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For more information concerning the history of this Act, please see the ***Table of Public Acts***.

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Legislative Counsel Office
Tel: (902) 368-4291
Email: legislation@gov.pe.ca

CHAPTER L-4

LANDLORD AND TENANT ACT

1. In this Act — Definitions

(a) "action" means a proceeding in the Supreme Court; — action

(b) "court" means the Supreme Court and includes a judge thereof; — court

(c) "crops" means the products of the soil, and without limiting the generality thereof, includes all sorts of grain, grass, hay, hops, fruit, dulse, potatoes, beets, turnips and other products of the soil; — crops

(d) "land" includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way), also a rent charged upon or payable in respect of any land, and an easement, right, privilege or benefit in, over or derived from land, but not an undivided share in land; — land

(e) "landlord" includes every lessor, every owner, every person giving or permitting the occupation of land, and their respective successors in title; — landlord

(f) "mines and minerals" includes any strata or seam of minerals or substances in or under any land and powers of working and getting the same, but not an undivided share thereof. R.S.P.E.I. 1974, Cap. L-7, s.1; 1975, c.27, s.5. — mines and minerals

PART I
GENERAL PROVISIONS

2. (1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, relating to the leased premises and on the tenant's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate. — Leases, rent reserved and covenants contained therein

(2) Any rent referred to in subsection (1), covenant or provision shall be capable of being recovered, received, enforced and taken advantage of, by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased. — Recovery and enforcement of rent and covenants

Where condition of re-entry or forfeiture enforceable

(3) Where the person referred to in subsection (2) becomes entitled by conveyance or otherwise the rent, covenant or provision may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition waived or released before the person becomes so entitled. R.S.P.E.I. 1974, Cap. L-7, s.2.

Application of section 2

3. Section 2 applies to leases made before or after October 2, 1939 but does not affect the operation of

(a) any severance of the reversionary estate; or

(b) any acquisition by conveyance or otherwise of the right to receive or enforce any rent, covenant or provision,

effected before October 2, 1939. R.S.P.E.I. 1974, Cap. L-7, s.3.

Condition of covenant made by landlord, effect on reversionary estate

4. (1) The obligation under a condition or of a covenant entered into by a landlord relating to his leased premises is if and as far as the landlord has power to bind the reversionary estate immediately expectant on the term granted by the lease, annexed and incident to and goes with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is for the time being vested by conveyance, devolution in law, or otherwise; and, if and as far as the landlord has power to bind the person from time to time entitled to that reversionary estate, the obligation may be taken advantage of and enforced against any person so entitled.

Application of section 4

(2) This section applies to leases made before or after October 2, 1939 whether the severance of the reversionary estate was effected before or after that date.

Idem

(3) This section takes effect without prejudice to any liability affecting a covenantor or his estate. R.S.P.E.I. 1974, Cap. L-7, s.4.

Apportionment of condition of re-entry

5. Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition of right of re-entry and every other condition contained in the lease, shall be apportioned and shall remain annexed to the several parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains

subsisting, as the case may be, had alone originally been comprised in the lease. R.S.P.E.I. 1974, Cap. L-7, s.5.

Merger, etc. of reversions

6. Where a reversion expectant on a lease of land is surrendered or merged, the estate or interest which as against the tenant for the time being confers the next vested right to the land, shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion if there had been no surrender or merger thereof. R.S.P.E.I. 1974, Cap. L-7, s.6.

Waste by tenants

7. (1) Subject always to the express terms of any lease, or of any valid and subsisting covenant, agreement or stipulation affecting the tenancy

(a) every tenant for years and every tenant for life is liable to his landlord and to every other person for the time being having a reversionary interest in the leased premises for voluntary waste and for permissive waste in respect of the premises to the extent by which the interest of the landlord and other persons, if any, having a reversionary interest in the premises is detrimentally affected thereby; and

(b) every tenant at will is liable to his landlord and every other person having a reversionary interest in the leased premises for voluntary waste in respect of the premises to the extent by which the interest of the landlord and other persons, if any, having a reversionary interest in the premises is detrimentally affected thereby.

Enforcement by landlord

(2) Every landlord and every person having a reversionary interest in any leased premises is entitled in respect of any waste by a tenant in respect of the premises in an action brought in any court of competent jurisdiction to obtain damages or an injunction, or both. R.S.P.E.I. 1974, Cap. L-7, s.7.

Defects in lease made under power of leasing

8. (1) Where in the intended exercise of any power of leasing whether conferred by a statute or by any other instrument, a lease (in this section referred to as an invalid lease), is granted, which by reason of any failure to comply with the terms of the power is invalid, then

(a) as against the person entitled, after the determination of the interest of the grantor, to the reversion; or

(b) as against any other person who, subject to any lease properly granted under the power, would have been entitled to the land comprised in the lease,

the lease, if it was made in good faith and the lessee has entered thereunder, shall take effect as a contract for the grant, at the request of the lessee, of a valid lease under the power, of like effect as the invalid lease, subject to such variations as may be necessary in order to comply with the terms of the powers, but a lessee under an invalid lease shall

not, by virtue of any such implied contract, be entitled to obtain a variation of the lease if the other persons who would have been bound by the contract are willing and able to confirm the lease without variation.

Where invalid lease becomes valid

(2) Where a lease granted in the intended exercise of such power is invalid by reason of the grantor not having power to grant the lease at the date thereof but the grantor's interest in the land comprised therein continues after the time when he might, in the exercise of the power, have properly granted a lease in the like terms, the lease shall take effect as a valid lease in like manner as if it had been granted at that date.

Person in possession under invalid lease, bound to accept confirmation of

(3) Where during the continuance of the possession taken under an invalid lease the person for the time being entitled, subject to the possession, to the land comprised therein or to the rents and profits thereof, is able to confirm the lease without variation, the lessee, or other person who would have been bound by the lease had it been valid, shall, at the request of the person so able to confirm the lease, be bound to accept a confirmation thereof, and thereupon the lease shall have effect and be deemed to have had effect as a valid lease from the grant thereof.

Confirmation, how made

(4) Confirmation under subsection (3) may be by a memorandum in writing signed by or on behalf of the persons respectively confirming and accepting the confirmation of the lease.

Receipt or memorandum deemed confirmation, where

(5) Where a receipt or a memorandum in writing confirming the invalid lease is, upon or before the acceptance of rent thereunder, signed by or on behalf of the person accepting the rent, that acceptance shall, as against that person, be deemed to be a confirmation of the lease.

Application of section

(6) The foregoing provisions of this section do not affect prejudicially

(a) any right of action or other right or remedy to which, but for those provisions or any enactment replaced by those provisions, the lessee named in an invalid lease would or might have been entitled under any covenant on the part of the grantor for title or quiet enjoyment contained therein or implied thereby; or

(b) any right of re-entry or other right or remedy to which, but for those provisions or any enactment replaced thereby, the grantor or other person for the time being entitled to the reversion expectant on the termination of the lease, would or might have been entitled by reason of any breach of the covenants, conditions, or provisions contained in the lease, and binding on the lessee.

Deemed intended exercise of power of leasing

(7) Where a valid power of leasing is vested in or may be exercised by a person who grants a lease which, by reason of the determination of the interest of the grantor or otherwise, cannot have effect and continuance according to the terms thereof independently of the power, the lease shall

for the purposes of this section be deemed to have been granted in the intended exercise of the power although the power is not referred to in the lease.

Application of section

(8) This section takes effect without prejudice to the provision in this Act for the grant of leases in the name and on behalf of the estate owner of the land affected. R.S.P.E.I. 1974, Cap. L-7, s.8.

Right of re-entry for non-payment of rent

9. In every lease in writing whenever made, unless it is otherwise agreed, and in every lease by parol, there shall be implied an agreement that if the rent reserved, or any part thereof, remains unpaid for fifteen days after any of the days on which it ought to have been paid, although no formal demand thereof has been made, the landlord may, at any time thereafter, into and upon the demised premises, or any part thereof in the name of the whole, re-enter, and have the premises again, repossess and enjoy as of his former estate; and the occupant thereof shall be deemed to be an overholding tenant within the meaning of Part III. R.S.P.E.I. 1974, Cap. L-7, s.9.

Conviction for keeping common bawdy house, re-entry by landlord

10. In every lease whenever made there shall be implied an agreement that if the tenant or any other person is convicted of keeping a common bawdy house, within the meaning of the *Criminal Code* (Canada) R.S.C. 1985, Chap. C-46, or is convicted of an offence against the provisions of the *Liquor Control Act* R.S.P.E.I. 1988, Cap. L-14 excepting section 38 thereof, on the demised premises, or any part thereof, the landlord may at any time thereafter, into the demised premises, or any part thereof, re-enter, and have the premises again, repossess and enjoy as of his former estate. R.S.P.E.I. 1974, Cap. L-7, s.10.

License to tenant, extent of

11. (1) Where a license is granted to a tenant to do any act, the license, unless otherwise expressed, extends only

(a) to the permission actually given;

(b) to the specific breach of any provision or covenant referred to; or

(c) to any other matter thereby specifically authorized to be done,

and the license does not prevent any proceeding for any subsequent breach unless otherwise specified in the license.

Covenants etc. prevail

(2) Notwithstanding a license referred to in subsection (1)

(a) all rights under covenants and powers of re-entry contained in the lease remain in full force and are available as against any subsequent breach of covenant, condition or other matter not specifically authorized or waived, in the same manner as if no license had been granted; and

(b) the condition or right of entry remains in force in all respects as if the license had not been granted, except in respect of the particular matter authorized to be done.

License to assign or sublet, right of re-entry

(3) Where in any lease there is a power or condition of re-entry on the tenant assigning, subletting or doing any other specified act without a license, and a license is granted

(a) to any one of two or more tenants to do any act, or to deal with his equitable share or interest; or

(b) to any tenant, or to any one of two or more tenants to assign or underlet part only of the property, or to do any act in respect of part only of the property,

the license does not operate to extinguish the right of re-entry in case of any breach of covenant or condition by the co-lessees of the other shares or interests in the property, or by the tenant or tenants of the rest of the property, as the case may be, in respect of such shares or interests or remaining property, but the right of re-entry remains in force in respect of the shares, interests or property not the subject of the license.

Application of section

(4) This subsection does not authorize the grant after October 2, 1939 of a license to create an undivided share in a legal estate. R.S.P.E.I. 1974, Cap. L-7, s.11.

Covenant etc. against assigning, subletting conditional

12. (1) In every lease containing a covenant, condition, or agreement against assigning, subletting, or parting with the possession, or disposing of the land leased without license or consent, such covenant, condition, or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject

(a) to a proviso to the effect that the license or consent shall not be unreasonably withheld; and

(b) to a proviso to the effect that no fine or sum of money in the nature of a fine is payable for or in respect of the license or consent, but this proviso does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to the license or consent.

Judge may make order allowing assignment or subletting

(2) Where the landlord refuses or neglects to give a license or consent to assign or sublet, a judge of the Supreme Court, upon the application of the tenant, or assignee or subtenant, and after notice to the landlord, may make an order determining whether or not such license or consent is unreasonably withheld, and where it is so withheld, permitting the assignment or sublease to be made; and the order shall be the equivalent of the license or consent of the landlord within the meaning of any covenant or condition requiring the same, and such assignment or sublease is not a breach thereof.

Costs of application

(3) The costs of an application under subsection (2) shall be in the discretion of the judge and shall conform, as nearly as may be, to costs in the Supreme Court. R.S.P.E.I. 1974, Cap. L-7, s.12; 1975, c.27, s.5.

13. Every tenant to whom there is delivered any process of any court for the recovery of premises demised to or held by him or to whose knowledge any such process comes, shall forthwith give notice thereof to his landlord or his agent, and if he fails so to do, he is answerable for all damages sustained by the landlord by reason of the failure to give the notice. R.S.P.E.I. 1974, Cap. L-7, s.13.

Notice by tenant to landlord of proceedings

14. In this section and sections 15 and 16

Definitions

(a) "lease" means every agreement in writing, and every parol agreement whereby one person as landlord confers upon another person as tenant the right to occupy land, and every sublease and every agreement for a sublease and every assurance whereby any rent is secured by condition;

lease

(b) "mining lease" means a lease for mining purposes, which purposes includes the searching for, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away or disposing of mines or minerals, and substances in, on or under the land, obtainable by underground or by surface working or purposes connected therewith and includes a grant or license for mining purposes;

mining lease

(c) "sublease" includes an agreement for a sublease where the sublessee has become entitled to have his sublease granted;

sublease

(d) "subtenant" includes any person deriving title under a sublease;

subtenant

(e) "tenant" includes every lessee, occupant, subtenant and their assigns and legal representatives. R.S.P.E.I. 1974, Cap. L-7, s.14.

tenant

15. (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, shall not be enforceable, in any case in which the breach is capable of remedy or of being compensated by money payment, unless and until

Right of re-entry or forfeiture, not enforceable until

(a) the landlord serves on the tenant a notice specifying the particular breach, and requiring the tenant to remedy or to make compensation in money for the breach; and

(b) the tenant fails, within a reasonable time after the service of the notice, to remedy the breach, or to make compensation in money to the satisfaction of the landlord for the breach.

(2) Where a landlord is proceeding by action or otherwise to enforce any right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the tenant may in the landlord's action, if any, or if there is no such action pending, then in an action brought by himself, apply to the court for relief, and the court may grant such relief as having regard

Application by tenant to court for relief

to the proceedings and conduct of the parties under the foregoing provisions of this section and to all the other circumstances the court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the court may consider just.

Application of section

(3) This section applies, whether the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease or is implied therein.

Lease limited to continue until breach, term of

(4) For the purposes of this section a lease limited to continue as long as the tenant abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

Action for non-payment of rent terminated, when

(5) Where the action is brought to enforce a right of re-entry or forfeiture for non-payment of rent and the tenant at any time before judgment pays into court all the rent in arrears and the costs of the action, the cause of action is at an end.

Relief granted, effect of lease

(6) Where relief is granted under the provisions of this section the tenant holds and enjoys the demised premises according to the lease thereof made without any new lease.

Covenant or condition to insure, re-entry & forfeiture where breach

(7) Where the right of re-entry or forfeiture is in respect of a breach of a covenant or condition to insure, relief shall not be granted if at the time of the application for relief there is not a policy of insurance in force in conformity with the covenant or condition to insure, except, in addition to any other terms which the court may impose, upon the term that the insurance is effected.

Application of section

(8) This section applies to leases made either before or after October 2, 1939 and applies notwithstanding any stipulation to the contrary.

Idem

(9) This section does not extend

(a) to a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased;

(b) in the case of a mining lease, to a covenant or condition for allowing the landlord to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof; or

(c) to a condition for forfeiture on the bankruptcy of the tenant or on the taking in execution of the lessee's interest if contained in

(i) a lease of agricultural or pastoral land,

(ii) a mining lease,

(iii) a lease of a house let as a dwelling-house with the use of any furniture, books, works of art or other chattels not being in the nature of fixtures,

(iv) a lease of land with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the landlord, or to any person holding under him.

Location of tenant uncertain, service of notice

(10) If the whereabouts of the tenant cannot be ascertained after reasonable inquiry or if the tenant is evading service, the notice referred to in subsection (1) may be served on the tenant by leaving it at the place of residence of the tenant with any adult person for the time being in charge thereof, and if the premises are unoccupied, the notice may be served by posting it up in a conspicuous manner upon some part of the demised premises. R.S.P.E.I. 1974, Cap. L-7, s.15.

Vesting term of lease in subtenant where landlord enforcing right of re-entry or forfeiture

16. Where a landlord is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease or for non-payment of rent, the court, on application by any person claiming as subtenant any estate or interest in the property comprised in the lease or any part thereof, either in the landlord's action, if any, or in any action brought or summary application made to the court by such person for that purpose, may make an order vesting for the whole term of the lease or any less term the property comprised in the lease, or any part thereof, in any person entitled as subtenant to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, as the court in the circumstances of each case thinks fit, but in no case is the subtenant entitled to require a lease to be granted to him for any longer term than he had under his original sublease. R.S.P.E.I. 1974, Cap. L-7, s.16.

Waiver, operation of

17. Where the actual waiver by a lessor or the persons deriving title under him of the benefit of any covenant or condition in any lease is proved to have taken place in any particular instance, the waiver shall not, unless a contrary intention appears, be deemed to extend to any instance, or to any breach of covenant or condition except that to which the waiver specially relates, nor operate as a general waiver of the benefit of any such covenant or condition. R.S.P.E.I. 1974, Cap. L-7, s.17.

Covenant to pay taxes, scope

18. Unless it is otherwise expressly provided in the lease a covenant by a tenant for payment of taxes shall not be deemed to be an obligation to pay taxes assessed for local improvements, or drainage or irrigation rates. R.S.P.E.I. 1974, Cap. L-7, s.18; 1975, c.27, s.5; 1978, c.19, s.3.

Notice to quit, requirements

19. (1) Subject to an express agreement to the contrary, sufficient notice to quit shall be deemed to have been given if there is given

(a) in the case of a weekly tenancy, a week's notice ending with the week;

(b) in the case of a monthly tenancy, a month's notice ending with the month;

(c) in the case of a tenancy from year to year, three month's notice ending, in the case of a tenancy originally from year to year, with an anniversary of the last day of the first year thereof, and in the case of all other tenancies from year to year, with an anniversary of the last day of the original tenancy,

but, in the case of a lease of agricultural lands, not less than six month's notice to quit shall be given.

Determination of lease, tenant in possession: terms of tenancy

(2) In case a tenant, upon the determination of his lease, whether created by writing or by parol, remains in possession with the consent, express or implied, of the landlord, he shall be deemed to be holding subject to the terms of the lease, so far as they are applicable.

Certain tenancies deemed from year to year

(3) In case the tenancy created by the lease was neither a weekly nor monthly tenancy nor a tenancy from year to year, the overholding tenant shall be deemed to be holding as a tenant from year to year. R.S.P.E.I. 1974, Cap. L-7, s.19.

Recovery of rent

20. Where any rent is payable or reserved by virtue of any deed, transfer or other assurance, or by will, and there exists no express right of distress for the recovery thereof, the person entitled to receive the rent shall have the same right of distress for the recovery thereof as if it were rent reserved upon lease. R.S.P.E.I. 1974, Cap. L-7, s.20.

Attornment of a tenant to stranger

21. (1) Every attornment of a tenant of any land to a stranger claiming title to the estate of his landlord shall be absolutely null and void, and the possession of his landlord shall not be deemed to be changed, altered or affected by such attornment, but nothing herein shall vacate or affect an attornment made

(a) pursuant to and in consequence of a judgment or order of a court; or

(b) with the privity and consent of the landlord.

Application of section

(2) Nothing herein contained shall alter, prejudice or affect any rights which a vendor, mortgagee or incumbrancee may now possess under any law or statute. R.S.P.E.I. 1974, Cap. L-7, s.21.

Grant or conveyance of rent, attornment not necessary

22. (1) Every grant or conveyance of any rent or of the reversion or remainder of any land is good and effectual without any attornment of the tenant of the land out of which the rent issues, or of the particular

tenant upon whose particular estate the reversion or remainder is expectant or depending.

Liability of tenant where no notice of grant

(2) A tenant shall not be prejudiced or damaged by the payment of rent to any grantor or by breach of any condition for non-payment of rent before notice to him of the grant. R.S.P.E.I. 1974, Cap. L-7, s.22.

Effect of renewal on subleases

23. (1) Where a lease is duly surrendered in order to be renewed, and a new lease is made and executed by the chief landlord, the new lease is, without a surrender of all or any of the underleases, as good and valid as if all the underleases derived thereout had been likewise surrendered at or before the time of taking of the new lease.

Estate for life or for years, entitlement to rents, when

(2) Every person in whom any estate for life, or lives, or for years, is from time to time vested by virtue of the new lease, is entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the underlessees shall hold and enjoy the land in the respective underleases comprised as if the original lease had been kept on foot and continued, and the chief landlord shall have and is entitled to such and the same remedy by distress or entry in and upon the land comprised in any underleases for the rents and duties reserved by the new lease, so far as the same do not exceed the rents and duties reserved in the lease out of which the sublease was derived, as he would have had if the former lease had been still continued or as he would have had if the respective underleases had been renewed under the new principal lease. R.S.P.E.I. 1974, Cap. L-7, s.23.

Renewal of leases by court, landlord etc. out of province etc.

24. (1) Where any person who, in pursuance of any covenant or agreement in writing, if within the province and amenable to the process of the court, might be compelled to execute any lease by way of renewal, is not within the province, or is not amenable to the process of the court, the court upon the application of any person entitled to such renewal, whether the person is or is not under any disability, may direct such person as the court thinks proper to appoint for that purpose to accept a surrender of the subsisting lease, and to make and execute a new lease in the name of the person who ought to have renewed the same.

Effect of renewal

(2) A new lease executed by the person so appointed shall be as valid as if the person in whose name the same was made was alive and not under any disability and had himself executed it.

Discretion vested in court to establish right

(3) In every such case it is in the discretion of the court to direct an action to be brought to establish the right of the person seeking renewal, and not to make the order for such new lease unless by the judgment to be made in such action, or until after it shall have been entered.

Renewal of lease conditional upon payment of money

(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant, or agreement, unless the sum of money, if any, which ought to be paid on the renewal and the things, if any, which ought to be performed in pursuance of the covenant or agreement by the tenant are first paid and performed, and counterparts of every such renewed lease are duly executed by the tenant.

Payment of money received to

(5) All sums of money which are had, received or paid for, or on account of, the renewal of any lease by any person out of the province or not amenable to the process of the court, after a deduction of all necessary incidental charges and expenses, shall be paid to such person or in such manner or into court to such account and be applied and disposed of as the court shall direct.

Costs and expenses of application etc.

(6) The court may order the costs and expenses of and relating to the application, orders, directions, conveyances and transfers, or any of them, to be paid and raised out of or from lands or the rents in respect of which they are respectively made, in such manner as the court shall consider proper. R.S.P.E.I. 1974, Cap. L-7, s.24.

Farm land held under lease subject to determination upon uncertain event

25. Where any farm land is held by a tenant subject to the payment of a rent which substantially represents the fair annual letting value of the land of a landlord whose interest in the land is liable to be determined by death or by any uncertain event, upon the interest of the landlord being determined by death or other uncertain event,

(a) in lieu of any claim for emblements, the tenant shall continue to hold and occupy such land until the expiration of the then current year of his tenancy and shall then quit upon the terms of his tenancy in the same manner as if the tenancy were then determined by effluxion of time or other lawful means during the continuance of the landlord's estate;

(b) the person succeeding to the interest of the landlord is entitled to recover from the tenant in the same manner as his predecessor could have done if his interest in the land had not been determined, a fair proportion of the rent for the period between the day upon which the interest of the predecessor ceased and the time of quitting; and

(c) the person so succeeding and the tenant respectively, as between themselves and as against each other, are entitled to all the same benefits and advantages and are subject to the same liabilities as the predecessor and the tenant would have been entitled or subject to in case the tenancy had been determined by effluxion of time or other lawful means at the expiration of the current year and during the continuance of the predecessor's interest in the land. R.S.P.E.I. 1974, Cap. L-7, s.25.

PART II
DISTRESS FOR RENT

Distress for rent, when

26. Upon the determination of any lease the person entitled as landlord to receive any rent made payable thereby may, at any time within six months next after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the rent became due, distrain for any rent due and in arrears and in the same manner as he might have done if the lease were not determined. R.S.P.E.I. 1974, Cap. L-7, s.26.

Recovery of rent for deceased

27. A person entitled to any rent or land for the life of another may recover by action or distress the rent due and owing at the time of the death of the person for whose life the rent or land depended as he might have done if the person by whose death the estate in the rent or land determined had continued in life. R.S.P.E.I. 1974, Cap. L-7, s.27.

Amount of goods subject to distress

28. (1) No person shall take under distress more goods than are reasonably sufficient to satisfy the rent in arrears and the costs of the distress.

Limitation of action for excessive distress

(2) Where chattels are distrained for rent due, the person making the distress is not liable to any action for excessive distress, if within seven days after the making of the distress he abandons the excess and thereafter holds under the distress no more chattels than are reasonably necessary to satisfy the rent due with the costs of the distress. R.S.P.E.I. 1974, Cap. L-7, s.28.

Times distress prohibited

29. No distress for rent shall be made at any time in the interval between five o'clock in the afternoon and eight o'clock in the following morning. R.S.P.E.I. 1974, Cap. L-7, s.29.

Goods not on premises not subject to distress

30. Except as herein otherwise provided, goods or chattels which are not at the time of the distress upon the premises in respect of which the rent distrained for is due shall not be distrained for rent. R.S.P.E.I. 1974, Cap. L-7, s.30.

Domestic animals subject to distress

31. There may be taken under a distress for rent any horses, cattle, sheep, swine, poultry, fowl, livestock and other domestic animals that are grazing, pasturing or feeding upon any highway or way belonging or appertaining to the premises in respect of which the rent distrained for is payable. R.S.P.E.I. 1974, Cap. L-7, s.31.

Fraudulent or clandestine removal of goods by tenant

32. (1) Where a tenant of land held under any kind of tenancy under which rent is payable, fraudulently or clandestinely removes or causes to be removed from the land so held by him, at a time when there are any arrears of rent payable in respect thereof that are recoverable by distress,

any goods or chattels liable to such distress, to prevent the landlord from distraining the same for arrears of rent so payable, the landlord or any person by him duly authorized may, within thirty days next after such removal, take and seize as a distress for such arrears any goods and chattels so removed, wherever the same are found, and may sell or otherwise dispose of the goods and chattels so taken in such manner as if the same had actually been distrained by the landlord for arrears of rent upon the premises from which the same had been so removed.

Purchases without notice for valuable consideration

(2) Notwithstanding subsection (1), no property referred to in subsection (1) shall be taken as a distress for the arrears of rent payable, that has been sold or disposed of for valuable consideration, before the seizure that was made, to any person not having notice of the fraud, as aforesaid. R.S.P.E.I. 1974, Cap. L-7, s.32.

Search and seizure of goods fraudulently or clandestinely removed

33. (1) Every person lawfully charged with the duty of executing a warrant of distress for rent who has reason to believe that any goods or chattels have been fraudulently or clandestinely removed for the purpose of preventing the landlord from distraining them, and that the said goods are in any building, yard, inclosure or place in such circumstances as to prevent them from being taken or seized as a distress for arrears of rent, may at any time between eight o'clock in the morning and five o'clock in the afternoon enter into and upon the building, yard, inclosure or place and every part thereof for the purpose of searching for any goods and chattels so removed and may seize the goods and chattels there found for arrears of rent as he might have done if they were in an open field or place upon the premises from which they were removed, and for that purpose may obtain entry upon and access to the premises by breaking or removing any doors or any locks or other fastenings whereby such entry and access is hindered.

Resistance to search and seizure, overcoming

(2) If any person encounters any resistance in doing any of the acts and things which he is authorized by subsection (1) to do, he may call upon any peace officer to assist him in overcoming that resistance, and such person in the presence of a peace officer and the peace officer are each empowered to use such force as is reasonably necessary for the purpose of overcoming that resistance. R.S.P.E.I. 1974, Cap. L-7, s.33.

Liability of tenant for double value of goods removed

34. Every tenant and every other person who fraudulently or clandestinely removes any goods and chattels for the purpose of preventing the landlord from distraining the same for arrears of rent, and every person who wilfully and knowingly aids or assists him in so doing or in concealing any goods or chattels so removed, is liable to the landlord for double the value of the said goods, which amount is recoverable by action in any court of competent jurisdiction. R.S.P.E.I. 1974, Cap. L-7, s.34.

35. A landlord, his bailiff or agent, may take under a distress for rent, any sheaves or cocks of grain, or grain loose, or in the straw, or hay, lying or being in any barn or granary or otherwise upon any part of the land charged with the rent. R.S.P.E.I. 1974, Cap. L-7, s.35.

Grain, hay and straw subject to distress

36. A landlord, his bailiff or agent, may take growing crops as a distress for rent, excepting such crops as may be subject to a valid crop mortgage given in consideration of the supply of seed or fertilizer therefor. R.S.P.E.I. 1974, Cap. L-7, s.36.

Growing crops subject to distress

37. (1) Where growing crops are taken as a distress for rent, the landlord, his bailiff or agent, may cut, gather, make, cure, thresh, carry and lay up the same, when ripe, in the barns or other proper place on the demised premises, and if there is no barn or proper place on the demised premises, then in any other barn or proper place which the landlord procures for that purpose as near as may be to the premises, and may sell or otherwise dispose of the same towards satisfaction for the rent for which such distress is made, and of the charge of such distress and sale in the same manner as other goods and chattels may be seized, distrained and disposed of, and the appraisement thereof shall be taken when cut, gathered, made, cured or threshed, as the case may be, and not before.

Where growing crops taken as a distress

(2) If, after a distress of growing crops taken for arrears of rent, and at any time before they are ripe and cut, cured, threshed or gathered, the tenant pays the landlord for whom the distress is taken the whole rent then in arrears, with the costs and charges of making the distress and occasioned thereby, then, upon such payment or lawful tender thereof, the same and every part thereof shall cease, and the growing crops so distrained shall be delivered up to the tenant. R.S.P.E.I. 1974, Cap. L-7, s.37.

Payment of rent before growing crops cut

38. (1) Notwithstanding the preceding section, where growing crops are distrained for rent, they may, at the option of the landlord, be advertised and sold in the same manner as other goods; and it is not necessary for the landlord to reap, thresh, gather or market the same.

Sale of growing crops without harvesting

(2) Any person purchasing growing crops at a sale referred to in subsection (1) is liable for the rent of the land upon which they are growing at the time of the sale, from that time until they are removed, unless the rent has been paid or has been collected by the landlord, or has been otherwise satisfied, and the rent shall, as nearly as may be, be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land, and to the time during which the purchaser occupied it. R.S.P.E.I. 1974, Cap. L-7, s.38.

Purchaser's rights

Goods liable to distress

39. No goods and chattels are liable to be taken under a distress for rent excepting the goods and chattels of the tenant, and

(a) goods and chattels which are claimed by a person other than the tenant

(i) by virtue of any execution against the tenant,

(ii) by virtue of any purchase, gift, transfer or assignment from the tenant, whether absolute or in trust or by way of mortgage or otherwise,

(iii) being the spouse, daughter, son, daughter-in-law or son-in-law of the tenant or any other person who lives as a member of the tenant's household upon the premises, in respect of which the rent distrained for is payable,

(iv) which have been in the possession, order or disposition of the tenant for one year or upwards under such circumstances that such tenant is the reputed owner thereof;

(b) the interest of the tenant in any goods and chattels under a contract for the purchase thereof or under a contract whereby the tenant may become the owner thereof upon the performance of any condition;

(c) goods and chattels which have been exchanged between the tenant and another person, or which have been borrowed by the one from the other, for the purpose of defeating the claim of or the right of distress by the landlord. R.S.P.E.I. 1974, Cap. L-7, s.39; 2008,c.8,s.17.

Rental periods for which distress valid

40. The right of distress arising under subclause 39(a)(i) and (ii) is limited to the rental due for a period of one year in the case of rental terms of less than one year, and to the rental due for a period of two years in all other cases. R.S.P.E.I. 1974, Cap. L-7, s.40.

Exemptions from distress

41. The following goods and chattels of the tenant, and no others, are exempt from seizure under any distress, namely,

(a) the bed, bedding, and bedsteads, in ordinary use by the tenant and his family;

(b) the necessary and ordinary wearing apparel of the tenant and his family;

(c) goods in the custody of an officer of the law (e.g. when actually seized by virtue of an execution);

(d) fixtures, whether irremovable or severable by a tenant;

(e) subject to the provisions of sections 35 and 36 things of a perishable nature that must necessarily be damaged by removal or appreciably deteriorate in value before sale or replevin. R.S.P.E.I. 1974, Cap. L-7, s.41.

42. Every distress for rent made by any person other than the landlord of the premises or his agent generally authorized therefor in writing, shall be unlawful, unless made by virtue of a warrant to distrain, which shall contain

Who may distrain & warrant to distrain

(a) the date when and the place where it was signed;
(b) the amount of rent demanded,
(c) the time when it accrued due;
(d) a description of the premises for which the rent is demanded,

and shall authorize the person to whom it is directed to distrain for the rent, the property on the premises, and the warrant shall be signed by the person authorizing the distress, or his authorized agent. R.S.P.E.I. 1974, Cap. L-7, s.42.

43. Every person making a distress for rent shall at the time of the making thereof deliver to the person in the possession or occupation of the premises, for the rent of which the distress is made, an inventory of the property distrained, together with a notice of the distress, signed by the person making it, which notice shall contain

Inventory of property distrained

(a) the amount of rent demanded;
(b) the time when it accrued due;
(c) the name and place of residence of the person making the distress;
(d) a statement that the rent and charges of distraining must be paid within four days next after the distress and notice, or in default thereof, the property distrained will be disposed of according to law. R.S.P.E.I. 1974, Cap. L-7, s.43.

44. (1) If the person making the distress is not the party entitled to the rent for which the distress is made, the notice referred to in section 43 shall contain the name of the person by whose authority the distress is made, and the person making the distress shall deliver with the inventory and notice a duplicate of the warrant by virtue of which the distress is made.

Where person distraining not landlord etc.

(2) In case there is no person found in possession or occupation of the premises for the rent of which the distress is made, the inventory and notice and duplicate warrant, where the distress is made by virtue of a warrant, shall be affixed on some conspicuous part of such premises. R.S.P.E.I. 1974, Cap. L-7, s.44.

No person found in possession, posting premises

45. Any distress made without the delivery or the affixing as the case may be, of the inventory and notice, and duplicate warrant where the distress is made by virtue of a warrant, is unlawful and void, but no distress is unlawful and void by reason only that the amount of rent demanded by the notice is not the exact amount due, if the error has been

Effect of lack of prescribed notice

the exact amount due, if the the error has been made without fraud or malice or want of reasonable care. R.S.P.E.I. 1974, Cap. L-7, s.45.

Person having legal estate in reversion not named in notice

46. If the person by whom or by whose authority distress is made is the person beneficially entitled to the rent, the distress is not unlawful or void by reason of the person having the legal estate in the reversion not being named in the notice. R.S.P.E.I. 1974, Cap. L-7, s.46.

Time within which tenant etc. to replevy or execute warrant of attorney, sale of property

47. (1) Where any property is distrained for rent, and the tenant or owner of the property so distrained does not, within four days next after the distress and notice thereof, replevy the same or execute a warrant of attorney as herein provided, the person distraining shall cause the property so distrained to be appraised by two appraisers, and after the appraisement may on the fifth day after the distress advertise it to be sold on a date not earlier than the fifth day after advertising, and shall sell for the best price that can be obtained therefor towards satisfaction of the rent and charges of the distress, appraisement and sale, leaving the surplus (if any) for the owner's use.

Person distraining unable to sell on fixed date

(2) If for any reason the person distraining is unable to sell the property distrained on the day appointed for the sale thereof, the sale may be postponed until another time, and from time to time, and upon any postponement, the property distrained or any part thereof may be removed to any suitable place, and upon the postponement, the property distrained, or any part thereof may be sold at such time, in such manner, and after such notice as the person distraining considers proper.

Persons eligible to purchase property

(3) The person authorizing a distress, or his agent, may purchase at public auction, any of the property distrained, but, in such case, the person distrained upon is entitled to receive credit for at least the appraised value of the property so purchased. R.S.P.E.I. 1974, Cap. L-7, s.47.

Appraisers, qualifications

48. The appraisers shall be competent, disinterested persons, appointed by the person distraining, and shall, before acting, be sworn before a justice or a judge appointed under the *Provincial Court Act* R.S.P.E.I. 1988, Cap. P-25 to make true appraisement of the value of the property distrained. R.S.P.E.I. 1974, Cap. L-7, s.48.

Warrant of attorney by owner

49. No property distrained shall be sold until after the expiration of twenty days from the day of distress, if the owner of the property, or some person on his behalf, with one or more sureties within four days after the distress, executes a warrant of attorney to confess a judgment in the court in favour of the person entitled to the rent distrained for in double the value of the property so distrained, as fixed by the appraisers. R.S.P.E.I. 1974, Cap. L-7, s.49.

50. The warrant of attorney shall contain a defeasance for the due forthcoming of the property distrained, or the appraised value thereof, on the day of sale. R.S.P.E.I. 1974, Cap. L-7, s.50.

Contents of warrant

51. Upon the execution of the warrant of attorney the person distraining shall forthwith return the property distrained. R.S.P.E.I. 1974, Cap. L-7, s.51.

Return of property distrained

52. If the property distrained and returned upon the execution of a warrant of attorney, is not forthcoming on the day appointed for the sale thereof, or if the appraised value thereof, where the value is less than the amount of rent due, and the charges of the distress, or where the value exceeds the amount of rent due and the charges of the distress, then the amount of the rent and charges shall not be paid, judgment may be entered on the warrant of attorney and execution issued thereon for the amount of the appraised value of the property, if not exceeding the amount of rent then due, with costs. R.S.P.E.I. 1974, Cap. L-7, s.52.

Where property not returned

53. If any part of the property distrained and delivered back, as referred to in section 52, is not forthcoming on the day appointed for the sale thereof, such part of the property as is forthcoming shall be sold, by virtue of the distress, and judgment may be entered on the warrant of attorney and execution thereon issued, endorsed to levy for the difference between the amount realized, on the property so sold, after deducting the costs of distress and sale, and the appraised value of the property distrained, if not exceeding the balance of rent then due, and if exceeding such amount then the amount of such balance, with costs. R.S.P.E.I. 1974, Cap. L-7, s.53.

Sale of property returned

54. The person whose property has been distrained is entitled, on demand, at any time before the commencement of the sale of the property distrained, to receive from the person making the distress a detailed account, in writing, of the expenses of the distress up to the time of making the demand, and any person making a distress and refusing to deliver the account, is, on summary conviction, liable to a fine of $30, and in default of payment to imprisonment for thirty days. R.S.P.E.I. 1974, Cap. L-7, s.54.

Tenant etc. may demand detailed account

55. The person making a distress shall give a copy of his costs and charges in connection with the distress, signed by him, to the person whose property has been distrained, within twenty-four hours after the sale of the same, or in case of a settlement without sale, then at the time of such settlement, if demanded, and in default thereof in either case, shall, on summary conviction, be liable to a fine of $20 and in default of payment to imprisonment for twenty days. R.S.P.E.I. 1974, Cap. L-7, s.55.

Costs and charges of distress

Payment of rent and charges to release property

56. A tender to the person making the distress of the rent in arrears, and of the charges of the distress at any time before the commencement of the sale of the property distrained, is sufficient to entitle the person distrained upon to a return of the property distrained. R.S.P.E.I. 1974, Cap. L-7, s.56.

Purchaser, title to goods

57. A purchaser of any property at any sale under a distress without notice of any illegality or irregularity in the proceedings prior to the sale, acquires the absolute title to the property, and the remedy of the person to whom the property belonged prior to the sale for any damage sustained by the irregular or illegal sale thereof is against the person selling or authorizing the sale. R.S.P.E.I. 1974, Cap. L-7, s.57.

Revocation of warrant

58. Any person who has executed a warrant to distrain may at any time before the proceedings in distress have been closed, revoke the warrant, and may proceed with such distress in person, or by his warrant may authorize any other person to proceed with and complete the distress. R.S.P.E.I. 1974, Cap. L-7, s.58.

Subsequent warrants

59. Any second or subsequent warrant to distrain shall contain, in addition to the particulars mentioned in the first warrant, a statement that the first or other warrant has been revoked, and forthwith after the execution of the second or subsequent warrant, a duplicate thereof shall be served or posted in the manner provided for the serving or posting of the first warrant, otherwise the distress is void. R.S.P.E.I. 1974, Cap. L-7, s.59.

Distress proceedings after revocation of first or subsequent warrants

60. Any person proceeding with a distress after the revocation of a first or subsequent warrant to distrain, either in person or by virtue of a second or subsequent warrant to distrain, shall continue any proceedings already had or taken under the first, or under the first and any subsequent warrant or warrants, or any of them, as if the first warrant had not been revoked, and he had been the person therein authorized to make such distress, or as if the person signing such warrant had made the distress in person. R.S.P.E.I. 1974, Cap. L-7, s.60.

Impounding or securing property

61. Any person making a distress may impound or otherwise secure the property distrained in such place, or on such part of the premises where the distress was made, as he shall consider fit, and may appraise, sell and dispose of it upon the premises, and any person may come and go to and from the premises to view, appraise and buy, and to remove the same after the purchase thereof. R.S.P.E.I. 1974, Cap. L-7, s.61.

Breach of inclosure where distrained goods impounded

62. Any person who is a party to a breach of any inclosure or place in which any goods or chattels distrained are impounded or secured, is, on summary conviction liable to a fine of $65 and in default of payment to

imprisonment for three months, and is also liable to pay to any parties sustaining damage, by reason of the breach, treble the amount of the damage and costs of suit, to be recovered in any court of competent jurisdiction. R.S.P.E.I. 1974, Cap. L-7, s.62.

Retaking goods removed

63. In case there is a breach of any inclosure or place, in which any goods or chattels distrained are impounded or secured, and any of the goods or chattels are removed therefrom, the person distraining, his agent or bailiff, may retake the goods or chattels or any part thereof at any time and sell the same. R.S.P.E.I. 1974, Cap. L-7, s.63.

Notice of place of impounding

64. Where property distrained is removed from the premises whereon it has been distrained and impounded, or secured in any other place, notice of the place where they are impounded or secured shall be given within three days after removal including the day of distress, to the tenant, either personally, or by leaving the notice at his last place of abode, or by posting it on a conspicuous part of the premises for the rent of which the distress was made. R.S.P.E.I. 1974, Cap. L-7, s.64.

Enforcement of landlord's rights after death

65. The personal representative of any landlord may distrain upon the lands demised, for any term, or at will, for the arrears of rent due to the landlord, in his lifetime in like manner as the landlord might have done in his lifetime. R.S.P.E.I. 1974, Cap. L-7, s.65.

Distress after determination of lease

66. Arrears may be distrained for after the end or determination of a term or lease at will, in the same manner as if the term or lease had not been ended or determined, but the distress must be made within six months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears become due. R.S.P.E.I. 1974, Cap. L-7, s.66.

Property upon messuage lands or tenements

67. (1) Subject to section 68, no property liable to be taken under a distress for rent lying or being in or upon any messuage, lands or tenements that are leased is liable to be taken by virtue of any execution unless the party at whose suit the execution is sued out, before the removal of the property from off the premises by virtue of the execution, pays to the landlord the premises or his agent, all moneys due for rent for the premises at the time of the taking of the property by virtue of the execution, if the arrears of rent do not amount to more than the rent for a period of one year, in the case of rental terms of less than one year, and to the rental due for a period of two years in all other cases.

Execution of judgment

(2) The party at whose suit the execution is sued out having paid the landlord or his agent the rent as aforesaid, may proceed to execute his judgment as in other cases, and the sheriff or other officer is required and

empowered to levy and pay to the execution creditor, as well the moneys so paid for rent as the execution money. R.S.P.E.I. 1974, Cap. L-7, s.67.

Lien for rent, written statement to sheriff

68. Every landlord claiming a lien for rent in arrears upon any property taken in execution, shall deliver to the sheriff or other officer making the levy a written statement signed by himself or his agent, that sets forth the amount of rent claimed to be in arrears, and the time for and in respect of which such rent is due, otherwise the sheriff or other officer making the levy shall proceed to realize under such execution such levy as if no rent were in arrears; but, if, after the landlord has complied with the requirements of this section, the provisions of section 67 as to the payment of rent are not complied with within a reasonable time, the sheriff or other officer as aforesaid shall withdraw from such levy. R.S.P.E.I. 1974, Cap. L-7, s.68.

Set-off against rent due

69. (1) A tenant may set-off against rent due a debt due to him by the landlord, in which case he shall give notice in writing of the claim of set-off in Form 3 in the Schedule; the notice may be given before or after seizure.

Distress after set-off

(2) Upon the giving of the notice, the landlord is entitled to distrain or to proceed with the distress, as the case may be, for the balance of the rent due after deducting the amount of the debt mentioned in the notice, which is due and owing by the landlord to the tenant.

Service of notice

(3) The notice may be served either personally upon the landlord or any other person authorized to receive the rent on his behalf or by leaving it with an adult person in and apparently residing on the premises occupied by the landlord or other person authorized to receive the rent.

Want of form

(4) No notice given under this section is invalid for any want of form. R.S.P.E.I. 1974, Cap. L-7, s.69.

Standing crops, seizure and sale

70. Where all or any part of the standing crops of the tenant of any land seized and sold by any sheriff or other officer by virtue of any writ of execution, the crops, so long as they remain on the land, are, in default of sufficient distress of the goods and chattels of the tenant, liable for the rent which may accrue and become due to the landlord after the seizure and sale, and to the remedies by distress for recovery of the rent, and that, notwithstanding any bargain and sale or assignment which may have been made or executed of the crop by any sheriff or other officer. R.S.P.E.I. 1974, Cap. L-7, s.70.

Wrongful or irregular distress

71. Where any distress is made for rent due, and any irregularity is afterwards done by the person distraining, or by his agent, or if there has been an omission to make the appraisement under oath, the distress itself is not therefore deemed to be unlawful, nor the person making it deemed

a trespasser from the beginning, but the person agrieved by the irregularity may recover by action full satisfaction for the special damage sustained thereby. R.S.P.E.I. 1974, Cap. L-7, s.71.

Liability for excessive or wrongful distress

72. (1) Subject to this Act, a distrainer who makes an excessive distress, or makes a distress wrongfully, is liable in damages to the owner of the goods or chattels distrained.

Liability for damages where distress for rent not due

(2) Where a distress and sale are made for rent pretended to be in arrears, and due when in truth, no rent is in arrears or due to the person distraining, or to the person in whose name or right the distress is made, the owner of the goods or chattels distrained and sold, his executors or administrators are entitled, to bring an action against the person so distraining, to recover full satisfaction for the damage sustained by the distress and sale. R.S.P.E.I. 1974, Cap. L-7, s.72.

Rights of landlord on tenant's bankruptcy

73. (1) In case of a tenant making an assignment for the general benefit of his creditors, or of a tenant company being wound up under the *Winding-up Act* R.S.P.E.I. 1988, Cap. W-5, the right of the landlord to distrain or to complete a distress upon any goods which pass to or vest in the assignee or liquidator, cease from and after the date of the assignment or of the resolution or order for winding up, and the assignee or liquidator is entitled to immediate possession of the property of the tenant; but in the distribution of the property of the tenant the assignee or liquidator shall pay, in priority to all other debts, the landlord's claim for rent to an amount not exceeding the value of the distrainable assets of the tenant and not exceeding the rent due and accruing due at the date of the assignment or of the resolution or order for winding up, for a period equal to three terms or times of payment, according as the term of times of payment may be weekly, monthly or quarterly, or for a period of one year if the term of times of payment be more than three months and the costs of distress, if any distress has been commenced.

General creditor, proof as

(2) In the case of an assignment or winding up referred to in subsection (1), the landlord may prove as a general creditor for

(a) any surplus of rent accrued due at the date of the assignment or of the resolution or order for winding up over and above the amount mentioned in subsection (1) for which the landlord may have a preference or priority in payment; and

(b) any accelerated rent to which he may be entitled under his lease, not exceeding an amount equal to three months rent.

Unexpired portion of rent, no claim for

(3) Except as otherwise provided in this section, the landlord is not entitled to prove as a creditor for rent for any portion of the unexpired term of his lease, but the assignee or liquidator, shall pay to the landlord for the period during which he actually occupies the leased premises

from and after the date of the assignment or of the resolution or order for winding up a rental calculated on the basis of the lease and payable in accordance with the terms thereof, but any payment already made to the landlord as rent in advance in respect of accelerated rent, shall be credited against the amount payable by the assignee or liquidator for the period of his occupation.

Assignee or liquidator entitled to continue in occupation for thirty days

(4) Notwithstanding any provision, stipulation or agreement in any lease and notwithstanding the lease may have terminated or expired at or before the date of the assignment or of the resolution or order for winding up, the assignee or liquidator is entitled to continue in occupation of the leased premises for the purposes of liquidation of the tenant's estate for a period of thirty days from and after the date of the assignment or of the resolution or order for winding up, without notice to the landlord, and has the further right by giving notice in writing to the landlord at least ten days before the expiration of said thirty days to retain possession for an additional period of thirty days, subject to the payment of rental calculated on the basis of the said lease. R.S.P.E.I. 1974, Cap. L-7, s.73.

Retention of leased premises for unexpired term by assignee or liquidator

74. (1) Notwithstanding the legal effect of any provision or stipulation in the lease, in the case of an assignment for the general benefit of creditors or of winding up under the *Winding-up Act*, the assignee or liquidator may at any time while he is in occupation of leased premises for the purposes of liquidation of the estate and before he has given notice of intention to surrender possession or disclaimed the lease, elect to retain the leased premises for the unexpired term, upon giving notice thereof in writing to the landlord.

Assignment of lease

(2) The assignee or liquidator may, upon payment to the landlord of all overdue rent, assign the lease to any person who will covenant to observe and perform its terms and agree to occupy the demised premises for a trade, occupation or purpose which is not reasonably of a more objectionable or more hazardous nature than that for which the premises were occupied by the lessee, and who are, on application by the assignee or liquidator, approved by a judge as a person fit and proper to be put in possession of the leased premises.

Liability of assignee or liquidator re-assignment of lease

(3) Upon the making of the assignment referred to in subsection (2) the liability of the assignee making the assignment or of the liquidator and also all liability of the estate of the lessee is, subject to this section and to sections 73 and 75, limited and confined to the payment of rent for the period of time during which the assignee or liquidator occupies the leased premises for the purpose of liquidation of the estate.

(4) The assignee or liquidator has the further right at any time before electing to retain the premises, to surrender possession or disclaim the lease upon giving notice thereof in writing to the landlord, and his entry into possession of the leased premises and their occupation by him while required for the purposes of liquidation of the estate shall not be deemed to be evidence of an intention on his part to elect to retain possession pursuant to this section.

Surrender of possessions, disclaimer of lease

(5) If the assignee or liquidator does not, within the time in which he may remain in occupation of the premises for purposes of liquidation, give the landlord notice in writing of his intention either to retain the premises or to surrender possession or disclaim the lease, he shall be deemed to have disclaimed the lease.

Deemed disclaimer of lease

(6) After the assignee or liquidator surrenders possession, such of the landlord's rights as are based upon actual occupation by the assignee or liquidator cease. R.S.P.E.I. 1974, Cap. L-7, s.74.

Landlord's rights after surrender, etc.

75. (1) Where the lessee before making an assignment for the general benefit of creditors or before a resolution or order for winding up has been made against him, has demised by way of under-lease, approved or consented to in writing by the landlord, any premises, and the assignee or liquidator surrenders, disclaims or elects to assign the lease, the underlessee, if he so elects in writing within two months of the date of the assignment or of the resolution or order for winding up, stands in the same position with the landlord, as though he were a direct lessee from the landlord but subject, except as to rental payable, to the same liabilities and obligations as the lessee was subject to under the lease at the date of the assignment or of the resolution or order for winding up.

Underlessee, rights and liabilities

(2) The underlessee shall, in the event, be required to covenant to pay to the landlord a rental not less than that payable by the underlessee to the lessee, and if the last mentioned rental is greater than that payable by the lessee to the landlord, the underlessee is required to covenant to pay to the landlord the like greater rental. R.S.P.E.I. 1974, Cap. L-7, s.75.

Rental payable by underlessee

PART III
EJECTMENT PROCEEDINGS LIABILITY OF TENANTS OVERHOLDING

76. In case a tenant or other person who is in possession of any land by, from or under, or by collusion with the tenant, wilfully holds over the land or any part thereof after the determination of the term, if notice in writing requiring delivery of the possession thereof is given by his landlord or the person to whom the remainder or reversion of the land belongs or his agent thereunto lawfully authorized, the tenant or other

Overholding tenants, liability of

person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to that person or his assigns at the rate of double the yearly value of the land so detained for so long as the same is detained, to be recovered by action in any court of competent jurisdiction. R.S.P.E.I. 1974, Cap. L-7, s.76.

Notice to quit but overholds, liability of tenant

77. Where a tenant gives notice of his intention to quit the premises held by him at a time mentioned in the notice, and does not accordingly deliver up the possession thereof at the time mentioned in the notice, the tenant shall from thenceforward pay to the landlord double the rent or sum which he should otherwise have paid, to be levied, sued for, and recovered at the same time and in the same manner as the single rent or sum before the giving of the notice could be levied, sued for, or recovered, and the double rent or sum shall continue to be paid while the tenant continues in possession. R.S.P.E.I. 1974, Cap. L-7, s.77.

Summary ejectment, application for

78. (1) When any overholding tenant, on due notice to quit having been given, refuses to deliver up possession to the lessor, or person entitled thereunto, the lessor or person, (hereinafter referred to as the plaintiff), his attorney or agent, may apply to the judge of the Supreme Court or a judge appointed under the *Provincial Court Act* having jurisdiction in the county within which the tenements or premises are situated, or to the judge appointed under the *Provincial Court Act* having jurisdiction in the City of Charlottetown or in the Town of Summerside if the tenements or premises are situated within the city of town.

Tenant summoned before judge

(2) An oath having been made before a judge that the tenant has held and occupied the tenements or premises for a certain period then last past, as tenant to the person, under a demise which had then expired or been determined, or as tenant at will or suffrance, and that due notice to quit has been given, the judge shall thereupon summon the tenant.

Summons, contents and effect

(3) The judge shall give at least eight days notice to quit; the notice shall be served in the manner prescribed for the service of an originating notice issued out of the Supreme Court, to show cause at a place and time in the summons specified before the judge, why the tenant holds over tenements or premises.

Tenant fails to show cause for overholding

(4) In the case the tenant neglects or refuses to attend the summons, or attending does not show sufficient cause to the satisfaction of the judge for so holding over, the judge shall adjudge the plaintiff to be put in possession of the premises and thereupon the judge shall issue his warrant of possession and execution, directed to the sheriff of the county within which the tenements or premises are situated, requiring him forthwith to put the plaintiff in possession, and to levy the costs of the proceedings.

(5) The sheriff shall execute the warrant agreeably to the direction therein contained, but where the tenant gives to the judge security for the payment of the costs within thirty days from the time of judgment, then no execution shall issue against the goods and chattels of that person during the period of thirty days. R.S.P.E.I. 1974, Cap. L-7, s.78; 1975, c.27, s.5.

Execution of warrant

79. (1) On the return of the summons mentioned in section 78, if the lands held with the messuage, tenements or premises, exceed one acre, or, if in the case of a lease for a period exceeding three months the monthly rental value of the premises exceeds $32, the judge

(a) may, having regard to the convenience of the parties, the costs of the proceedings and other considerations; and

(b) shall, on the request of the tenant, to which the tenant is entitled as of right,

direct that the case be referred to a judge of the Supreme Court to be heard and disposed of.

Referral of case to Supreme Court

(2) Upon the case being referred to the Supreme Court the subsequent proceedings shall be the same in the Supreme Court, with the necessary changes, as if they had been continued before the judge appointed under the *Provincial Court Act*, but if it appears to the judge of the Supreme Court that, in the circumstances of the case, the right to possession should not be determined in a summary manner, he may direct an issue or make such order therein as may seem just, with or without costs, and in such case the taking of any proceeding under this Part does not affect or detract from any other remedy which a landlord may have against his tenant. R.S.P.E.I. 1974, Cap. L-7, s.79; 1975, c.27, s.5.

Proceedings in the Supreme Court

80. When on appeal from the judge appointed under the *Provincial Court Act*, the proceedings are quashed by the Supreme Court, the Supreme Court may make an order for the restitution of the lands, tenements and premises, and for payment of any damages which the tenant may have sustained by reason of the proceedings. R.S.P.E.I. 1974, Cap. L-7, s.80; 1975, c.27, s.5.

Order for restitution of land

81. In all proceedings held under this Part, the party prevailing may recover his costs, and have process therefor, that is to say, for proceedings had before such provincial court judges, the like costs to be by them taxed and allowed as are recoverable for similar proceedings under Part XXVII of the *Criminal Code*, except the sheriff's fees on the execution of a writ of possession, which shall be the same as for executing a writ of possession issuing out of the Supreme Court, and, for proceedings in the Supreme Court, costs according to the scale in such court to be assessed in the usual manner. R.S.P.E.I. 1974, Cap. L-7, s.81; 1975, c.27, s.5.

Costs, recovery of

Forms

82. The summons and writ of possession and execution shall be in the Forms 1 and 2 in the Schedule. R.S.P.E.I. 1974, Cap. L-7, s.82.

Application of Part III

83. This Part applies to the relationship between mortgagor and mortgagee. R.S.P.E.I. 1974, Cap. L-7, s.83.

Tenant defined

84. In this Part "tenant" includes every lessee, occupant, subtenant, and their assigns and personal representatives; and "overholding tenant" includes a tenant at will or sufferance, and a tenant who, after the expiration or determination of the lease, remains in possession of the premises without the consent of the landlord. R.S.P.E.I. 1974, Cap. L-7, s.84.

PART IV
MISCELLANEOUS

Fees and allowances

85. The fees and allowances to be paid for any matter or thing done under Part II are as set forth in the Schedule. R.S.P.E.I. 1974, Cap. L-7, s.85.

Limitation of action

86. Every action for any penalty imposed by this Act shall be commenced within six months next after the cause of action accrues. R.S.P.E.I. 1974, Cap. L-7, s.86.

Recovery of fees and allowances

87. Any person paying, or from or against whom, any fees or allowances are demanded, received, charged, retained, or taken, is entitled to recover in any court of competent jurisdiction, from the person making any distress, or from the person by whose authority it shall have been made, any amount paid, demanded, received, charged, retained or taken by the person making the distress in excess of the fees and allowances authorized by this Act. R.S.P.E.I. 1974, Cap. L-7, s.87.

Costs allowable

88. No costs in any case of distress for the service of more than one bailiff are chargeable or allowed and costs for only such men in possession, as may be considered necessary to protect the property distrained. R.S.P.E.I. 1974, Cap. L-7, s.88.

Uniform construction of Parts

89. Parts I, II, III and IV shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it. R.S.P.E.I. 1974, Cap. L-7, s.89.

Sections 90 - 116 repealed by 1988, c.58, s.37.

SCHEDULE*

Fees

Warrant to distrain (in duplicate) $1.50
Levying distress 1.00
Inventory of Property.....1.00
(if above is 3 folios, for each folio additional ten cents)
Copy of Inventory 30
(if above 3 folios, for each folio additional five cents
Notice to tenant at time of distress.....1.00
Each copy of same 30
Warrant of Attorney when given 3.00
For each mile actually travelled to make a distress
(one way, only within the County where distress is made.....12
Man in possession, per day of twenty-four hours 2.00
For each appraiser, per day 1.00
Catalogues, advertisements, sales and commissions and
delivery of goods, five per cent on the net proceeds of the sale.

*{Note: the Schedule is prescribed by section 85.}

FORM 1*

Summons

To _____

WHEREAS _____ of _____ hath this day on oath made it appear to _____ that you have, as his tenant, occupied (here describe the premises), for _____ last past, under a demise which has expired, or as tenant-at-will or suffrance and that after being duly notified to quit, you hold over and refuse to give up the possession of said premises, I do, therefore, agreeable to the directions of the Statute in such case made and provided, summon you to apppear before me _____ (here describe day, hour and place) to show cause, if any you have, why you should not deliver up to the said _____ the possession of the said tenements (or premises).

Given under my hand, this ____ day of _____, 20__.

*{Note: Form 1 is prescribed by section 82.}

FORM 2*

Writ of Possession and Execution

By _____ Supreme Court, or Provincial Court Judge.
To the Sheriff of _____
WHEREAS _____ claiming as lessor of certain premises, situate (here describe the tenement or premises) now in the occupation of _____ hath on oath made it appear to me, that the said _____ holds over and refuses to give up possession of the said premises after his demise thereof has expired, and due notice to quit given, and the said _____ having been duly summoned to appear before me, agreeable to the directions of the Statute in such case made and provided, to show cause why, etc. I have adjudged that the said _____ shall be forthwith put in possession of the said premises, and shall also recover his costs of proceeding, being _____ besides your fees, on executing this Writ: And I do hereby command you, that without delay, you cause the said _____ to have possession of said premises: I also command you that you levy of the goods and chattels of the said _____ the sum of _____ adjudged against him for costs, besides your fees, and how you shall have executed this WRIT, return to me within _____ from the date hereof.

GIVEN under my hand, this ____ day of _____, 20__.

*{Note: Form 2 is prescribed by section 82.}

FORM 3*

Notice of Set-Off

TAKE NOTICE that under the *Landlord and Tenant Act* I wish to set-off against rent due by me to you the debt which you owe me on your promissory note for _____ (or as the case may be).

DATED this ____ day of _____, 20__.
C.D., (tenant)

*{Note: Form 3 is prescribed by section 69.}

FORM 4*

Notice to Tenant

Repealed by 1988, c.58, s.37 *{eff.}* Jan. 18/89.

FORM 5*

Notice to Landlord

Repealed by 1988, c.58, s.37 *{eff.}* Jan. 18/89.