

# TENEMENTS RECOVERY ORDINANCE 1936. <sup>(1)</sup>

## No. 7 of 1936.

### An Ordinance to facilitate the Recovery of Possession of Tenements after Determination of the Tenancy and for other purposes.

**B**E it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1935*, as follows:—

1. This Ordinance may be cited as the *Tenements Recovery Ordinance 1936.*<sup>(1)</sup> Short title.

2. In this Ordinance, unless the contrary intention appears— Definitions.

“agent” means any person usually employed by the landlord in the letting of the premises or in the collection of the rents of the premises or authorized by the landlord in writing to act in the particular matter or to act as his attorney;

“landlord” means the person entitled to the immediate reversion of the premises or, if the premises are held in joint tenancy, coparcenary, or tenancy in common, includes any one of the persons so holding the premises and entitled to the reversion, and includes the agent of the landlord;

“premises” means lands, houses, or other corporeal hereditaments.

3.—(1.) Where the term or interest of a tenant of any premises held by him has ended or has been duly determined by a legal notice to quit or otherwise, and the tenant, or (if the tenant does not actually occupy the premises or occupies only a part of the premises) any person by whom the whole or any part of the premises is then actually occupied, neglects or refuses to quit and deliver up possession of the whole or of the part, respectively, of

*Proceedings for possession on determination of lease.*

(1) Particulars of this Ordinance are as follows:—

Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
25.2.1936	15.6.1936	25.2.1936 ( <i>Laws of T.N.G.</i> , Vol. XIII, p. 379)

## LAND—

the premises, the landlord of the premises may make a complaint to a justice against the person neglecting or refusing to quit and deliver up possession for the recovery of the whole or of the part of the premises, and the justice may issue a summons in the prescribed form to the person neglecting or refusing.

(2.) If the person to whom the summons is directed does not appear before the District Court, and at the time, named in the summons, or, if appearing, does not satisfy the District Court that there is reasonable cause why he should not give possession of the premises or of the part of the premises of which he is then in possession and still neglects or refuses to deliver up possession of the premises or of the part of the premises of which he is then in possession, then, upon proof of the matter of the complaint, the District Court may order the person to deliver up possession of the premises or of the part of the premises to the complainant, either forthwith or on or before a day to be named in the order, and, if the order is not obeyed, any justice may, at the request of the complainant, issue a warrant in the prescribed form directed to any member of the New Guinea Police Force authorizing and commanding him, within a period to be named in the warrant not more than thirty clear days from the date of the warrant, to enter, by force and with assistance if necessary, into the premises, and to give possession of the premises or of the part of the premises to the complainant.

(3.) In any complaint made under this section against a tenant or occupier, the complainant may add a claim for rent or mesne profits, or both, down to the day appointed for the hearing or to any preceding day named in the complaint, provided that the amount of the claim does not exceed One hundred pounds, and any misdescription in the nature of the claim may be amended at the hearing.

4.—(1.) If the rent payable by a tenant holding any premises by the week, or month, or quarter, or any longer term not exceeding three years is in arrear for ten days in the case of a weekly tenancy, or twenty-one days in the case of a monthly tenancy, or thirty days in the case of a quarterly tenancy, or forty-two days in the case of a tenancy for any longer term, the landlord may, subject to the provisions of this section, without any formal demand or re-entry, make a complaint to any justice, who may issue a summons in the prescribed form directed to the tenant, and the service of the summons shall stand in lieu of a demand or re-entry.

(2.) The power conferred on a landlord by the last preceding sub-section may be exercised only—

(a) if no right of re-entry for the non-payment of rent has been expressly conferred on the landlord by agree-

Recovery of  
premises  
when rent  
in arrear.

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ment with the tenant, upon the expiration of the respective periods of ten days, twenty-one days, thirty days, or forty-two days; or

(b) if a right of re-entry has been conferred on the landlord by agreement with the tenant, upon the accrual of the right of re-entry in accordance with the terms of the agreement, but in no case sooner than the time permissible for the exercise of the power under the provisions of the last preceding paragraph.

(3.) Where there is a tenancy and no agreement as to its duration the tenant shall, for the purposes of this section, be deemed to hold the premises by the month.

(4.) If the tenant, five clear days before the day appointed for the hearing of the complaint, pays into court all the rent in arrear and the costs, the complaint shall be deemed to be withdrawn.

(5.) If the tenant does not make the payment referred to in the last preceding sub-section, and does not appear at the time named in the summons, or, if appearing, does not show reasonable cause why the premises should not be recovered, then, upon proof of the matter of the complaint, the District Court may order the tenant to deliver up possession of the premises to the complainant, either forthwith or on or before a day named in the order, and, if the order is not obeyed, any justice may, at the request of the complainant, issue a warrant in the prescribed form directed to any member of the New Guinea Police Force authorizing and commanding him, within a period to be named in the warrant not more than thirty clear days from the date of the warrant, to enter, by force and with assistance if necessary, into the premises, and to give possession of the premises to the complainant.

(6.) The complainant shall, from the time of the execution of the warrant issued under the last preceding sub-section, hold the premises discharged of the tenancy, and the tenant and all persons claiming by, through, or under him shall, so long as the order of the court is not reversed, be barred from all relief.

5.—(1.) If any tenant holding premises at a rent under any demise or agreement either written or verbal, who is in arrear for two months, deserts the premises and leaves them uncultivated or unoccupied so that no sufficient distress can be had to countervail the arrears of rent, and although no right or power of re-entry is, by the demise or agreement, given or reserved to the landlord in case of the non-payment of rent, then, at the request of the landlord or his solicitor, and upon proof of the above-mentioned matters, a District Court may issue a warrant directed to any member of the New Guinea Police Force authorizing and commanding him to enter into and view the premises, and to affix or cause to be affixed

When rent in arrear and premises deserted without distress, landlord may recover possession.

upon some conspicuous part of the premises a notice in writing specifying what day (not sooner than fourteen days from the affixing of the notice) he will return to take a second view of the premises.

(2.) If upon the second view referred to in the last preceding sub-section the tenant or some person on his behalf does not appear and pay to the member of the New Guinea Police Force the rent in arrear, or there is not a sufficient distress upon the premises, the District Court may issue a warrant to any member of the New Guinea Police Force requiring him, on or before a day to be named in the warrant, to enter into the premises and put the landlord into possession of the premises; and the lease of the premises to the tenant, as to any demise contained therein only, shall, upon the execution of the warrant, become void.

Action to recover premises held without right, title, or licence.

6.—(1.) If any person without right, title, or licence is in possession of any premises, the owner may make a complaint to a justice to recover possession of the premises, and the justice may issue a summons in the prescribed form to the person in illegal occupation.

(2.) If the person summoned does not appear before the District Court, and at the time, named in the summons, or, if appearing, does not show reasonable cause why possession should not be given of the premises, then, upon proof of the matter of the complaint, the District Court may issue a warrant directed to any member of the New Guinea Police Force authorizing and commanding him, on or before a day to be named in the warrant, to enter, by force and with assistance if necessary, into the premises, and to give possession of the premises to the complainant.

Sub-tenant to give notice of complaint to his immediate landlord.

7.—(1.) Every sub-tenant on whom any summons for the recovery of premises is served, or to whose knowledge it comes, shall forthwith give notice of the summons to his immediate landlord.

(2.) The immediate landlord, on receipt of the notice referred to in the last preceding sub-section, if not already a party to the proceedings before the District Court, may be added, or substituted for the sub-tenant, as a party to defend possession of the premises.

Warrant sufficient authority for entering premises.

8. Any warrant under the hand of a justice to a member of the New Guinea Police Force to give possession of premises shall justify him in entering, by force and with assistance if necessary, into the premises named therein and in giving possession accordingly, but no entry under any warrant shall be made except between the hours of nine in the morning and four in the afternoon.

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9. If any person to whom any warrant for the recovery of possession of any premises is granted under this Ordinance had not at the time of the granting of the warrant lawful right to the possession of the premises, the obtaining of the warrant shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry is made by virtue of the warrant.

Procuring issue of warrant without right deemed a trespass.

10. Nothing contained in this Ordinance—

(a) shall be deemed to protect any person on whose application and to whom any warrant for the recovery of possession of any premises is granted from any action which is brought against him by any tenant or occupier or in respect of the entry and taking possession of the premises, where the person had not at the time of the granting of the warrant lawful right to the possession of the premises; or

Persons illegally obtaining warrant not protected from action.

(b) shall affect any rights to which any person may be entitled as outgoing tenant under the law in force in the Territory.

11.—(1.) Where a warrant for the recovery of the whole or any part of any premises is granted under this Ordinance, if any tenant or occupier becomes bound with two sureties as hereinafter provided, to be approved by the District Court, in such sum as the District Court deems reasonable (regard being had to the value of the premises and to the probable costs of an action) to sue in the Supreme Court the person to whom the warrant was granted with effect and without delay, and to pay all the costs of the proceedings in the action in case a judgment is for the defendant, or the tenant or occupier discontinues or does not prosecute his action or becomes nonsuit therein, execution of the warrant shall be stayed until judgment has been given by the Supreme Court in the action.

Execution of warrant stayed on bond given to bring action.

(2.) If upon the hearing of the action judgment is given by the Supreme Court for the tenant or occupier, the judgment shall supersede the warrant so granted, and the tenant or occupier shall be entitled to costs in the action.

12.—(1.) Every bond entered into under the last preceding section shall be made to the landlord at the cost of the landlord, and shall be approved of in writing by the District Court.

Bond, to whom made, and actions thereon.

(2.) If the bond so taken is forfeited, or if upon the hearing of the action in respect of which the bond was given the Supreme Court does not indorse upon the record that the condition of the bond has been fulfilled, the party to whom the bond has been so made may make a complaint and recover on the bond, and the District Court hearing the complaint may by order give such relief to the parties upon the bond as to it appears just, and the order shall have the nature and effect of a defeasance to the bond.

Protection  
of justices.

13. No action or prosecution shall be brought against the persons constituting a District Court or against a justice for issuing a warrant under this Ordinance for the recovery of possession of any premises, or against any member of the New Guinea Police Force for executing a warrant issued under this Ordinance, by reason merely that the person on whose application the warrant was granted had not lawful right to the possession of the premises.

Effect of  
irregularity.

14.—(1.) Where the person, on whose application a warrant for the recovery of possession of premises was granted, had, at the time of the granting of the warrant, lawful right to the possession of the premises, neither he nor his agent nor any other person acting on his behalf shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the provisions of this Ordinance, but the party aggrieved shall not be debarred from bringing an action in any court of competent jurisdiction for any special damage which he alleges he has sustained by reason of the irregularity or informality, and from recovering full satisfaction for the special damage with costs.

(2.) If special damage is not proved, the defendant shall be entitled to a verdict, and, if damage is proved but is assessed by the court at a sum not exceeding Ten shillings, the complainant shall recover no costs, unless the court certifies that in the opinion of the court full costs ought to be allowed.

Power to make  
regulations.

15. The Administrator in Council may make regulations,<sup>(2)</sup> not inconsistent with this Ordinance, prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

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(2) See the *Tenements Recovery Regulations*, printed on p. 2999.