

ANGUILLA

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CHAPTER S40

SMALL TENEMENTS ACT

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SMALL TENEMENTS ACT

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SCHEDULE: Forms

SMALL TENEMENTS ACT

Interpretation

1. In this Act—

"Form" means a form set out in the Schedule;

"land" includes houses, chattel or moveable houses, buildings and all other corporeal hereditaments, but does not include a small holding within the meaning of the Agricultural Small Holdings Act;

"landlord" includes the attorney or agent of any landlord and also any person appointed to act on behalf of the Crown in dealing with any lands, buildings or corporeal or incorporeal hereditaments vested in the Crown;

"rent" includes any part of any crop rendered or any equivalent given in kind or in labour in consideration of which a landlord has permitted any person to use and occupy any land, house or other corporeal hereditament.

Tenant holding over

2. When and as soon as the term or interest of the tenant of any land held by him at will or for any term not exceeding 7 years either without being liable to the payment of any rent or at a rent not exceeding the rate of $200 per annum shall have ended or shall have been duly determined by a notice to quit, which may be in Form 1, and such tenant or (if such tenant does not actually occupy the premises or only occupies a part thereof) any person by whom the same or any part thereof are then actually occupied neglects or refuses to quit and deliver up possession of the premises or any part thereof respectively, such tenant or person shall be deemed to be a person holding over.

Notice by landlord to tenant holding over

3. Where a person is holding over whose tenancy has ended or been determined otherwise than by a notice to quit, the landlord may cause a notice in writing, which may be in Form 2, to be served upon such person as aforesaid calling upon him to quit and deliver up possession of the premises held over by him within 7 days of the service of such notice as aforesaid.

Person holding over and neglecting to give possession may be summoned

4. Upon the expiration of the time limited in any notice to quit as mentioned in section 2 or 3, if the person holding over neglects or refuses to quit and deliver up possession of the premises mentioned in such notice to quit as aforesaid, it shall be lawful for the Magistrate on the application of the landlord to issue a summons in Form 3 calling on the person holding over to appear on the day fixed in the summons and show cause why possession should not be given to the landlord under the provisions of this Act.

Magistrate to hear and determine the matter

5. (1) On the day of appearance as mentioned in section 4, if the person holding over appears, or if he does not appear, then on proof of the due service of the summons, the landlord shall give evidence of the end or other determination of the tenancy with the time and manner thereof and of the

holding over, and (where the title of the landlord has accrued since the letting of the premises) of the right by which he claims possession, and of the service of the notice to quit, and it shall be lawful for the Magistrate to determine the matter and, subject to the succeeding provisions of this section, to give such judgment and make such orders therein under the provisions of this Act as to him shall seem fit. The order may be in Form 4.

(2) Where the land to which the tenancy relates is subject to the provisions of any Act restricting the rents payable therefor and the recovery of the possession thereof, no judgment or order shall be given or made under subsection (1) unless the Magistrate is satisfied that power has been conferred on him so to do under the provisions of any such law.

(3) Where a chattel or moveable house of a value of not less than $50, which is not the property of the landlord, (hereinafter in this section referred to as the "premises") has been placed by a tenant or his predecessor in title on the land in respect of which possession is sought by the landlord and such premises are used by the tenant as his dwelling, no judgment or order shall be given or made under subsection (1) unless the Magistrate is satisfied that—

(a) it is reasonable to give such judgment or make such order having regard to all the circumstances of the case; and

(b) suitable alternative accommodation is available for the tenant or will be available for him when the judgment or order takes effect.

(4) For the purposes of subsection (3)—

(a) suitable alternative accommodation means accommodation which is reasonably suitable to the needs of the tenant as regards rental and to the needs of the tenant and his family as regards proximity to place of work, as well as character and extent in relation to its use as a dwelling for the tenant; and

(b) the onus of proof that a chattel or moveable house is of a value less than $50 shall be on the landlord.

(5) Notwithstanding anything contained in subsection (3) or (4), a judgment or order under subsection (1) may be given or made by the Magistrate, where he considers it reasonable so to do, without proof of suitable alternative accommodation where—

(a) the tenant has, within 12 months of the filing of the summons, been convicted of theft of cattle or of having in his possession or under his control prædial produce which is reasonably suspected to have been stolen or unlawfully obtained;

(b) the tenant has been convicted of using or allowing the premises or any part thereof to be used for an immoral or illegal purpose;

(c) the tenant has committed acts of waste or been guilty of neglect or default whereby the premises have been injuriously affected; or

(d) the tenant or any person residing or lodging with him or being his subtenant has been guilty of conduct which is a nuisance or annoyance to adjoining or adjacent occupiers of such premises.

Magistrate to issue warrant of possession

6. If the Magistrate gives judgment for the recovery by the landlord of the possession of the land, he may forthwith issue a warrant of possession, which may be in Form 5.

Outgoing tenant may claim for unexhausted improvements

7. Where by the custom of the country or otherwise the outgoing tenant is entitled to any compensation or allowance in respect of any unexhausted improvements which he has made on the subject matter of the tenancy, he may at any time make any claim or counterclaim before the Magistrate against the landlord in respect thereof; and the Magistrate may, if he thinks it expedient, hear and determine any counterclaim together with any claim to recover possession of the subject matter in respect of which the counterclaim is made, but—

(a) in the case of a counterclaim, notice in writing of the particulars of such counterclaim shall be given to the landlord 3 clear days before the day fixed for the hearing of the claim to recover possession; and

(b) the Magistrate at the hearing shall have power to enlarge the time for the delivery of such notice as aforesaid, or for the hearing of the counterclaim.

Landlord may claim for mesne profits

8. The landlord may either together with his claim to recover possession of any premises, or in answer to any claim or counterclaim made in respect of any unexhausted improvements as aforesaid, claim to recover or to set off all arrears of rent and also mesne profits accruing in respect of such premises since the ending or determination of the tenancy.

Limit of Magistrate's jurisdiction in claims for improvements, arrears, or mesne profits

9. No claim by the landlord against the tenant to recover or to set off any arrears of rent and mesne profits under section 8, and no claim or counterclaim by the tenant against the landlord for unexhausted improvements under section 7, shall be entertained where such claim or counterclaim exceeds the sum of $96.

Warrant of possession may issue at any time

10. Where a landlord is entitled to possession of any premises, the Magistrate may issue his warrant of possession notwithstanding that the counterclaim is undetermined or unsatisfied.

Magistrate may appoint person to value improvements

11. It shall be lawful for the Magistrate from time to time and at any time to appoint 1 or more persons to estimate the value of any unexhausted improvements in respect of which a claim or counterclaim is made and to report in writing to the Magistrate thereon; and also to make such order as he thinks fit in respect of the expenses and remuneration of such persons. The appointment of an estimator or estimators may be in Form 6 and the report may be in Form 7.

Report of valuers to be evidence

12. Such report in writing purporting to be signed by the person or persons appointed by the Magistrate in that behalf shall be received in evidence in all courts until it is shown that such report was not so signed as aforesaid.

Officer executing warrant of possession to give possession to landlord

13. The officer to whom the warrant of possession is directed shall with all convenient speed enter (by force if necessary) into the premises described in the warrant and give possession of the same to the landlord and may if necessary by force demolish or remove or demolish and remove any building on such premises.

Penalty for resisting or assaulting officer

14. Any person who resists or molests or assaults such officer as aforesaid when engaged in the execution of such warrant as aforesaid or any estimator engaged in carrying out an order of the Magistrate's Court is guilty of an offence against this Act and is liable on summary conviction to be imprisoned for a period of 6 months or to pay a fine of $3,840.

Penalty on person unlawfully retaking possession

15. Any person who has been put out of possession under a warrant of possession and unlawfully retakes possession of the premises after possession has been given to the landlord is guilty of an offence against this Act and is liable on summary conviction to be imprisoned for a period of 6 months or to pay a fine of $3,840.

Appeal from order of possession

16. Either party to any proceedings to recover possession of any premises under this Act may appeal from the decision of the Magistrate whatever may be the value of the subject matter in dispute.

Service of documents

17. Service of any notice to quit or any summons or other process may be effected either personally on the person affected by the same or by leaving the same with some adult person at his last or most usual place of abode, or if the person to be served cannot be found, and the place of his abode either is not known or admission thereto cannot be obtained then by posting the same on some conspicuous place on the subject matter of the claim.

Jurisdiction of Magistrate not ousted where question of title arises

18. Except as hereinafter provided, the jurisdiction of the Magistrate shall not be ousted by the defendant *bona fide* setting up the title of a third person, unless he holds under or claims through such third person.

No claim for improvements made without sanction of landlord

19. No person shall be entitled to make any claim for any unexhausted improvements unless such improvements have in all material particulars been made with the consent of the landlord.

Essentials of notice to quit

20. Every notice to quit served under the provisions of this Act shall be in writing and signed by the landlord or his agent or solicitor. It shall describe clearly the premises which are sought to be recovered and the proper day on which possession is to be given and shall not be ambiguous or optional.

Length of notice to quit in certain cases

21. Where there is no agreement as to notice by deed or in writing between the parties the following provisions shall take effect—

(a) in the case of a monthly tenancy or a tenancy for any shorter term than 1 month, a clear week's notice shall be given;

(b) in the case of a quarterly tenancy or a tenancy for any term shorter than 3 months and longer than 1 month, a clear month's notice shall be given;

(c) in the case of a half-yearly tenancy or a tenancy for any term shorter than 6 months and longer than 3 months, a clear 2 months' notice shall be given;

(d) in the case of a yearly tenancy or any term shorter than 1 year and longer than a half year, a clear 3 months' notice shall be given;

(e) in the case of any term longer than 1 year and not longer than 7 years, a clear 6 months' notice shall be given;

(f) in the case of any person being lawfully let into possession of any land by any other person without any period of tenancy whether limited or continuing being agreed upon either expressly or impliedly, a clear 3 months' notice shall be given;

(g) in the absence of any evidence to the contrary the time when the rent is paid or rendered shall be deemed to determine the nature of the tenancy as to whether it is monthly, quarterly or otherwise.

Notice to quit may be given at any time

22. It shall not be necessary that a notice to quit under section 21 should expire at the end of the current term of the tenancy but it may be given at any time, but it does not expire before the time when any crop growing on the subject-matter of the tenancy would in the ordinary course be taken, gathered or reaped.

Ejectment in case of trespassers

23. Where any person unlawfully obtains possession of and remains in occupation of any lands the value of which does not exceed $200, the person lawfully entitled to the immediate possession of the same may recover possession thereof under the provisions of this Act as though he were a landlord and as though the person unlawfully occupying the premises were a person holding over, but in such a case it shall not be necessary for the person seeking to recover possession of the premises to serve or prove the service of any notice to quit and such person shall only be required to prove that he is entitled to the immediate possession of the premises.

Power to stay proceedings where question of title involved

24. Any Judge of the High Court, upon application made to him and on being satisfied that in any proceedings commenced under this Act a *bona fide* question of title is involved, may, if he thinks it expedient, order that the claim of the plaintiff be heard and determined in the High Court and thereupon all proceedings under this Act shall be stayed and the plaintiff shall be at liberty to prosecute his claim accordingly.

Procedure

25. All proceedings under this Act whether civil or criminal shall be taken and had in the manner and form prescribed by the Magistrate's Code of Procedure Act, and all the provisions of such last-mentioned Act shall apply to all such proceedings as aforesaid except so far as they are repugnant to the provisions of this Act.

Forms

26. The forms set forth in the Schedule hereto may be used in proceedings under this Act and shall be valid and effectual therein.

Governor in Council may alter forms and prescribe fees

27. The Governor in Council may by regulation add to, amend and cancel the forms set forth in the Schedule and may direct what fees are to be taken in respect of any proceedings under this Act.

Citation

28. This Act may be cited as the Small Tenements Act, Revised Statutes of Anguilla, Chapter S40.

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SCHEDULE

FORMS

FORM 1

(Section 2)

FORM OF NOTICE TO QUIT

To C.D.

Sir,

I hereby (as Agent or Solicitor for X.Y. your landlord and on his behalf) give you notice to quit and deliver up possession of the land (*or house as the case may be*) and premises with the appurtenances situate at ……..…….. in Anguilla, which you hold of him (*or* which E.F. holds of him) as tenant thereof (by a lease or agreement in writing bearing date the …… day of ……, 20…..…) and which are now in your possession on the …… day of ……, 20…… .

Yours etc.

A.B. (Agent or Solicitor of the above-named X.Y.)

Dated the …… day of ……., 20……. .

———————

FORM 2

(Section 3)

FORM OF NOTICE TO QUIT

To C.D.

Sir,

I hereby (as Agent or Solicitor for X.Y. and on his behalf) give you notice to quit and deliver up possession of the land *(or house as the case may be)* and premises with the appurtenances situate at ……..…….. in Anguilla, and now in your possession within 7 days from the day on which this notice is served upon you.

Yours etc.

A.B. (Agent or Solicitor of the above-named X.Y.)

Dated the …… day of ……., 20……. .

———————

FORM 3

(Section 4)

FORM OF SUMMONS

IN THE MAGISTRATE'S COURT (CIVIL SIDE)

No. …… of 20 ……

Between A.B. of ……. Plaintiff

and

C.D. of …….. Defendant

To C.D. of …….

You are hereby summoned to appear at the Magistrate's Court, at ….……..……. in Anguilla, at …… a.m./p.m. and to show cause why an order should not be made against you according to the prayer of the plaintiff as set forth in the particulars of claim annexed hereto.

And take notice that if you fail to attend at the time and place aforesaid or at any adjourned hearing of this suit, the Court may give leave to the plaintiff to proceed *ex parte* to judgment and execution and may order that possession of the said premises be given by you to the plaintiff forthwith, and that if such order be not obeyed a warrant may issue to give possession to the plaintiff.

Signed

Magistrate

Given under my hand
This …… day of ……., 20…….

PARTICULARS OF CLAIM

The plaintiff claims:-

(1) To recover possession of *(describe the premises)*,

(2) and $ ……. for arrears of rent,

(3) and $ ……. for mesne profits.

ENDORSEMENT ON WRIT

The within writ was served on the within-named defendant at ……..…… by delivering a true copy thereof (or describe other mode of service) on the …… day of ……..……., 20……. .

G.H.
Bailiff.

———————

FORM 4

(Section 5)

ORDER FOR RECOVERY OF LAND

IN THE MAGISTRATE'S COURT (CIVIL SIDE)

Between A.B. of ……. Plaintiff

and

C.D. of …….. Defendant

Upon the hearing of this cause a Court holden this day doth order that the defendant do give to the plaintiff possession of a certain piece of land *(or as the case may be)* situate at ……..... ……. in Anguilla, forthwith (or on the …… day of ……..., 20…….) and doth adjudge that the plaintiff do recover against the defendant the sum of $ …… for rent (or, for mesne profits, or, for rent and mesne profits) and costs.

Given under my hand
this …… day of ……., 20…….

Signed

Magistrate

TO THE DEFENDANT

Take notice that if you do not give such possession a warrant may issue requiring the Bailiff of the Court to give possession of the said premises to the plaintiff and to levy the sum above-mentioned together with further costs.

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FORM 5

(Section 6)

FORM OF WARRANT OF POSSESSION

IN THE MAGISTRATE'S COURT (CIVIL SIDE)

Between A.B. of ……. Plaintiff

and

C.D. of …….. Defendant

To the Bailiff of the Magistrate's Court

Whereas at a Court holden on the …….. day of ……, 20……, it was ordered that the defendant should give to the plaintiff possession of a certain *(as in summons)* situate at …….. in Anguilla.

And whereas the defendant has not obeyed the said order: These are therefore to authorize and require you forthwith between the hours of 9 a.m. and 5 p.m. to enter (by force if needful) the said hereinbefore-mentioned premises and to eject therefrom any person and of the said premises to give full and peaceable possession to the plaintiff.

Given under my hand this …… day of ……., 20……. .

Signed

Magistrate

FORM 6

(Section 11)

FORM OF APPOINTMENT OF ESTIMATORS

IN THE MAGISTRATE'S COURT (CIVIL SIDE)

Between A.B. of …… Plaintiff

and

C.D. of …….. Defendant

Upon hearing the plaintiff and the defendant herein it is ordered that E.F. of ……. (or E.F. of ……..…….. and G.H. of ……) do enter upon the premises at ……in Anguilla lately in the occupation of the plaintiff and do estimate the present value of *(here set out and describe sufficiently for identification the things claimed by the plaintiff as improvements)* and do report to the Court in writing thereon on or before the ……..day of ……., 20……. And it is further ordered that the plaintiff (or the defendant or the plaintiff and the defendant or as the case may be) do pay to the said E.F. and G.H. *(here set out the terms of remuneration to be made to the estimators.)*

Given under my hand
this …… day of ……., 20…….

Signed

Magistrate

FORM 7

(Sections 11 and 12)

FORM OF REPORT OF ESTIMATORS

IN THE MAGISTRATE'S COURT (CIVIL SIDE)

Between A.B. of …… Plaintiff

and

C.D. of …….…… Defendant

We E.F. of …… and G.H. of ……..……. the estimators appointed herein under an order dated the …… day of …… 20……, having viewed the premises mentioned in the order aforesaid do appraise and value the same at the sum of $ …….. as hereinafter detailed, namely—

(Here set forth the particulars of the valuation)

As witness our hands

This ……..…… day of ……., 20……. .

Signed E.F.
G.H.

———————