

THE LANDLORD AND TENANT (AMENDMENT) BILL
(No. XX of 2020)

Explanatory Memorandum

The object of this Bill is to amend the Landlord and Tenant Act so as to extend to 31 December 2021 the period up to which the Act shall continue to apply to business premises let on or before 1 July 2005.

2. In addition, the Bill provides that –
- (a) the Fair Rent Tribunal will not entertain any new application made on or after 1 January 2021 by a landlord or tenant;
 - (b) any application made before 1 January 2021 by a landlord or tenant will be dealt with, and determined, by the Fair Rent Tribunal not later than 30 June 2021 or, in exceptional or unforeseen circumstances, not later than such later date as may be prescribed; and
 - (c) all applications falling under the jurisdiction of the Fair Rent Tribunal will, as from 1 January 2021, be made before the District Court exercising jurisdiction in the district or other area where the relevant business premises are situated,

and provides for matters related thereto.

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04 December 2020

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ARRANGEMENT OF CLAUSES

Clause

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2. Interpretation
3. Section 2 of principal Act amended
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5. Section 4 of principal Act amended
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10. First Schedule to principal Act amended
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A BILL

To amend the Landlord and Tenant Act with a view to extending to 31 December 2021 the period up to which the Act shall continue to apply to business premises let on or before 1 July 2005, and to provide that the Fair Rent Tribunal shall cease to exist

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Landlord and Tenant (Amendment) Act 2020.

2. Interpretation

In this Act –

“principal Act” means the Landlord and Tenant Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended by deleting the definitions “Chairperson”, “determination of the Tribunal”, “member” and “Tribunal”.

4. Section 3 of principal Act amended

Section 3 of the principal Act is amended, in subsection (2)(ab), by deleting the words "31 December 2020" and replacing them by the words "31 December 2021".

5. Section 4 of principal Act amended

Section 4 of the principal Act is amended –

- (a) in subsection (4), by deleting the words "Tribunal acting in the exercise of its jurisdiction" and replacing them by the word "Court";
- (b) in subsection (5), by deleting the words "Where the Tribunal", "section 14" and "the Tribunal" and replacing them by the words "Where the Court", "section 12" and "the Court", respectively.

6. Part III of principal Act amended

Part III of the principal Act is amended –

- (a) in the subheading, by deleting the words "**Sub-Part A – Rent**";
- (b) in section 6, by deleting the word "Tribunal" wherever it appears and replacing it by the word "Court";
- (c) by inserting, after section 9, the following new sections –

10. Determination of rent

(1) The Court shall, on an application made to it by a landlord or tenant on or after 1 January 2021 –

- (a) determine the fair rent of any premises let after 15 August 1999 or the market rent of business premises let on or before 1 July 2005;
- (b) subject to section 12, review, maintain, vary or set aside any determination made under paragraph (a); and
- (c) subject to section 4, review, maintain, vary or set aside any agreement referred to in that

section in so far as it relates to any matter provided for in this Part.

(2) The Court may, for the purposes of making a determination under subsection (1), hold that any expenditure referred to in section 9(2) or (9) was incurred unnecessarily.

(3) The Court may, where it thinks fit –

- (a) apportion the fair rent of any premises among 2 or more tenants;
- (b) order that the rent of any premises, other than business premises, shall gradually increase over a period not exceeding 48 months from the date of its determination in order not to cause excessive hardship to the tenant.

(4) Notwithstanding the lodging of an application before the Court, the tenant shall pay the rent claimed by the landlord.

(5) The Court may, on making a determination, order that any amount in excess of the fair rent paid by a tenant shall be –

- (a) refunded to him by the landlord; or
- (b) applied in satisfaction of rent payable in the future at such rate and over such period as it thinks fit.

11. Principles applicable to determine fair rent

The Court shall, for the purpose of determining the fair rent of any premises, take into account all the circumstances of the case, including –

- (a) their location;
- (b) the age, quality, character and type of the premises;
- (c) their state of repair;
- (d) any improvement made to the premises at the expense of the tenant with the landlord's consent;

- (e) a reasonable return to the landlord on the value of the premises; and
- (f) the market rent of similar premises in the neighbourhood.

12. Review by Court of its determination

The Court shall not review a determination made by it until the lapse of 3 years from the date it was made unless –

- (a) the circumstances affecting the determination of the fair rent of the premises or of the market rent of the business premises have materially altered since it was made;
- (b) the determination was made as a consequence of any fraud, misrepresentation or error;
- (c) fresh material evidence, which could not by reasonable diligence have been made available at the hearing, becomes available;
- (d) the determination was made in the absence of an interested party whose absence was not due to any fault or neglect of his; or
- (e) in the opinion of the Court, substantial injustice has been occasioned by the determination.

(d) by repealing Sub-part B.

7. Section 30 of principal Act amended

Section 30 of the principal Act is amended, in subsection (3)(b), by deleting the words “ask the Tribunal” and replacing them by the words “apply to the Court”.

8. Section 32 of principal Act repealed

Section 32 of the principal Act is repealed.

9. Part V of principal Act amended

Part V of the principal Act is amended –

- (a) by inserting, before section 33, the following new section –

32. Jurisdiction and powers of Court

(1) The Court shall, notwithstanding any other enactment, have exclusive jurisdiction to hear and determine any matter arising out of, or brought under Parts III and IV and in, the exercise of that jurisdiction, shall exercise all the powers which the Court has in civil proceedings.

(2) Except where, in the opinion of the Court, a plaint is frivolous, no costs shall be allowed in any proceedings other than proceedings on a plaint which includes a claim for unpaid rent.

(3) Notwithstanding any other enactment, every document made use of or produced before the Court, in the exercise of its jurisdiction under this section, shall be exempted from the payment of any registration duty or any other fee.

- (b) by inserting, after the new section 32, the following new section –

32A. Appeals from Court

(1) Any person aggrieved by a determination of the Court under Part III may, not later than 21 days of the date of the determination, appeal therefrom on a point of law to the Supreme Court.

(2) Any person aggrieved by the decision of the Court under Part IV may appeal therefrom to the Supreme Court in accordance with the District and Intermediate Courts (Civil Jurisdiction) Act.

- (c) in section 33, by repealing subsection (1) and replacing it by the following subsection –

(1) Any person who –

- (a) fails to comply with an order of the Court;

(b) in any manner contravenes this Act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

(d) by inserting, after section 34, the following new section –

34A. Transitional provisions and savings

(1) (a) This subsection shall apply as if Sub-part B of Part III has not been repealed.

(b) The Fair Rent Tribunal shall not entertain any application under the repealed section 11 made on or after 1 January 2021 by a landlord or tenant.

(c) Any application made under the repealed section 11 before 1 January 2021 by a landlord or tenant shall be dealt with, and determined, by the Fair Rent Tribunal not later than 30 June 2021 or, in exceptional or unforeseen circumstances, not later than such later date as may be prescribed.

(2) Where, prior to 1 July 2021 or not later than such later date as may be prescribed under subsection (1)(c), the Fair Rent Tribunal has made a determination under the repealed Sub-part B of Part III, the Court shall, in the circumstances provided for under the repealed section 14, review the determination made by the Tribunal until the lapse of 3 years from the date it was made by the Tribunal.

10. First Schedule to principal Act amended

The First Schedule to the principal Act is amended by deleting the following item –

Complaints may be addressed to the Fair Rent Tribunal at

11. Second Schedule to principal Act amended

The Second Schedule to the Act is amended, in paragraph 1(b), by deleting the word “Tribunal” and replacing it by the word “Court”.