

CONSOLIDATION OF COMMERCIAL TENANCIES ACT
R.S.N.W.T. 1988,c.C-10

(Current to: March 14, 2014)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

S.N.W.T. 1993,c.2

R.S.N.W.T. 1988,c.8(Supp)

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S.Nu. 2010,c.4,s.9

s.9 in force March 23, 2010

S.Nu. 2011,c.11,s.1

s.1 in force March 10, 2011

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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COMMERCIAL TENANCIES ACT

INTERPRETATION

Definitions

1. In this Act,

"Clerk" means the Clerk of the Nunavut Court of Justice appointed under the *Judicature Act*; (*greffier*)

"crops" means the products of the soil, and includes all sorts of grain, grass, hay, hops, fruits, vegetables and other products of the soil; (*récoltes*)

"judge" means a judge of the Nunavut Court of Justice; (*jugé*)

"land" includes

- (a) land of any tenure,
- (b) mines and minerals, whether or not held apart from the surface,
- (c) buildings or parts of buildings, whether the division is horizontal, vertical or made in any other way,
- (d) rent charged on or payable in respect of land, and
- (e) an easement, right, privilege or benefit in, over or derived from land,

but does not include an undivided share in land; (*bien-fonds*)

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

"mines and minerals" include any strata or seam of minerals or substances in or under any land and powers of working and getting the minerals or substances, but not an undivided share thereof; (*mines et minéraux*)

"Sheriff" means the Sheriff appointed under the *Judicature Act*. (*shérif*)
S.Nu. 2010,c.4,s.9(2).

PART I

COVENANTS AND CONDITIONS

COVENANTS RUNNING WITH THE LAND AND THE REVERSION

Application

2. (1) This section applies to leases made before, on or after January 20, 1949, but does not affect the operation of
- (a) a severance of the reversionary estate, or

(b) an acquisition by conveyance or otherwise of the right to receive or enforce any rent, covenant or provision, effected before January 20, 1949.

Reversionary estate

(2) Rent reserved by a lease, and the benefit of every covenant or provision contained in the lease, 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 contained in the lease, is annexed and incident to and goes with the reversionary estate in the land, or in any part of it, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate.

Recovery by person entitled to income

(3) Any rent, covenant or provision is capable of being recovered, received, enforced and taken advantage of, by the person entitled, subject to the term and to the income of the whole or any part, as the case may require, of the land leased.

Recovery by person entitled by conveyance

(4) Where a person becomes entitled by conveyance or otherwise, the person may recover, receive, enforce or take advantage of the rent, covenant or provision notwithstanding that the person 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 a person becomes so entitled.

Application

3. (1) This section applies to leases made before, on or after January 20, 1949, whether the severance of the reversionary estate was effected before, on or after that date.

Covenants of landlord annexed to reversionary estate

(2) The obligation under a condition or of a covenant entered into by a landlord relating to his or her leased premises shall, if and as far as the landlord has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts of it, 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 entitled to that reversionary estate, the obligation may be taken advantage of and enforced against any person so entitled.

Liability of covenantor

(3) This section takes effect without prejudice to any liability affecting a covenantor or his or her estate.

APPORTIONMENT OF CONDITION OF RE-ENTRY

Condition of re-entry where land severed

4. Notwithstanding

- (a) the severance by conveyance, surrender or otherwise of the reversionary estate in any land comprised in a lease, and
- (b) the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised in a lease,

every condition or right of re-entry, and every other condition contained in the lease, shall

- (c) be apportioned,
- (d) remain annexed to the severed parts of the reversionary estate as severed, and
- (e) be in force with respect to the term on which each severed part is reversionary, or the term in any land that has not been surrendered or as to which the term has not been avoided or has not otherwise ceased,

in the same 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.

SURRENDER OR MERGER OF REVERSIONS

Surrender or merger of reversions

5. Where a reversion expectant on a lease of land is surrendered or merged, the estate or interest that as against the tenant 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 of it.

WASTE BY TENANTS

Waste

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

- (a) every tenant for years and every tenant for life is liable to his or her landlord and to every other person 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 as a result of the waste; and
- (b) every tenant at will is liable to his or her 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 as a result of the waste.

Remedies

(2) Every landlord and every person having a reversionary interest in any leased premises may in respect of any waste by a tenant in respect of the premises in an action brought in any court obtain damages or an injunction, or both.

DEFECTS IN LEASE MADE UNDER POWERS OF LEASING

Where defective lease takes effect as contract for grant of lease

7. (1) Where in the intended exercise of any power of leasing whether conferred by a statute, Act or by any other instrument, a lease is granted, that by reason of any failure to comply with the terms of the power is invalid, the lease, if it was made in good faith, and the lessee has entered under the lease, shall

- (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,

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 is not, by virtue of any such implied contract, 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.

Continuance of interest of grantor

(2) Where a lease granted in the intended exercise of a power of leasing conferred by a statute, Act or other instrument is invalid by reason of the grantor not having power to grant the lease at the date of the lease, but the interest of the grantor in the land comprised in the lease continues after the time when the grantor might in the exercise of the power, have properly granted a lease in the same terms, the lease takes effect as a valid lease in the same manner as if it had been granted at that date.

Confirmation during possession

(3) Where, during the continuance of the possession taken under an invalid lease, the person entitled, subject to that possession, to the land comprised in the lease or to the rents and profits of the land, 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, is, at the request of the person so able to confirm the lease, bound to accept a confirmation of the lease, and upon that the lease has effect and shall be deemed to have had effect as a valid lease from the grant of the lease.

Memorandum

(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.

Effect of receipt for rent

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

Remedies preserved

(6) This section does not affect prejudicially

- (a) any right of action or other right or remedy to which, but for this section, 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 in the lease or implied by the lease; or
- (b) any right of re-entry or other right or remedy to which, but for this section, the grantor or other person 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 power of leasing

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

Leases in name of estate owner

(8) This section takes effect without prejudice to the provisions of this Act for the grant of leases in the name and on behalf of the estate owner of the land affected.

IMPLIED POWERS OF LESSOR

Implied powers of lessor

8. In every lease, unless a different intention appears in the lease, there shall be implied powers in the lessor

- (a) that, by himself or herself or his or her agents, the lessor may enter on the demised land and view the state of repair of it, and may serve on the lessee, or leave at the last or usual residence of the lessee, or on the demised land, a notice in writing of any defect, requiring the lessee within a reasonable time, to be mentioned in the notice, to repair the defect, insofar as the tenant is bound so to do; and

- (b) that in case the rent or any part of the rent is in arrears for two calendar months, or in case default is made in the fulfilment of any covenant in the lease on the part of the lessee, whether express or implied, and is continued for two calendar months, or in case the repairs required by the notice referred to in paragraph (a) are not completed within the time specified in the notice, the lessor may enter on and take possession of the demised land.

Re-entry on bawdy house conviction

9. In every lease whenever made there is implied an agreement that if the tenant or any other person is convicted of keeping a common bawdy-house, as defined in the *Criminal Code*, on the demised premises, or any part of the demised premises, the landlord may at any time after the conviction, re-enter the demised premises, or any part of the demised premises, and have the demised premises or any part of the demised premises again, re-possess the demised premises or any part of the demised premises and enjoy as of his or her former estate.

LICENCES TO TENANTS

Effect of licence

10. (1) Where a licence is granted to a tenant to do any act, the licence, 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 specifically authorized to be done,

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

Remedies preserved

(2) Notwithstanding any licence,

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

Re-entry where co-lessees

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

- (a) to any one of two or more tenants to do any act, or to deal with his or her 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 licence does not operate to extinguish the right of 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 entry remains in force in respect of the shares, interests or property not subject to the licence.

Undivided share in legal estate

(4) Subsection (3) does not authorize the grant after January 19, 1949, of a licence to create an undivided share in a legal estate.

ASSIGNING, SUBLETTING, PARTING WITH AND DISPOSING OF LAND

Deeming provision

11. (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 licence or consent, the 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 licence 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 shall be payable for or in respect of the licence 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 licence or consent.

Order of the Nunavut Court of Justice

(2) Where the landlord refuses or neglects to give a licence or consent to assign or sublet, a judge, on the application of the tenant, assignee or subtenant, may make an order determining whether or not the licence or consent is unreasonably withheld, and where it is unreasonably withheld, permitting the assignment or sublease to be made, and the order is the equivalent of the licence or consent of the landlord within the meaning of any covenant, condition or agreement requiring the licence or consent of the landlord, and the assignment or sublease is not a breach of the covenant, condition or agreement.

S.Nu. 2010,c.4,s.9(3).

NOTICE OF PROCEEDINGS

Notification of landlord of process for recovery of premises

12. A tenant to whom there is delivered a process of any court for the recovery of premises demised to or held by the tenant, or to whose knowledge any such process comes, shall without delay give notice of the process to the landlord or agent of the landlord, and if the tenant fails to do so, the tenant is answerable for all damages sustained by the landlord by reason of the failure to give the notice.

Notification of claimants in action for re-entry or forfeiture

13. Where a landlord is proceeding by action to enforce a right of re-entry or forfeiture under a covenant, proviso or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lease shall be made a party to the action if

- (a) the landlord knows that the person claims that right, title or interest; or
- (b) the instrument under which the person claims is registered in the land titles office for the registration district in which the demised premises are located.

R.S.N.W.T 1988,c.8(Supp.),s.202.

Effect of waiver

14. Where the actual waiver by a lessor or the persons deriving title under a lessor of the benefit of any covenant or condition in a 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 to operate as a general waiver of the benefit of any such covenant or condition.

IMPLIED COVENANTS

Covenant to pay taxes

15. In every lease, unless a contrary intention appears in the lease, there shall be implied covenants by the lessee

- (a) that the lessee will pay the rent reserved by the lease at the times mentioned in the lease, and all rates and taxes that may be payable in respect of the demised land during the continuance of the lease; and
- (b) that the lessee will, at all times during the continuance of the lease, keep and, at the termination of the lease, yield up the demised land in good and tenantable repair, accidents and damage to buildings from fire, storm and tempest or other casualty and reasonable wear and tear excepted.

NOTICES TO TERMINATE TENANCIES

Periods of notice

16. (1) Subject to any express agreement to the contrary, sufficient notice to quit shall be deemed to have been given where there is given,

- (a) in the case of a weekly tenancy, one-week notice ending with the week;
- (b) in the case of a monthly tenancy, one-month notice ending with the month; and

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

Overholding tenant where express tenure

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

Overholding tenant where no express tenure

(3) Where the tenancy created by a lease was not a weekly or monthly tenancy or a tenancy from year to year, the overholding tenant shall be deemed to be holding as a tenant from year to year.

DISTRESS FOR RENT

Right of distress for rent

17. 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 of the rent, the person entitled to receive the rent has the same right of distress for the recovery of the rent as if the rent were rent reserved on lease.

After determination of lease

18. On the determination of a lease, the person entitled as landlord to receive any rent made payable as a result of that may at any time

- (a) within six months after the determination of the lease,
- (b) within such six months during the continuance of the landlord's interest, and
- (c) within such six months during the possession of the tenant from whom the rent became due,

distrain for any rent due and in arrears in the same manner as he or she might have done if the lease were not determined.

Where rent for the life of another

19. 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 that rent or land depended as he or she might have done if the person by whose death the estate in that rent or land determined had continued in life.

PROPERTY LIABLE TO DISTRESS

Goods not on premises

20. Subject to this Act, goods or chattels that are not at the time of the distress on the premises in respect of which the rent distrained for is due shall not be distrained for rent.

Exemptions

21. The following goods and chattels are not liable to seizure by a distress by a landlord for rent:

- (a) the beds, bedding and bedsteads, including perambulators or cradles, in ordinary use by the debtor and his or her family;
- (b) the necessary and ordinary wearing apparel of the debtor and his or her family;
- (c) one cooking stove with pipes and furnishings, one other heating stove with pipes, two towels, one washbasin, one kitchen table, one tea kettle, one teapot, one saucepan, one frying pan and for each member of the family the following, namely, one chair, one cup and saucer, one plate, one knife, one fork and one spoon;
- (d) all necessary fuel, meat, fish, flour and vegetables for the ordinary consumption of the debtor and his or her family for 30 days;
- (e) the tools, agricultural implements and necessities used by the debtor in the practice of his or her trade, profession or occupation to the value of \$300; and
- (f) one axe and one saw.

Animals

22. The landlord may take under a distress for rent any horses, cattle, sheep, swine, poultry, fowl, livestock and other domestic animals that are grazing, pasturing or feeding on any highway or road allowance or on any way belonging or appertaining to the premises in respect of which the rent distrained for is payable.

Restriction on seizure

23. (1) No goods or chattels, other than goods or chattels belonging to the tenant, may be seized under a distress for rent.

Exemptions

(2) Subsection (1) does not apply to

- (a) goods or chattels that are claimed by a person other than the tenant
 - (i) under a writ of execution issued 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, and

- (iii) who is the spouse, daughter, son, daughter-in-law or son-in-law of the tenant or who is a relative of the tenant and lives on the premises in respect of which the rent distrained for is payable as a member of the household of the tenant;
- (b) the interest of the tenant in any goods or chattels under a contract for the purchase of the goods or chattels or under a contract by which the tenant may become the owner of the goods and chattels on the performance of any condition; or
- (c) goods and chattels that have been exchanged between the tenant and another person, or that 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.

RIGHTS OF LANDLORD ON BANKRUPTCY OF TENANT

Priority of claim for rent

24. (1) Where

- (a) an assignment for the general benefit of creditors,
- (b) an order for the winding-up of a corporation, or
- (c) a receiving order in bankruptcy or authorized assignment,

is made against or by a tenant, the right of the landlord to distrain or realize his or her rent by distress ceases on the date of the assignment or order and the assignee, trustee or liquidator may take immediate possession of the property of the tenant.

Distribution of property of tenant

(2) In the distribution of the property of the tenant referred to in subsection (1), the assignee, trustee or liquidator shall pay to the landlord, in priority to all other debts,

- (a) an amount not exceeding the value of the distrainable assets and restricted to the arrears of rent due during the three months immediately preceding the date of the assignment or order,
- (b) the costs of distress, if any, and
- (c) the rent for the three months following the date of the assignment or order, and from then so long as the assignee, trustee or liquidator retains possession of the premises,

but any payment to be made to the landlord in respect of accelerated rent shall be credited against the amount payable by the assignee, trustee or liquidator for the period of his or her occupation.

Powers of assignee, trustee or liquidator

(3) Notwithstanding any provision, stipulation or agreement in a lease or agreement or the legal effect of it, where

- (a) an assignment for the general benefit of creditors,
- (b) an order for the winding-up of a corporation, or
- (c) a receiving order in bankruptcy or authorized assignment,

has been made against or by a tenant, the assignee, trustee or liquidator may

- (d) at any time within three months after the date of the assignment or order for the purposes of the trust estate and before he or she has given notice of intention to surrender possession or disclaim, by notice in writing elect to retain the leased premises for the whole or any portion of the unexpired term and any renewal of the lease, on the terms of the lease and subject to the payment of the rent as provided by the lease or agreement, and
 - (e) on payment to the landlord of all arrears of rent, assign the lease with rights of renewal, if any, to any person who
 - (i) will covenant to observe and perform its terms and agree to conduct on the leased premises a trade or business that is not reasonably of a more objectionable or hazardous nature than that which was conducted on the demised premises by the debtor, and
 - (ii) on application of the assignee, trustee or liquidator, is approved by a judge as a person fit and proper to be put in possession of the leased premises.
- S.Nu. 2010,c.4,s.9(3).

Notice to surrender possession

25. (1) An assignee, trustee or liquidator has the right at any time before electing by notice in writing to the landlord under subsection 24(3) to surrender possession or disclaim any such lease, and his or her entry into possession of the leased premises and their occupation by him or her, while required for the purposes of the trust estate, shall be deemed not to be evidence of an intention on his or her part to elect to retain possession pursuant to this section.

Under-lease

(2) Where

- (a) the assignor, or person against whom a receiving order in bankruptcy, or a winding-up order has been made, being a lessee, has, before the making of the assignment or order demised by way of under-lease, approved or consented to in writing by the landlord, any premises, and
- (b) the assignee, trustee or liquidator surrenders, disclaims or elects to assign the lease,

the under-lessee shall, if he or she so elects in writing within three months of the assignment or order, stand in the same position with the landlord as though he or she were a direct lessee from the landlord but subject, except as to rent payable, to the same liabilities and obligations as the assignor, bankrupt or insolvent was subject to under the lease at the date of the assignment or order, but the under-lessee shall in that event covenant to pay to the landlord a rent not less than that payable by the under-lessee to the debtor, and if that rent was greater than that payable by the debtor to the landlord, the under-lessee shall covenant to pay to the landlord that greater rent.

Dispute

(3) Any dispute arising under this section shall be disposed of on summary application by a judge. S.Nu. 2010,c.4,s.9(3).

ATTORNMENT

Attornment to stranger

26. (1) An attornment of a tenant of any land to a stranger claiming title to the estate of the landlord is null and void, and the possession of the landlord shall be deemed not to be changed, altered or affected by the attornment, but nothing in this section vacates or affects an attornment made

- (a) pursuant to and in consequence of a judgment or order of a judge;
or
- (b) with the privity and consent of the landlord.

Rights of vendor and others

(2) Nothing in this section alters, prejudices or affects any rights that a vendor, mortgagee or encumbrancee has on January 20, 1949, under any law or Act. S.Nu. 2010,c.4,s.9(3).

Grant or conveyance

27. (1) A grant or conveyance of rent or of the reversion or remainder of land is good and effectual without any attornment of

- (a) the tenant of the land out of which the rent issues; or
- (b) the particular tenant on whose particular estate any such reversion or remainder is expectant or depending.

Notice of grant

(2) A tenant is not prejudiced or damaged by the payment of rent to a grantor or by breach of any condition for non-payment of rent before notice to the tenant of the grant by the grantee.

RENEWALS OF LEASES

Surrender of under-leases

28. (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 under-leases, as good and valid as if all the under-leases derived out of it had been likewise surrendered at or before the time of taking of the new lease.

Rights of under-lessees and chief landlord

(2) A person in whom an estate for life, or lives, or for years, is vested by virtue of a new lease is entitled to the rents, covenants and duties, and has the same remedy for recovery of them, and the under-lessees shall hold and enjoy the land in the respective under-leases comprised, as if the original lease had been kept alive and continued, and the chief landlord has and is entitled to the same remedy by distress or entry in and on the

land comprised in any under-lease for the rents and duties reserved by the new lease, so far as they do not exceed the rents and duties reserved in the lease out of which the sublease was derived, as the chief landlord would have had if the former lease had been continued or as the chief landlord would have had if the respective under-leases had been renewed under the new principal lease.

Renewal by the Nunavut Court of Justice order

29. (1) Where a person who, in pursuance of a covenant or agreement in writing, if in Nunavut and amenable to legal process, might be compelled to execute a lease by way of renewal, is not in Nunavut or is not amenable to legal process, a judge, on the application of any person entitled to the renewal, whether or not that person is under any disability, may direct a person that the judge 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 lease.

Validity

(2) A new lease executed by the person appointed under subsection (1) is as valid as if the person in whose name the lease was made was alive and not under any disability and had himself or herself executed it.

Action

(3) A judge may direct an action to be brought to establish the right of the person seeking renewal under this section, but the judge may not make the order for the new lease unless by the judgment to be made in the action, or until after it has been entered.

Payment and performance of covenants on renewal

(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, that ought to be paid on the renewal and the things, if any, that 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 shall be duly executed by the tenant.

Payment of money

(5) All sums of money that are had, received or paid for, or on account of, the renewal of a lease by a person out of Nunavut or not amenable to legal process after a deduction of all necessary incidental charges and expenses, shall be paid to such person or in such manner or into the Nunavut Court of Justice to such account and be applied and disposed of as a judge directs.

Costs

(6) A judge 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 the land, or the rents in respect of which they are respectively made, in the manner that the judge considers proper. S.Nu. 2010,c.4,s.9(3).

PART II

OVERHOLDING TENANTS

LIABILITY OF OVERHOLDING TENANTS

After notice by landlord

30. Where 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 of it after the determination of the term, if notice in writing requiring delivery of the possession of the land is given by the landlord or the person to whom the remainder or reversion of the land belongs or his or her agent lawfully authorized to give the notice, the tenant or other person holding over shall, for and during the time he or she holds over or keeps the person entitled out of possession, pay to that person or his or her assigns at the rate of double the yearly value of the land so detained for so long as the land is detained, to be recovered by action before a judge, against the recovering of which penalty there is no relief. S.Nu. 2010,c.4,s.9(3).

After notice by tenant

31. Where a tenant

- (a) gives notice of his or her intention to quit the premises held by the tenant at a time mentioned in the notice, and
- (b) does not then deliver up the possession of the premises,

the tenant shall from that time onward pay to the landlord double the rent or sum that the tenant should otherwise have paid, to be levied, sued for and recovered at the same times 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.

PROCEEDINGS AGAINST OVERHOLDING TENANTS

Definition of "tenant"

32. In sections 33 to 40, "tenant" includes every lessee, occupant, subtenant and their assigns and legal representatives.

Application by landlord

33. (1) When a tenant, on the determination of his or her lease or right of occupation, whether created by writing or orally, wrongfully refuses or neglects on demand made in writing to go out of possession of the land demised to the tenant or that the tenant has been permitted to occupy, the landlord may apply, on affidavit, to a judge, to make the inquiry provided for in this section and in sections 34 to 40.

Affidavit

(2) The landlord shall

- (a) set out on an affidavit the terms of the demise or right of occupation, if oral;
- (b) attach to the affidavit a copy of the instrument creating or containing the lease or right of occupation, if in writing, or, if for any cause a copy cannot be attached, make a statement setting out the terms of the demise or occupation and the reason why the copy cannot be attached;
- (c) attach to the affidavit a copy of the demand;
- (d) state the refusal of the tenant to go out of possession, and the reasons given for the refusal, if any were given; and
- (e) add such explanation in regard to the ground of the refusal referred to in paragraph (d) as the truth of the case may require.

Appointment of hearing

(3) A judge shall, in writing, appoint a time and place at which the judge will inquire and determine whether the tenant holds possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses to go out of possession.

Service on tenant

(4) A copy of the appointment of the judge and of the affidavit on which it was obtained, and copies of the documents to be used on the application other than of the instrument creating or containing the lease or right of occupation, shall be served on the tenant or left at his or her place of residence at least three days before the day appointed if the place appointed is not more than 30 km from the tenant's place of residence, and one day in addition for every 30 km or fraction of that above the first 30 km. S.Nu. 2010,c.4,s.9(3).

Postponement of hearing

34. A judge may, on the application being made to the judge under section 33, or at any time after that pending the proceedings, having regard to the convenience of the parties, the costs of the proceedings and other considerations, and subject to the conditions that may to the judge seem just, direct that the case stand over to be heard and disposed of. S.Nu. 2010,c.4,s.9(3).

Application of *Judicature Act*

35. Except as otherwise varied by this Part, the *Judicature Act* applies to applications made and proceedings had under this Part.

Style of cause

36. The proceedings under this Part shall be styled:
In the matter of, landlord,
against, tenant.

Failure to appear

37. (1) Where, at the time and place appointed, the tenant fails to appear, the judge, where it appears to the judge that the tenant wrongfully holds against the right of the landlord, may order a writ of possession in the prescribed form, directed to the Sheriff, commanding the Sheriff to place the landlord in possession of the land without delay.

Summary hearing

(2) Where the tenant appears, the judge shall, in a summary manner, hear the parties and their witnesses and examine into the matter and may take evidence orally or by affidavit as the judge thinks fit, and if it appears to the judge that the tenant wrongfully holds against the right of the landlord the judge may order the issue of a writ of possession in prescribed form.

Costs

- (3) On an application under section 33, a judge may
- (a) by order award costs according to the tariff of costs made under the *Judicature Act*; or
 - (b) order payment of a lump sum by way of costs.

Order for costs

(4) An order for the payment of costs by a judge may be filed in the office of the Clerk and shall upon that become a judgment of the judge.

Where proceedings improperly taken

(5) No order under subsection (4) shall be made if it appears to the judge that, in the circumstances of the case, the right to possession should not be determined by proceedings under this Part and in that case the taking of proceedings under this Part does not affect or detract from any other remedy that a landlord may have against his or her tenant. S.Nu. 2010,c.4,s.9(3).

Irregularities

38. A judge has the same power to amend or excuse irregularities in the proceedings under this Part as a judge has in an action. S.Nu. 2010,c.4,s.9(3).

Decision

39. The decision of a judge respecting an order granting or refusing a writ of possession is final. S.Nu. 2010,c.4,s.9(3).

Action by landlord

40. Nothing in this Part requires a landlord to proceed under this Part instead of by bringing an action.

PART III

SUMMARY PROCEEDINGS FOR NON-PAYMENT OF RENT

DELIVERY OF POSSESSION

Affidavit

41. (1) Where a tenant

- (a) fails to pay his or her rent within seven days of the time agreed on, and
- (b) wrongfully refuses or neglects, on demand made in writing, to pay the rent or to deliver up the premises demised,

the landlord or his or her agent may file with the Clerk an affidavit setting out the terms of the lease or occupancy, the amount of rent in arrears and the time for which the rent is in arrears, producing the demand made for the payment of rent or delivery of the possession and stating the refusal of the tenant to pay the rent or to deliver up possession, and the answer of the tenant, if any answer were made, and that the tenant has no right of set-off or reason for withholding possession.

Service of demand

(2) The demand referred to in paragraph (1)(b) shall

- (a) be served on the tenant or on a grown-up person on the premises; or
- (b) if the premises are vacant, be affixed to the dwelling or other building or otherwise posted up on the premises.

Summons

(3) On filing the documents mentioned in subsection (1), the Clerk shall cause a summons to be issued, in the prescribed form, that calls on the tenant to appear before a judge, on the day and at the time and place specified in the summons, to show cause why an order should not be made for delivering up possession of the premises to the landlord.

Service on tenant

(3.1) The summons mentioned in subsection (3) shall be served, in the same manner as the demand, at least three days before the day the summons requires the tenant to appear before a judge.

Hearing and order

(4) On the return of the summons mentioned in subsection (3), a judge shall

- (a) hear the evidence adduced on oath, either orally or by affidavit as the judge considers proper; and
- (b) make an order to confirm the tenant in possession or to deliver up possession to the landlord, as the facts of the case warrant.

Form of order

(5) An order for delivery of possession under paragraph (4)(b) may be in the prescribed form.

Ejection

(6) Where the order mentioned in subsection (4) states that the tenant shall deliver up possession and the tenant refuses, the Sheriff or any of the officers of the Sheriff shall, with the assistance that he or she may require, without delay proceed under the order

- (a) to eject and remove the tenant together with all goods and chattels that the tenant may have on or about the premises;
- (b) to make the rent in arrears; and
- (c) to place the landlord in possession of the premises.

Stay of proceedings

(7) Where a tenant, before the execution of the order mentioned in subsection (4), pays the rent in arrears and all costs, the proceedings shall be stayed and the tenant may continue in possession as of his or her former tenancy.

Entry of premises

(8) Where

- (a) the premises in question are vacant, or
- (b) the tenant is not found in possession or, if in possession, the tenant refuses on demand made in the presence of a witness to admit the Sheriff or any of the officers of the Sheriff,

the Sheriff or any of the officers of the Sheriff, after a reasonable time has been allowed to the tenant or person in possession to comply with the demand for admittance, may force open any outer door in order to gain an entrance, and may also force any inner door for the purpose of ejecting the tenant or occupant and giving proper possession of the premises to the landlord or the agent of the landlord. S.N.W.T. 1993,c.2,s.1; S.Nu. 2010,c.4,s.9(3).

Costs

42. (1) A judge may by order award costs according to the tariff of costs under the *Judicature Act*, or may order payment of a lump sum by way of costs.

Where costs added to rent

(2) Where the landlord is awarded costs against the tenant, the costs may be added to the cost of the levy for rent, if the levy is or is to be made.

Order for costs

(3) An order for the payment of costs by a judge may be filed in the office of the Clerk and shall upon filing become a judgment of the judge. S.Nu. 2010,c.4,s.9(3).

Appeal

43. No appeal lies from the order of a judge made under paragraph 41(4)(b). S.Nu. 2010,c.4,s.9(3).

RE-ENTRY AND FORFEITURE

Definitions

44. (1) In this section and in sections 45 and 46,

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

"mining lease" means a lease, grant or licence for mining purposes, including 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 with that; (*bail minier*)

"sublease" includes an agreement for a sublease where the sublessee has become entitled to have his or her sublease granted; (*sous-bail*)

"subtenant" includes any person deriving title under a sublease; (*sous-locataire*)

"tenant" includes every lessee, occupant, subtenant and their assigns and legal representatives. (*locataire*)

Application

(2) Section 45 applies to leases made before, on or after January 20, 1949, notwithstanding any stipulation to the contrary.

Exemptions

(3) Section 45 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 working of it; 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, or

- (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 in the ground of neighbourhood to the landlord, or to any person holding under him or her.

Right of re-entry or forfeiture

45. (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 is not enforceable, in any case in which the breach is capable of remedy or of being compensated by money payment, unless and 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.

Service of notice

(2) Where

- (a) the whereabouts of the tenant cannot be ascertained after reasonable inquiry, or
- (b) 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 an adult for the time being in charge of that place, and if the premises are unoccupied, the notice may be served by posting it up in a conspicuous manner on a part of the demised premises.

Application by tenant for relief

(3) 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 or, if there is no such action pending, then in an action brought by the tenant, apply to a judge for relief.

Relief

(4) On an application made under subsection (3), a judge may grant the relief that the judge thinks fit having regard to the proceedings and conduct of the parties under subsection (1) and to all the other circumstances, and on the terms as to payment of rent, costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any similar breach in the future, that the judge considers just.

Implied and express proviso

(5) 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 in the lease.

Term of lease

(6) For the purposes of this section, a lease limited to continue as long as the tenant abstains from committing a breach of covenant is and takes 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.

Payment into the Nunavut Court of Justice

(7) Where an 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 the Nunavut Court of Justice all the rent in arrears and the costs of the action, the cause of action shall be at an end.

Grant of relief

(8) Where relief is granted under this section, the tenant shall hold and enjoy the demised premises according to the lease of the demised premises made, without any new lease.

Covenant to insure

(9) 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 no policy of insurance in force in conformity with the covenant or condition to insure except in addition to any other terms that the judge may impose, on the term that the insurance is effected. S.Nu. 2010,c.4,s.9(3).

Application by subtenant

46. 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, a judge, on application by any person claiming as subtenant any estate or interest in the property comprised in the lease or any part of it, either in the landlord's action, if any, or in any action brought or summary application made to the judge by such person for that purpose, may make an order vesting for the whole term of the lease or any lesser term, the property comprised in the lease, or any part of it, in any person entitled as subtenant to any estate or interest in the property on the conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, that the judge 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 or her for any longer term than the subtenant had under his or her original sublease. S.Nu. 2010,c.4,s.9(3).

PART IV
REGULATIONS

Regulations

47. The Commissioner, on the recommendation of the Minister, may make regulations prescribing the forms that by this Act are to be prescribed.