CHAPTER 504

LANDLORDS AND TENANTS

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504.01 DISTRESS FOR RENT. The remedy by distress for rent is abolished. [*R. L. s. 3327*] *(8186)*

504.02 CANCELATION OF LEASES IN CERTAIN CASES; ABANDONMENT OR SURRENDER OF POSSESSION. In case of a lease of real property, when the landlord has a subsisting right of reentry for the failure of the tenant to pay rent he may bring an action to recover possession of the property and such action is equivalent to a demand for the rent and a reentry upon the property; but if, at any time before possession has been delivered to the plaintiff on recovery in the action, the lessee or his successor in interest as to the whole or any part of the property pays to the plaintiff or brings into court the amount of the rent then in arrears, with interest and costs of the action, and an attorney's fee not exceeding $5.00, and performs the other covenants on the part of the lessee, he may be restored to the possession and hold the property according to the terms of the original lease.

If the lease under which the right of reentry is claimed is a lease for a term of more than 20 years, reentry cannot be made into the land or such action commenced by the landlord unless, after default, he shall serve upon the tenant, also upon all creditors having a lien of record legal or equitable upon the leased premises or any part thereof, a written notice that the lease will be canceled and terminated unless the payment or payments in default shall be made and the covenants in default shall be performed within 30 days after the service of such notice, or within such greater period as the lessor shall specify in the notice, and if such default shall not be removed within the period specified within the notice, then the right of reentry shall be complete at the expiration of the period and may be exercised as provided by law. If any such lease shall provide that the landlord, after default, shall give more than 30 days' notice in writing to the tenant of his intention to terminate the tenancy by reason of default in terms thereof, then the length of the notice to terminate shall be the same as provided for and required by the lease.

As to such leases for a term of more than 20 years, if at any time before the expiration of six months after possession obtained by the plaintiff by abandonment or surrender of possession by the tenant or on recovery in the action, the lessee or his successor in interest as to the whole or part of the property, or any creditor having a lien legal or equitable upon the leased premises or any part thereof, pays to the plaintiff, or brings into court, the amount of rent then in arrears, with interest and the costs of the action, and performs the other covenants on the part of the lessee, he may be restored to the possession and hold the property according to the terms of the original lease. The provisions of this section shall not apply to any action or proceeding now pending in any of the courts of this state.

Upon recovery of possession by the landlord in the action a certified copy of the judgment shall be recorded in the office of the register of deeds of the county where the land is situated if unregistered land or in the office of the registrar of titles of such county if registered land and upon recovery of possession by the landlord by abandonment or surrender by the tenant an affidavit by the landlord or his attorney setting forth such fact shall be recorded in a like manner and such recorded certified copy of such judgment or such recorded affidavit shall be prima facie

evidence of the facts stated therein in reference to the recovery of possession by such landlord.

[*R. L. s. 3328; 1917 c. 428 s. 1; 1923 c. 76 s. 1; 1937 c. 38 s. 1*] *(8187)*

504.03 TENANT MAY NOT DENY TITLE; EXCEPTION. When any person enters into the possession of real property under a lawful lease he shall not while so in possession deny the title of his landlord in an action brought by such landlord, or any person claiming under him, to recover possession of the property; but such estoppel shall not apply to any lessee who, at and prior to the lease, is in possession of the premises under a claim of title adverse or hostile to that of the lessor.

[*R. L. s. 3329*] *(8188)*

504.04 PERSON IN POSSESSION LIABLE FOR RENT; EVIDENCE. Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it be only a part of the land originally demised. Such rent may be recovered in a civil action, and the deed, demise, or other instrument showing the provisions of the lease may be used in evidence by either party to prove the amount due from the defendant. Nothing herein contained shall deprive landlords of any other legal remedy for the recovery of rent, whether secured to them by their leases or provided by law.

[*R. L. s. 3330*] *(8189)*

504.05 RENT LIABILITY; DESTROYED UNTENANTABLE TENEMENTS. The lessee or occupant of any building which, without fault or neglect on his part, is destroyed or is so injured by the elements or any other cause as to be untenantable or unfit for occupancy, is not liable thereafter to pay rent to the lessor or owner thereof, unless otherwise expressly provided by written agreement; and the lessee or occupant may thereupon quit and surrender possession of such premises.

[*R. L. s. 3331*] *(8190)*

504.06 ESTATE AT WILL, HOW DETERMINED; NOTICE. Estates at will may be determined by either party by three months' notice in writing for that purpose given to the other party, and, when the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it be equal to the interval between the times of payment; and, in all cases of neglect or refusal to pay the rent due on a lease at will, 14 days' notice in writing to quit, given by the landlord to the tenant, is sufficient to determine the lease.

[*R. L. s. 3332*] *(8191)*

504.07 URBAN REAL ESTATE; HOLDING OVER. When the lessee or tenant of urban real estate, or any interest therein, holds over and retains possession thereof after expiration of the term of the lease without express contract with the owner, no tenancy for any other period than the shortest interval between the times of payment of rent under the terms of the expired lease shall be implied.

[*R. L. s. 3333*] *(8193)*

504.08 NOTICE TO BE GIVEN OF VACATION OF BUILDING. Every person who shall, between the 15th day of November and the 15th day of April following, remove from, abandon, or vacate any building, or part thereof, occupied by him, or in his possession, as tenant, except upon the termination of his tenancy, and which contains any plumbing, water, steam, or other pipe liable to injury from freezing, without first giving to the landlord, owner, or agent in charge of such building three days' notice of his intention so to remove shall be guilty of a misdemeanor.

[*1915 c. 213 s. 1*] *(8194)*

504.09 NOTICE OF CANCELATION OF LEASES. When a notice of the cancelation of termination of a lease of real property, or a copy of the notice, with proof of service thereof, and the affidavit of the lessor, his agent or attorney, showing that the lessee has not complied with the terms of the notice, shall be presented for recording at the office of the register of deeds in which the lease has been duly recorded, it shall be the duty of the register of deeds to record the notice, proof of service thereof and affidavit, and the record thereof shall be prima facie evidence of the facts therein stated.

[*1921 c. 394 s. 1*] *(8192)*

504.10 TERMINATION OF LONG TIME LEASES SUSPENDED. Termination by the lessor, without the written assent of the lessee, of leases of real estate for the term of 20 years or more and the right to reenter and to recover possession of such real estate for failure of the tenant to pay rent or to make other payments provided by the lease, whether such termination or action to recover possession be attempted pursuant to section 504.02 or sections 566.03 to 566.17, and acts supplemental thereto, or otherwise, is hereby suspended and prohibited during the period of the emergency except upon order of the district court pursuant to notice and proceedings as herein provided.

[*1935 c. 157 s. 1; 1937 c. 46 s. 1; 1939 c. 34 s. 1*] *(8192-1)*

504.11 METHOD OF TERMINATION. During such emergency no notice that a lease of real estate for the term of 20 years or more will be canceled and terminated because of default of the lessee shall be sufficient to terminate the same or shall be sufficient to comply with section 504.02, as to such notice, unless such notice shall be served upon the persons designated by sections 504.10 to 504.17, and upon the persons designated by section 504.02, at least 40 days before the date of the hearing in district court provided for by sections 504.10 to 504.17 and except in accordance with the order of the court pursuant to proceedings as herein provided.

When default is made in the conditions of any lease for 20 years or more, or any interest therein, whereby the lessor has a right to terminate the same, the lessor may serve upon the lessee, his personal representatives or assigns, either within or without the state, a notice specifying the conditions in which default has been made, and stating that at a time specified, not less than 40 days after the service of the notice, he will apply to the court for an order adjudging the lease terminated, unless prior thereto the lessee, his personal representatives or assigns, shall comply with and perform the conditions then in default. Such notice must be given notwithstanding any provisions in the lease to the contrary, and shall be served within the state in the same manner as a summons in the district court, and, if served without the state, in the manner provided in section 543.11.

In case of such service by publication the notice shall specify the conditions in which default has been made and state that at a specified time, not less than 90 days after the first publication of the notice the lessor will apply to the court for an order adjudging the lease terminated, unless prior thereto the lessee, his personal representatives or assigns, shall comply with and perform the conditions then in default. If the lease shall contain a provision for personal service or mailing any notice of termination more than 40 days before such termination, then the notice of application to the court under sections 504.10 to 504.17 shall be served at least the number of days before the hearing which is provided for in the lease. If any such lease contains a provision for the service of such notice of termination or cancelation by mail addressed to any definite or definitely ascertainable person and address, such service may be made by mailing such notice as so provided at least 40 days before the hearing provided for herein.

If, within the time mentioned in the notice within which the lessee, his personal representatives or assigns, must perform the conditions in default, the lessee complies with such conditions, the lease shall remain in full force and effect; but if the lessee fails or neglects to perform the conditions in default within the time mentioned in the notice for such performance, and fails to serve written objections to the termination of such lease upon the lessor within 15 days after service of notice on the lessee, the court shall, upon motion of the lessor, and proof of service of the notice, and in the absence of any appearance upon behalf of the lessee, make its order adjudging such lease terminated and the lease shall thereupon forthwith be and become finally terminated.

The lessee may within 15 days after service of the notice, serve upon the lessor, or his attorney, written objections to the making of any order adjudging the lease terminated and any legal or equitable defenses claimed by him; and when it shall be made to appear to the court upon the hearing of the application for an order adjudging the termination of the lease that the lessee has in addition to the payment of an amount equal at least to taxes, insurance, and interest, if any, made and paid for valuable improvements upon the premises, or paid upon the leasehold price or rental of the premises whether to the lessor or to the owner of any encumbrances subject to which the lease was made, or which the lease provides that the lessee,

his successors or assigns, shall pay, or to both, a sum or sums equal to a substantial part of the original leasehold price or rental, and that the lessor's interest is reasonably secure, the court may, on taking into consideration the reasonable value of the income of such property, or, if the property has no income, then the reasonable rental value thereof, the efforts and ability of the lessee to pay, and all the facts and circumstances of the case, by order and upon such terms and conditions as to make it appear just and equitable, extend the time in which the lessee may perform the conditions of the lease in default, not to exceed one year from the date of the service of notice of termination on the lessee, and in no event beyond March 1, 1941.

If the lessee shall fail to perform the conditions in default, or any of them, as required and directed by the court to be performed, the lease shall forthwith be and become terminated, and the lessor may thereupon apply to the court for an order adjudging the lease terminated, on giving at least ten days' written notice of such application to the lessee, served in the manner herein provided for the service of the notice of application for an order terminating the lease. If it shall be made to appear to the court, upon a hearing on the application, that the lessee has defaulted in performing such conditions, the court shall make an order declaring the lease terminated and the lease shall thereupon forthwith be and become finally terminated.

Every law and all the provisions thereof inconsistent with the provisions of sections 504.10 to 504.17 are hereby suspended until March 1, 1941. Proceedings heretofore begun and now pending for the cancelation and termination of any lease of real estate for a term of 20 years or more and all notices of cancelation of such leases served on the lessee more than 30 days prior to the first day of March, 1939, where the lessee shall have served upon the lessor as provided in Laws 1937, Chapter 46, Section 2, and within the time therein limited, written objections to the making of any order adjudging the lease terminated and any legal or equitable defenses claimed by him, shall be governed by the provisions of sections 504.10 to 504.17, otherwise such proceedings and such notices shall be governed by and become effective under the provisions of section 504.02 or sections 566.03 to 566.17.

[*1935 c. 157 s. 2; 1937 c. 46 s. 2; 1939 c. 34 s. 2*] *(8192-2)*

504.12 COURT ORDER MAY BE RECORDED. A copy of any order of the court made pursuant to sections 504.10 to 504.17 may be recorded with the register of deeds of the county wherein the real estate is situated.

[*1935 c. 157 s. 3; 1937 c. 46 s. 3; 1939 c. 34 s. 3*] *(8192-3)*

504.13 APPLICATION. The provisions of sections 504.10 to 504.17 shall apply only to leases for terms of 20 years or more made prior to the passage and approval of those sections, but shall not apply to leases made prior to the passage of those sections which are hereafter renewed or extended for a period ending more than one year after the passage of those sections; neither shall those sections apply in any way which would allow an extension to such time that any right might be adversely affected by a statute of limitation. Upon the application of either party prior to the expiration of the extended period, as provided in those sections, and upon the presentation of evidence that the terms fixed by the court are no longer just and reasonable, the court may revise and alter these terms in such manner as the changed circumstances and conditions may require.

[*1935 c. 157 s. 4; 1937 c. 46 s. 4; 1939 c. 34 s. 4*] *(8192-4)*

504.14 TRIAL OF ACTION. The trial of any action, hearing, or proceeding mentioned in sections 504.10 to 504.17 shall be held within 30 days after the filing by either party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during the vacation of the court.

[*1935 c. 157 s. 5; 1937 c. 46 s. 5; 1939 c. 34 s. 5*] *(8192-5)*

504.15 TIME LIMITATION. The emergency herein declared to exist shall be deemed to be terminated whenever the governor of this state shall by proclamation declare that the emergency is at an end or whenever in fact the emergency shall have terminated, and sections 504.10 to 504.17 shall remain in effect no longer than March 1, 1941.

[*1935 c. 157 s. 6; 1937 c. 46 s. 6; 1939 c. 34 s. 6*] *(8192-6)*

504.16 LIMITATIONS. Nothing in sections 504.10 to 504.17 shall be construed to modify or give the court power to modify the provisions of section 504.02 with

regard to the right of the lessee or his successor in interest or any creditor having a lien upon the leased premises or any parts thereof, at any time before the expiration of six months after possession is obtained by the plaintiff on recovery in any action, to be restored to the possession and to hold the property according to the terms of the original lease on the conditions set forth in that section.

[*1935 c. 157 s. 7; 1937 c. 46 s. 7; 1939 c. 34 s. 7*] *(8192-7)*

504.17 LESSOR AND LESSEE. The terms "lessor" and "lessee" shall be construed to include the plural and the survivor or survivors, the heirs, executors, administrators, assigns, or successors thereof.

[*1935 c. 157 s. 8; 1937 c. 46 s. 8; 1939 c. 34 s. 8*] *(8192-8)*