which is used for habitation only by caretakers or watchmen not exceeding two in number.
- (ii) Any building or portion of a building which is used for habitation only by office attendants or their families.
- (iii) Any hotel or boarding house which does not fall within any one of the classes of boarding houses specified in Rule 1 of the rules made by the Governor in Council under the Asiatic Emigration Ordinance, 1915, and the Boarding House Ordinance, 1917, and published in the *Gazette* of the 19th day of October, 1917.
- (iv) Any part of any hotel or boarding house whatsoever.
- (v) Any furnished house.
- (vi) Any building for the time being vested in the Custodian of Enemy Property, or any part of any such building.

- (c.) "Lease" includes every agreement for the letting of any domestic tenement, whether oral or in writing.
- (d.) "Lessee" includes a sub-lessee but does not include the Crown lessee.
- (e.) "Lessor" includes every person who lets any domestic tenement to any other person.
- (f.) "Standard rent" with respect to any domestic tenement means :—
- (i) if the domestic tenement was actually let on the 31st December, 1920, the rate of rent which was recoverable from the tenant in actual occupation on the 31st December, 1920; and
- (ii) if the domestic tenement was not actually let on the 31st December, 1920, but had been let on some previous date, the rate of rent which was recoverable from the tenant in actual occupation on the last occasion before the 31st December, 1920, on which the domestic tenement was actually let; and
- (iii) if the domestic tenement was not let until after the 31st December, 1920, or shall be first let after the commencement of this Ordinance, the rate of rent at which the domestic tenement was or shall be first let to a tenant in actual occupation.
- (g.) "Tenant in actual occupation" means a lessee of any domestic tenement who occupies such domestic tenement himself, or by his family or servants, provided that—
- (i) A lessee of any domestic tenement who occupies a portion of such domestic tenement himself, or by his family or servants, and who sub-lets other portions of such domestic tenement, shall be deemed to be the tenant in actual occupation of such domestic tenement as regards his immediate lessor.
- (ii) A sub-lessee from any such lessee as is referred to in proviso (i) above, of any domestic tenement which such sub-lessee occupies himself, or by his family or servants, shall be deemed to be the tenant in actual occupation of such domestic tenement.

3.—(1.) Notwithstanding any agreement to the contrary, whether made before or after the commencement of this Ordinance, and whether oral or in writing, no rent shall be recoverable in respect of any domestic tenement, from the tenant in actual occupation, in excess of the standard rent of such domestic tenement.

No rent in excess of the standard rent to be recoverable.

(2.) This section shall apply to any rent which shall become due after the commencement of this Ordinance, whatever the period may be in respect of which it shall be due.

4.—(1.) Notwithstanding any notice to quit, whether given before or after the commencement of this Ordinance, and notwithstanding the terms of any agreement whatsoever, whether made before or after the commencement of this Ordinance, and whether oral or in writing, an order or judgment against any tenant in actual

Restrictions on the right to possession. 10 and 11 Geo. 5, c. 17 s. 5.

occupation for the recovery of possession of any domestic tenement, or for the ejection of a tenant therefrom, shall be made or given only if:—

- (a) the tenant shall have failed to pay duly the standard rent recoverable in respect of his domestic tenement; or
- (b) the tenant has or shall have failed to perform some obligation of his tenancy; or
- (c) the tenant or any person residing with him has or shall have been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has or shall have been convicted of using the domestic tenement or allowing the domestic tenement to be used for an immoral or illegal purpose, or the condition of the domestic tenement has or shall have, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person; or
- (d) the tenant has or shall have given notice to quit, or has or shall have agreed in writing to quit, and in consequence of that notice or agreement the lessor has or shall have contracted to sell or let the domestic tenement or has or shall have taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or
- (e) the domestic tenement is reasonably required by the lessor for occupation as a residence for himself or for his family, or for any person *bonâ fide* residing or to reside with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, and the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available; or
- (f) the lessor *bonâ fide* requires possession of the domestic tenement in order to pull down such domestic tenement or in order to reconstruct such domestic tenement to such an extent as to make such domestic tenement a new building within the meaning of the Public Health and Buildings Ordinance, 1903, and shall have given the tenant three months notice to quit.

Ordinance  
No. 1 of 1903.

(2.) If but for this Ordinance any tenancy would have expired by effluxion of time, or by reason of a notice to quit, or for any other reason, so that the tenancy is preserved only by reason of this Ordinance, the terms of the tenancy so preserved, except as they may be modified by this Ordinance, and except as to the agreed period of tenancy, shall be as far as possible the same as the terms of the tenancy as it existed immediately before the time at which, but for this Ordinance, the tenancy would have expired.

(3.) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any domestic tenement, or for the ejection of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Ordinance, and not executed, at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession, for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit discharge or rescind any such order or judgment.

(4.) Where any order or judgment has been made or given before the passing of this Ordinance, but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Ordinance had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit.

(5.) Where a lessor has obtained an order or judgment for possession or ejection on the ground that he requires a domestic tenement for his own occupation, and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the lessor to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

(6.) Nothing in this Ordinance shall be construed as affecting the operation of sections 205, 206, 207 or 207a of the Public Health and Buildings Ordinance, 1903. Ordinance No. 1 of 1903.

5.—(1.) Where the rights of any lessee of any building or buildings, other than the Crown lessee and the tenant in actual occupation, are affected by the operation of this Ordinance, it shall be lawful for such lessee to apply to the court for the revision of the rent payable under the lease, and upon such application the court may make such order as it shall think fit. Revision of the rent payable under intermediate leases.

(2.) It shall be lawful for the court to give such directions as it shall think fit for the procedure to be followed on such applications, and for the notice to be given to the other parties to any such lease, or to their agents.

(3.) Pending the decision of the court upon any such application the lessee under any such lease shall be bound to pay at the due date the rent reserved by such lease, as if no such application had been made, but if the court shall order the rent payable to be reduced, the lessee shall be entitled to recover back from the lessor any amount paid in excess of the revised rate of rent in respect of any period after the commencement of this Ordinance, or to deduct such amount from any subsequent rent payable under such lease, and such amount shall be ascertained by apportionment if necessary.

(4.) There shall be no appeal from any decision of the court under this section except with the leave of the court or of the full court of two judges, and if any appeal is allowed under this sub-section it shall be to the full court of two judges, whose decision shall be final.

(5.) Any application to the court for leave to appeal against any decision by it under this section shall be made within 14 days after such decision shall have been given, and any application to the full court for leave to appeal under this section shall be by notice of motion which shall be filed with the Registrar within 14 days after the decision of the court under this section has been given, or, as the case may be, within 14 days after the refusal of the court to allow an appeal under this section.

6.—(1.) If any question arises as to the recovery of possession of any domestic tenement, or as to the ejection of a tenant therefrom, or as to the construction of this Ordinance, such question shall be decided in the first instance by the court, and there shall be an appeal as of right from any decision of the court under this section to the full court of two judges, whose decision shall be final. Determination of the construction of the Ordinance.

(2.) An appeal from any decision of the court under this section shall be by notice of motion which shall be filed with the Registrar within 14 days after such decision shall have been given.

Collection of rates not to be affected. 7. Nothing in this Ordinance shall be construed so as to prevent a lessor of a domestic tenement from collecting from his lessee the rates for the time being payable in respect of such domestic tenement, or such apportioned sum as shall properly be attributable to such domestic tenement in respect of rates, provided that the obligation of paying the rates in respect of such domestic tenement has not been assumed by the lessor under terms of the tenancy.

Evidence. Ordinance No. 6 of 1901. 8.—(1.) In any matter arising under or in consequence of this Ordinance, any returns made under the Rating Ordinance, 1901, relating to any domestic tenement, shall be admissible as evidence of the rent of such domestic tenement at the time when such return was made, and any return under the Rating Ordinance, 1901, which includes such domestic tenement shall be deemed to relate to such domestic tenement although such domestic tenement be not treated as a separate unit in such return.

(2.) In any matter arising under or in consequence of this Ordinance, any assessment whatsoever made under the Rating Ordinance, 1901, which may appear to the court to be relevant shall be admissible in evidence.

(3.) Any such return or assessment as is referred to in sub-sections (1) and (2) of this section may be proved by a certificate under the hand of the Assessor or Assistant Assessor.

(4.) In any matter arising under or in consequence of this Ordinance, it shall be lawful for the court to order the production of any books of account or documents whatsoever if it shall appear to the court that such books of account or documents may be relevant for the purpose of determining such matter.

Application of Ordinance. 9.—(1.) This Ordinance shall not apply to the New Territories, except New Kowloon.

Ordinance No. 1 of 1903. (2.) This Ordinance shall not apply to any entirely new building in the case of which the certificate referred to in section 204 of the Public Health and Buildings Ordinance, 1903, shall not have been issued before the commencement of this Ordinance.

Duration of Ordinance. 10. This Ordinance shall continue in force until, and including, the 30th day of June, 1922, provided that it shall be lawful for the Legislative Council from time to time by resolution to extend the duration of this Ordinance for such term, not exceeding one year at any one time, as may be specified in such resolution.

Effect on tenancies of the termination of the Ordinance. 11. Immediately after this Ordinance shall cease to be in force any tenant who shall have been in occupation at the time when this Ordinance ceases to be in force shall be deemed to be holding over lawfully on the tenancy terms on which he shall have been holding immediately before this Ordinance ceases to be in force, and at the standard rent, unless the lessor shall have given such tenant such notice to quit, terminating with the termination of this Ordinance, as would have been, as regards length of notice, a due notice to quit under the terms of the tenancy if this Ordinance had not been passed.

Assessor to have power to reduce valuations in certain cases. Ordinance No. 6 of 1901. 12.—(1.) Notwithstanding anything contained in the Rating Ordinance, 1901, it shall be lawful for the assessor, in his absolute discretion, on the application of the owner or occupier of any tenement, to reduce the valuation of such tenement in any case in which the rent actually paid in respect of such tenement shall have been temporarily reduced in consequence of the operation of this Ordinance.

(2.) Such reduced valuation shall apply to the quarter in which the reduction is made, and, subject to the provisions of the Rating Ordinance, 1901, with regard

to interim valuations, shall continue to be in force while this Ordinance is in force and until the coming into effect of the first annual valuation made after this Ordinance shall have ceased to be in force.

(3.) If the valuation of any tenement is reduced under the provisions of this section, and if the rates in respect of such tenement for the quarter in which the reduction is made shall have been paid to the Treasurer before the making of such reduction, the Treasurer shall refund the sum by which the amount of the rates payable under the former valuation exceeds the amount of the rates payable under the reduced valuation.

13. If the rent recoverable from the tenant in actual occupation of any domestic tenement on the 31st day of December, 1920, either (a) was a rent which had been agreed upon in writing at some date before the 1st day of January, 1918, or (b) was not higher than the rent recoverable from the tenant in actual occupation on the 1st day of January, 1918, it shall be lawful for the lessor of such tenement to apply to the court to fix such other rent than the standard rent as the court shall think fit as the rent to be paid in respect of such tenement during the continuance of this Ordinance, provided that nothing in this section shall affect any rent which became due before the commencement of this Ordinance, and provided that nothing in this section shall entitle any lessor, during the currency of any written lease of any domestic tenement for a definite and unexpired term, to any rent higher than the rent reserved in such lease.

Court may revise the rent in certain cases.

14. In case a lessor of any domestic tenement has expended or shall expend after the 31st day of December, 1920, the sum of five hundred dollars or upwards on additions or improvements thereto by which in the opinion of the court the rateable value thereof shall have been or shall be increased, the court may on application by the lessor for such purpose order that the rent of such tenement shall be increased beyond the standard rent by an annual sum equal to 8 per cent. on the amount so expended by the lessor on such additions or improvements, provided that nothing in this section shall affect any rent which became due before the commencement of this Ordinance.

Court may increase rent in case of certain rateable improvements.

15. If any lease of any domestic tenement, a portion of which is occupied by the lessee himself or by his family or servants, shall expire after the commencement of this Ordinance, nothing in this Ordinance shall be construed as enabling such lessee to retain possession of any portion of such domestic tenement which he does not occupy himself or by his family or servants.

Tenancies to be extended only as regards premises actually occupied by the lessee.

16.—(1.) No person shall, as a condition or pretended condition of the grant, renewal, or continuance, by himself or by any other person of a tenancy of any domestic tenement, demand payment of any sum of money whatsoever, in addition to the rent.

Money not to be demanded for the grant, renewal or continuance of tenancies.

(2.) Every person demanding any payment in contravention of this section shall be liable upon summary conviction to a fine not exceeding one thousand dollars, and the magistrate by whom such person is convicted may order the amount paid to be repaid to the person by whom the same was paid.

10 & 11 Geo. 5, c. 17, s. 8.

(3.) This section shall not apply to any fine, premium, or other like sum, which any person, before the commencement of this Ordinance, shall have agreed in writing to pay.

17. Where any sum shall, after the commencement of this Ordinance, have been paid on account of any rent, being a sum which is by virtue of this Ordinance irrecoverable by the lessor, the sum so paid shall be recoverable from the lessor who received the payment or his legal personal representative by the lessee by whom it

Recovery of rent by lessee.  
10 & 11 Geo. 5, c. 17, s. 11 (1).

was paid, and any such sum may, without prejudice to any other method of recovery, be deducted by the lessee from any rent payable by him to the lessor.

Passed the Legislative Council of Hongkong, this 18th day of July, 1921.

S. B. B. McELDERRY,  
*Clerk of Councils.*

Assented to by His Excellency the Governor, the 19th day of July, 1921.

CLAUD SEVERN,  
*Colonial Secretary.*