



No. 13 of 1977

## RENTS ORDINANCE, 1977

*(Assented to 21 June 1977)*  
*(Afrikaans text signed by the Administrator)*  
*(Date of commencement to be proclaimed)*

**ORDINANCE**

To consolidate and amend the laws on the control of rent payable in respect of leased dwellings, and the periods of notice with which lessors of business premises and dwellings shall comply.

BE IT ORDAINED by the Legislative Assembly for the Territory of South-West Africa with the consent of the State President, in so far as such consent is necessary, previously obtained and communicated to the Legislative Assembly by message from the Administrator, as follows:—

**ARRANGEMENT OF SECTIONS***Section*

1. Definitions.
2. Establishment of rent boards.
3. Constitution of rent boards.
4. Term of office of additional members of rent boards.
5. Meetings of rent boards.
6. Remuneration, allowances and fees payable to additional members of rent boards.
7. Functions, powers and duties of rent board secretaries.
8. Procedure on receipt of complaints and applications.
9. Chairman disposes of undisputed complaints and applications himself and refers the rest to the rent board.
10. Functions, powers and duties of rent boards.
11. Investigations by rent boards.
12. Orders and authorisations of rent boards in regard to complaints and applications.
13. Signing and service of orders and authorisations of rent boards.
14. Effect of an order to reduce rent. ~

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15. Non-observance of order of rent board.
16. Variation or rescission of order by rent board.
17. Review of decision of rent board by revision board.
18. Constitution of revision board.
19. Powers of revision board.
20. Remuneration, allowances and fees payable to members of revision board.
21. Appointment of inspectors.
22. Powers of inspectors.
23. Secrecy.
24. Notice by lessor in respect of leased dwellings.
25. Prohibition on the claiming or receiving of monies in excess of rent.
26. Compulsory issue of receipts for rent.
27. Stay of legal proceedings.
28. Limitation on ejectment of lessees.
29. Lessee entitled to benefits and subject to obligations arising from original lease.
30. Children no ground for refusal to lease.
31. Notice to vacate dwelling.
32. Periods of notice to vacate.
33. Lessor responsible for repairs and replacements necessitated by normal wear and tear, and for the payment of rates and taxes.
34. Jurisdiction of magistrates' courts.
35. Limitation of application of Ordinance.
36. Exemptions.
37. General penalty.
38. Regulations.
39. Repeal of laws and dissolution of existing rent boards.

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## 40. Short title.

Schedule A: DOCUMENTS TO BE PRODUCED BY A LESSOR IN THE CASE OF A COMPLAINT OR APPLICATION UNDER SECTION 8.

Schedule B: LAWS REPEALED.

## Definitions.

1. In this Ordinance, unless the context otherwise indicates —

- (i) "business premises" means any premises other than a dwelling, garage or car port, farm, church or school; (ii)
- (ii) "child" means one's own or lawfully adopted child or a stepchild, such child being less than nineteen years of age or completely dependent on the lessee, but does not include a son-in-law or a daughter-in-law; (ix)
- (iii) "dwelling" means any room, flat, house or other place occupied by human beings or intended to be so occupied, but excluding —
  - (a) an hotel or club, licenced in accordance with the laws relating to the control and supply of intoxicating liquor;
  - (b) a boarding house or other establishment providing both board and lodging to boarders (such board to include more than one meal daily, at least one of which is served hot);
  - (c) rooms which are let on a daily basis; (xviii)
- (iv) "Executive Committee" means the Administrator-in-Executive-Committee as referred to in section 6 of the Constitution of South West Africa Act, 1968. (Act 39 of 1968); (xiv)
- (v) "habitable part" means that part of a building used for human occupation, including living-rooms, bath-rooms, lavatories, kitchens, balconies, entrance halls, stairways, corridors, and also garages and car ports which form an integral part of the building and are exclusively intended for and used by the inhabitants, but excluding gardens, roof-gardens, courtyards, driveways, roofless parking areas, side-walks, halls, business premises, and any spaces not forming an integral part of the building and not exclusively intended for and used by the inhabitants; (iii)
- (vi) "inspector" means an inspector appointed in terms of section 21; (viii)

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- (vii) "lessee" with regard to business premises, includes the widow of a lessee who rented the premises in his personal capacity, if she was living with him at the time of his death and is desirous of a continued occupation of the premises, and unless the lease agreement expressly or by necessary implication prohibits sublease, cession or assignment by the lessee, a sublessee, cessionary or assignee of the lessee; and with regard to a dwelling, includes the widow or deserted wife of a lessee if she was living with him in the dwelling at the time of his death or desertion and is desirous of a continued occupation of the dwelling; (vi)
- (viii) "lessor" with regard to a dwelling or business premises, means the owner or his authorised agent, and with regard to business premises, unless the lease agreement expressly or by necessary implication prohibits sublease, also a lessee who has sublet the business premises; (xv)
- (ix) "premises" means a house or building with the grounds on which it was built and all its appurtenances; (xi)
- (x) "reasonable rent" with regard to a dwelling, means a rental that a rent board has determined to be a reasonable rent in the circumstances of the particular case: Provided that —
- (a) no rent shall be considered reasonable which, after deduction of —
- (i) the actual rates and taxes paid or payable in respect of the dwelling and the grounds in which it is situated and which are occupied in connection therewith;
  - (ii) an amount which the board considers to be reasonable for any furniture, fittings equipment or services provided by the lessor to the lessee;
  - (iii) premiums paid by the lessor in respect of fire-insurance in regard to the dwelling and the furniture in it;
  - (iv) an amount (if any) which the board considers to be reasonable in respect of expenses incurred by the lessor in collecting the rent for the dwelling;
  - (v) any amount paid by the lessor in respect of the supply of electricity, water or gas for domestic purposes in connection with the dwelling;

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- (vi) any amount paid by the lessor for sanitary services and sewerage in respect of the dwelling,

gives an annual return to the lessor of more than  $9\frac{1}{2}$  per cent on the joint value of the land and improvements;

- (b)  $7\frac{1}{2}$  per cent shall be considered the basic rate of interest normally imposed by building societies on mortgage bond loans, and if the rate of interest that building societies charge on mortgage bond loans of the type usually granted in respect of properties such as the dwelling, is higher or lower than  $7\frac{1}{2}$  per cent, the allowable percentage referred to in paragraph (a) shall be increased or reduced, as the case may be, by the same percentage figure that the aforementioned rate of interest exceeds or falls short of  $7\frac{1}{2}$  per cent; and
- (c) if a dwelling comprises a section only of the habitable part of premises, a reasonable rent shall be determined in the manner described in paragraphs (a) and (b) in respect of the entire habitable part, and thereafter a reasonable rent for the dwelling shall be fixed in such manner that it has the same ratio to a reasonable rent for the entire habitable part that the floor area of the dwelling has to the floor area of the habitable part; (xii)
- (xi) "rent board" means a rent board established under section 2; (vii)
- (xii) "replacement costs" means the amount required, at current building costs and with due regard also to
- (a) kind and nature of materials used;
- (b) manner in which the dwelling was erected and finished,
- to erect a dwelling similar to that for which a reasonable rent is to be determined; (xvi)
- (xiii) "revision board" means a revision board established under section 17; (iv)
- (xiv) "secretary" means the secretary of the rent board; (xiii)
- (xv) "services" includes the use of any balcony, verandah, hall, lounge, corridor, common room, kitchen, bathroom, lavatory or other room, and any other privilege, amenity or facility accorded to a lessee by reason of his occupation of the leased dwelling, save

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and except the supplying and serving of meals, consisting of cooked or otherwise prepared food, including at least one course served hot, at least once a day in a room specially set aside and equipped for the purpose of supplying and serving meals and which room is a part of and situated within the accommodation complex concerned; (i)

(xvi) "this Ordinance" includes any regulation made and in force thereunder; (v)

(xvii) "unreasonable rent" means a rent that gives a lessor a higher yield than a reasonable rent would give him; (x)

(xviii) "value" with regard to a dwelling, means the replacement cost of the buildings and other improvements made to the land, minus a maximum of five per cent depreciation of such replacement cost for every year of the age of such dwelling depending on the standard of maintenance and repairs; and with regard to the land on which the dwelling is situated, a value which a rent board in all the circumstances of a particular case determines to be a reasonable rent value (which may or may not coincide with the market value) for such land, regard being had, inter alia, to the following —

- (a) any municipal valuation;
- (b) any sworn valuation;
- (c) the purpose for which such land is used;
- (d) the position of the land and its surroundings;
- (e) any other relevant factors. (xvii)

Establishment of rent boards.

2. (1) The Executive Committee shall establish as many rent boards as it may deem necessary.

(2) Notice shall be given in the *Official Gazette* of the establishment of each such board and of the area for which it is established.

Constitution of rent boards.

3. (1) A rent board shall consist of the local magistrate of the area for which a rent board has been established, and not more than four additional members appointed by the Executive Committee.

(2) The magistrate referred to in subsection (1) shall be the chairman of a rent board, and the Executive Committee may also designate an additional member as vice-chairman.

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(3) The Executive Committee may on such conditions as it may determine appoint one or more persons as alternate additional members of a rent board, and the chairman of such board may require of such an alternate additional member to take the place of any absent additional member.

(4) The Secretary for South West Africa may, with due observance of the provisions of the Public Service Act, 1957 (Act 54 of 1957) and the Administration Employees Ordinance, 1957 (Ordinance 17 of 1957), allocate a person that he regards as suitable to a rent board to act as secretary of such board.

Term of office of additional members of rent boards.

4. (1) An additional member of a rent board shall be appointed for a period of three years.

(2) A person whose term of office as an additional member of a rent board has expired, may be reappointed.

(3) When an additional member of a rent board vacates his office before his term of office has expired, the Executive Committee may appoint a person to fill the vacancy for the unexpired portion of the term for which he was appointed.

Meetings of rent boards.

5. (1) The chairman of a rent board shall determine the times and places at which such rent board shall meet.

(2) The majority of all the members of a rent board shall form a quorum for a meeting of the board.

(3) At all meetings of a rent board the chairman or, in his absence, the vice-chairman, shall preside and if both the chairman and vice-chairman are absent at any meeting of the board, the other members present shall elect a chairman from amongst themselves to preside at the meeting.

(4) Subject to the provisions of section 9, the decision of the majority of the members of a rent board present at a meeting of a rent board shall be deemed to be a decision of such board and in the event of an equality of votes in regard to any matter, the person presiding at such meeting shall in addition to his deliberative vote, have a casting vote.

(5) Minutes shall be kept of all meetings of a rent board.

Remuneration, allowances and fees payable to additional members of rent boards.

6. Remuneration, allowances and fees as determined by the Executive Committee, shall be paid to those additional members of a rent board who are not officers of the Public Service or employees in the service of the Administration.

Functions, powers and duties of rent board secretaries.

7. (1) The secretary of a rent board shall —



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- (a) keep a register of leased dwellings situated in the area of jurisdiction of such rent board, and of the rent charged in each case;
- (b) receive the complaints and applications referred to in section 8(1)(a) and 8(2)(a), and shall deal therewith as prescribed in the said section 8;
- (c) perform the other functions and duties as assigned to him in terms of the provisions of this Ordinance or by the chairman, and exercise the powers granted to him under this Ordinance.

(2) The entries in the register referred to in subsection (1)(a) shall serve as *prima facie* proof of the facts contained therein.

Procedure on receipt of complaints and applications.

8. (1) (a) On receipt by the secretary of a rent board of a written complaint in which it is alleged that a lessee has been required to pay an unreasonable rent for a dwelling situated in the area of jurisdiction of such rent board (irrespective of whether such complaint is lodged by the lessee himself, his duly authorised agent or an inspector), the secretary shall notify the lessor of such complaint and instruct him to indicate in writing within fourteen days of receipt of such notice whether he denies or admits the allegation and, irrespective of whether he admits or denies the allegation, to submit within the said period to the secretary the documents referred to in Schedule A in triplicate.
- (b) On receipt of the documents referred to in paragraph (a), the secretary shall forward one copy thereof to the lessee requesting him to submit within fourteen days in writing a reply to the information and allegations contained in such documents.
- (c) On receipt of the lessee's reply, or expiry of the period referred to in paragraph (b) (whichever event takes place first), the secretary shall submit all the documents concerning the matter to the chairman, together with the comments of the inspector who has investigated the matter on instructions from the secretary.
- (2) (a) On receipt by the secretary of a rent board of a written application by a lessor for authorisation to charge a higher rent for a dwelling situated within the jurisdiction of such rent board, than that which is registered in terms of section 24, or which was determined to be a reasonable rent by a rent board or revision board in a previous decision, the secretary shall notify each lessee affected by the application of such application, and at the same time submit to each such lessee one copy of the

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documents referred to in Schedule A (and supplied to the secretary by the lessor for this purpose), and shall further call upon such lessee to raise objections (if any) to the application within fourteen days after receipt of the notice, stating reasons and submitting affidavits or solemn declarations, if any, in support thereof.

- (b) Failure on the part of a lessee within the prescribed period mentioned in paragraph (a) to object to an application for authorisation to charge a higher rent than he has to pay, shall be deemed to be acquiescence in the proposed increase.
- (c) On receipt by the secretary of an objection to the application by the lessor, the secretary shall forward a copy of such objection, together with the reasons therefor and supporting affidavits or solemn declarations, if any, to the lessor, requesting him within fourteen days to submit in writing a reply to such objection.
- (d) On receipt of the lessor's reply, or expiry of the period referred to in paragraph (c) (whichever event takes place first), the secretary shall submit all the documents concerning the matter to the chairman, together with the comments of the inspector who has investigated the matter on instructions from the secretary.

Chairman disposes of undisputed complaints and applications himself and refers the rest to the rent board.

9. (1) The chairman of a rent board, or, in his absence, the vice-chairman, shall —

- (a) (i) investigate each complaint referred to in section 8(1)(a), on submission to him by the secretary of all documents that have a bearing on the matter;
- (ii) refer each such complaint disputed or denied by the lessor, and each such complaint not disputed or denied by the lessor, but which as a result of any special circumstances should in his opinion be considered by the full rent board, to the rent board to be considered at the next meeting, and he shall summon each witness whose evidence in his opinion may prove to be of importance, to attend such meeting;
- (iii) decide personally in the manner prescribed in section 12 on each such complaint which is not disputed or denied by the lessor and which in his opinion should not be referred to the rent board;

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- (b) (i) consider each application referred to in section 8(2)(a), on submission by the secretary to him of all the documents that have a bearing on the matter;
  - (ii) refer each such application disputed by the lessee or a lessee, or to which the lessee or a lessee has objected in the manner prescribed in section 8(2), and each such application not so disputed by the lessee or a lessee or to which no objection was raised, but which as a result of any special circumstances in his opinion should be considered by the full rent board, to the rent board, to be considered at the next meeting, and he shall summon each witness whose evidence may in his opinion prove to be of importance, to attend such meeting;
  - (iii) decide personally in the manner prescribed in section 12 on each such application which is not disputed by the lessee or a lessee, or to which no objection was raised, and which in his opinion should not to be referred to the rent board;
- (c) authorise or order personally, at the request of a lessor or a lessee, and without referring the matter to the rent board, a proportionate increase or reduction as the case may be, of the rent registered in terms of section twenty-four, or of a reasonable rent determined by a rent board or a revision board under section 12 or section 19, when the assessment rates and taxes and other monies levied by the local authority, and for the payment of which the lessor is responsible, are increased or reduced.

(2) Decisions, authorisations or orders by the chairman of a rent board, or, in his absence, by the vice-chairman, given under subsection (1)(a)(iii), subsection (1)(b)(iii) or subsection (1)(c) shall for all purposes be deemed to be decisions, authorisations or orders by that rent board.

Functions, powers and duties of rent boards.

10. (1) A rent board shall —

- (a) investigate the complaints referred to it under section 9(1)(a)(ii) by the chairman;
- (b) consider the applications referred to it under section 9(1)(b)(ii) by the chairman;
- (c) perform the other functions and duties and exercise the powers entrusted to and conferred on it under this Ordinance.

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(2) At a meeting of a rent board to investigate a complaint or to consider an application, every lessee and lessor shall be entitled, if he so wishes, to be represented or assisted by an advocate or attorney or other representative.

Investigations by rent boards.

11. (1) A rent board may —

- (a) for the purpose of any investigation initiated by it or a matter which it considers, summon any person who in its opinion may be able to give material information concerning the subject of the investigation or who it presumes or believes has in his possession or custody or under his control any book, document or thing which has any bearing upon the subject of the investigation, to appear before it at a time and place specified in the summons, to be questioned, or to produce that book, document or thing and the rent board may retain for examination any book, document or thing so produced;
- (b) call, and by its chairman, administer an oath to, or accept an affirmation from, any person present at the investigation who was or may have been summoned under section 9(1)(a)(ii) or section 9(1)(b)(ii), and may question him and require him to submit any book, document or thing in his possession or custody or under his control;
- (c) at all reasonable times enter and inspect any premises for the purpose of any investigation instituted by it;
- (d) employ any competent valuator or other technical adviser to assist it on such conditions and at such remuneration as determined by the Executive Committee from time to time.

(2) A summons requiring of any person to appear before a rent board or to submit any book, document or thing to the board, shall be in the form prescribed by regulation, and shall be signed by the chairman or the secretary of the board, and shall be served in the same manner as a subpoena issued by a magistrate's court in a criminal case, or by prepaid registered post addressed to the person concerned at the place where the dwelling of which he is the lessee is situated or at the address known to the rent board: Provided that if it is proved that such registered document has not reached the addressee, or reached him later than twenty-four hours before the time the investigation was due to commence, the summons shall be deemed not to have been properly served.

(3) If any person duly summoned under this section, section 9(1)(a)(ii) or section 9(1)(b)(ii) fails, without sufficient cause, to attend at the time and place specified in the summons, or to remain in attendance until excused by the chairman from further attendance, or if any person

called in terms of subsection (1)(b) of this section refuses to be sworn or to make affirmation as a witness, or fails, without sufficient cause, to answer fully and satisfactorily to the best of his knowledge and belief all questions lawfully put to him concerning the subject of the investigation, or to produce any book, document or thing in his possession or custody or under his control which has any bearing upon the subject of the investigation, he shall be guilty of an offence: Provided that the rules of law with regard to privilege, as applicable to a witness subpoenaed to give evidence before a court of law, or to produce any book, document or thing shall apply in connection with the questioning of such person or the production of such book, document or thing.

(4) Any witness who, having been sworn in or having made an affirmation, gives a false reply to any question material to the issue and lawfully put to him, or who makes a false statement on any matter, knowing such reply or statement to be false, shall be guilty of an offence.

(5) Any person who wilfully hinders the chairman, the secretary or any member of a rent board in the exercise of any of the powers conferred upon him by this Ordinance, or who, while any proceedings of a rent board are in progress, wilfully insults the chairman or any member of the board taking part in the proceedings or wilfully interrupts such proceedings or otherwise misconducts himself at the place where such proceedings are in progress, shall be guilty of an offence.

(6) Any person convicted of an offence under subsections (3) or (5) shall be liable to a fine not exceeding one hundred rand or imprisonment not exceeding one month, or to both such fine and such imprisonment, and any person convicted of an offence under subsection (4) shall be liable to a fine not exceeding five hundred rand or imprisonment not exceeding six months, or to both such fine and such imprisonment.

Orders and authorisations of rent boards in regard to complaints and applications.

12. (1) When any complaint that a lessee has been required to pay an unreasonable rent for a dwelling has been duly investigated in accordance with the provisions of this Ordinance, and the rent board (or the chairman of the rent board when he has to decide alone) is satisfied that such complaint is well founded, it (or he) shall order the lessor to reduce the rent which the lessee has to pay for the dwelling, to an amount which the rent board (or the chairman thereof, as the case may be), determines to be a reasonable rent therefor, and may further order the lessor forthwith to refund to the lessee, as from the date upon which the complaint was delivered to the lessor, such sum as has been paid in excess of the amount which the rent board (or the chairman thereof, as the case may be) determines to be a reasonable rent, less any arrear rent owing by the lessee: Provided that where any such complaint relates to any dwelling forming part of a group of dwellings in the same

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building or complex, the rent board may also investigate the reasonableness of the rent which has been charged for the other dwellings in the said building or complex and may, if it is satisfied that the rent charged for any of the other dwellings therein is unreasonable, order the lessor to reduce the rent which the lessee or lessees concerned are required to pay for such other dwellings, to an amount which the board determines to be a reasonable rent therefor, and may further order the lessor forthwith to refund to the said lessee or lessees, as from the date upon which the said complaint was delivered to the lessor, such sum as has been paid in excess of the amount the rent board determines to be a reasonable rent, less any arrear rent owing by the said lessee or lessees.

(2) When an application by a lessor for authorisation to increase the rent for a dwelling has been duly considered in accordance with the provisions of this Ordinance, and the rent board (or the chairman thereof where he has to decide alone) is satisfied that such application should be granted, it (or he) may authorise the lessor to increase the rent to an amount which the board (or the chairman thereof, as the case may be) deems to be reasonable.

(3) If a rent board (or the chairman thereof where he has to decide alone) is of the opinion that a complaint or an application for an increase of rent was vexatious or was made without any reasonable expectation of a favourable result, it (or he) may order the person who lodged the complaint, or made the application, to pay to the lessor or lessee (as the case may be) a sum not exceeding thirty rand to compensate such lessor or lessee for his expenses in connection with the hearing.

(4) An order for the payment of any amount under subsections (1) or (3) shall have the effect of a civil judgement in favour of the lessee or the lessor (as the case may be) and may be executed as if it were such a judgement: Provided that no writ of execution shall be issued before the period of thirty days referred to in section 17 has expired, and if application has within that period been made for a review of the order by the revision board, the issue of such writ shall be stayed pending the decision of the revision board.

(5) An authorisation under subsection (2) to increase rent may be made retrospective to the date on which the lessor's application for authorisation to increase the rent was delivered to the lessee, but not for a period exceeding six months: Provided that —

(a) the lessor shall not be authorised to increase the rent with retrospective effect during the currency of a lease for a fixed period, unless —

(i) the lessor gave written notice to the lessee before entering into such lease that he intended increasing the rent with the permission of the rent board concerned, duly granted in accordance with the provisions of this Ordinance, to an amount equal at least to that authorised by the said rent board; and

(ii) a clause with a similar effect was included in the lease;

(b) in the case of a lease for an indefinite period, the lessor shall not be authorised to increase the rent with retrospective effect unless he gave the lessee written notice of one month (or of such other period in force as a period of notice under the lease) of his intention to apply to the rent board for authorisation to increase the rent.

(6) When a complaint has been duly investigated in accordance with the provisions of this Ordinance, or when a rent board has, under section 16 of this Ordinance, reconsidered its decision or that of its chairman (where he had to decide alone) in regard to a complaint, and such rent board is satisfied that a reasonable rent exceeds the rent actually charged by the lessor, such rent board may authorise the lessor, if the lessor applies therefor, and without further investigation, to increase the rent to such an amount as is found to be reasonable by such rent board.

(7) When an application has been duly considered in accordance with the provisions of this Ordinance, or when a rent board has, under section 16 of this Ordinance, reconsidered its decision or that of its chairman (where he had to decide alone) in regard to an application, and such rent board is satisfied that a reasonable rent is less than the rent actually charged by the lessor, such rent board shall order the lessor to reduce the rent payable by the lessee for the dwelling to an amount which such rent board determines to be a reasonable rent therefor.

Signing and service of orders and authorisations of rent boards.

13. An order or authorisation issued under section 12 by a rent board (or by the chairman of a rent board, where he has to decide alone), shall be signed by the chairman and the secretary of the rent board and shall be served by being sent by prepaid registered post, or by being delivered by the secretary in person,

(a) to the lessor or to the agent (if any) of such lessor at the last known place of abode or place of business of such lessor or agent; and

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- (b) to the lessee at the dwelling to which the order or authorisation relates or at his last known postal address.

Effect of an order to reduce rent.

14. The effect of an order under section 12 to reduce rent is that no rent in excess of the amount to which it has thereby been reduced, shall be payable by the lessee or any subsequent lessee to the lessor or any subsequent lessor in respect of the dwelling to which the order relates, and the production by any such lessee of the order or a copy thereof certified under the hand of the chairman of the rent board concerned shall be a complete defence to any legal proceedings by or on behalf of any such lessor against such lessee to recover in respect of that dwelling any amount in excess of the amount to which the rent has been reduced by the order, or to any legal proceedings to recover from such lessee possession of, or to eject him from that dwelling on the grounds of non-payment of so much of the rent as represents such excess.

Non-observance of order of rent board.

15. (1) (a) If, after a rent board has made an order whereby a reasonable rent for any dwelling is determined, any lessor knowingly requires or permits a lessee to pay a rent for such dwelling in excess of the amount so determined, he shall, irrespective of whether he was the lessor of that dwelling at the date when the said order was made, or not, be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or imprisonment not exceeding six months, or to both such fine and such imprisonment, and the court convicting him may, in addition to any penalty which it may impose, order him forthwith to refund to the lessee any sum paid to him by such lessee in excess of the said amount.
- (b) An order referred to in paragraph (a) shall have the effect of, and may be executed as if it were, a civil judgment in favour of the lessee.

- (2) (a) If, after notice has been given under section 24 to the secretary of a rent board of the lease of a dwelling, a lessor knowingly requires or permits a lessee to pay a rent for such dwelling in excess of the amount of the rent mentioned in such notice, he shall, irrespective of whether he was the lessor of that dwelling at the date when the said notice was given, or not, be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or imprisonment not exceeding six months, or both such fine and such imprisonment, and the court convicting him may, in addition to any penalty which it



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may impose, order him forthwith to refund to the lessee any sum paid to him by such lessee in excess of the said amount.

(b) An order referred to in paragraph (a) shall have the effect of, and may be executed as if it were, a civil judgment in favour of the lessee.

Variation or rescission of order by rent board.

16. (1) A rent board may, on good cause shown, reconsider and confirm, vary or rescind any decision given by it or by the chairman (where he had to decide alone).

(2) Notwithstanding the provisions of subsection (1), a rent board shall not have the power to reconsider any decision already reviewed by a revision board, or in connection with which application has been made for review, but if at any time after a decision has been reviewed by a revision board, the rent board receives written representations to the effect that good cause exists for the variation or rescission of the decision of such revision board, the rent board shall, after proper investigation, forward the record of its proceedings, together with its recommendations thereon, to the revision board which shall be instituted for the purpose of such further review by the Executive Committee.

Review of decision of rent board by revision board.

17. (1) Any lessor or lessee who is aggrieved by any decision of a rent board (including any decision given by such a board upon reconsideration in terms of section 16(1)) may within thirty days after the date of delivery, in terms of section 13, of the decision in question, or within such extended period as may on good cause be allowed by the revision board, and on payment of a deposit of thirty rand, apply to the secretary of such rent board to have such decision reviewed by a revision board, which shall be instituted by the Executive Committee for the purpose of such review.

(2) The deposit referred to in subsection (1) shall be forfeited if the matter at such review is decided wholly against the applicant, or if the applicant withdraws his application for revision.

Constitution of revision board.

18. (1) A revision board shall consist of three members appointed by the Executive Committee on the conditions determined by it.

(2) The Executive Committee shall designate one of the members of the revision board as chairman, who shall be a magistrate with at least ten years experience as magistrate or an advocate or attorney of the Supreme Court of not less than ten years' standing.

(3) The other two members of the revision board shall have experience or knowledge of the value of property and

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shall not be members of a rent board or officers or employees of the State.

Powers of revision board.

19. (1) A revision board may, subject to the provisions of this Ordinance —

(a) confirm, vary or reverse the decision of the rent board;

(b) if the record of the proceedings does not contain sufficient evidence or information to enable the revision board to give a decision remit the matter to the rent board and direct it to take such further evidence or to furnish such additional information as the revision board may deem necessary;

(c) take such other course as seems to it best calculated to dispose of the proceedings as justly, promptly and cheaply as possible.

(2) Any order of a revision board given under subsection (1)(a), shall for all purposes be deemed to be an order of the rent board, whose decision was reviewed.

(3) There shall be no appeal from a decision of a revision board.

(4) The provisions of sections 10 and 11 shall apply *mutatis mutandis* in respect of any steps which it may be necessary for a rent board to take in consequence of the remittal to it under subsection (1)(b) of any matter.

(5) The chairman of the revision board shall keep or cause to be kept complete records of the proceedings at a review and, within seven days after completion of the review forward a complete record of the proceedings to the Secretary for South West Africa and such record shall then be kept by the Secretary or an officer appointed by him unless otherwise determined by the Executive Committee.

(6) A lessee or lessor shall have the right, if he so desires, to appear before such revision board and be assisted or represented by an advocate or an attorney or other representative.

Remuneration, allowances and fees payable to members of revision board.

20. To members of a revision board who are not officers or employees of the State shall be paid such remuneration, allowances and fees as the Executive Committee may determine from time to time.

Appointment of inspectors.

21. (1) The Executive Committee may, subject to the provisions of the Public Service Act, 1957 (Act 54 of 1957) and the Administration Employees Ordinance, 1957 (Ordinance 17 of 1957) appoint any person as an inspector for the whole Territory or for the area or areas of jurisdiction of one or more rent boards.

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(2) Every inspector shall be furnished with a certificate, signed by an officer designated for the purpose by the Executive Committee, and stating that he has been appointed as an inspector under this Ordinance.

## Powers of inspectors.

22. (1) Upon the production of a certificate referred to in section 21(2), any inspector may, for any purpose connected with the carrying out of the provisions of this Ordinance —

- (a) at all reasonable times require to be admitted to any dwelling if he requires information with regard to such dwelling;
- (b) while he is in the dwelling, or at any other reasonable time, question any person personally or by letter who in his opinion may be able to furnish any information desired by him;
- (c) require from any person the production then and there or at a time or place fixed by him of all books and documents which in his opinion may afford evidence relevant to the enquiry upon which he is engaged, and examine and make extracts from and copies of any such book or document, and require an explanation of any entry in any such book or document:

Provided that any person who is questioned, or required to give an explanation or to produce books or documents, under this section, shall be entitled to all the privileges to which a person giving evidence before a court of law is entitled.

(2) An interpreter may accompany an inspector at the inspector's request on to any premises and for the purposes of this section any such interpreter shall, while acting under the lawful direction of the inspector he accompanies, be deemed to be an inspector.

(3) Any person by whom any premises are occupied, and any employee of such person, shall upon the request of an inspector, provide to the inspector such assistance as may be required by him to enter the premises or to exercise on such premises any of his powers under subsection (1).

(4) Any person who —

- (a) makes any statement to an inspector, which is false in any material particular, knowing the same to be false;
- (b) refuses or fails to answer to the best of his ability any question which an inspector in the lawful discharge of his duties has put to him;
- (c) hinders or obstructs an inspector in the lawful discharge of his duties;

(d) falsely holds himself out as an inspector,

shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand, or imprisonment not exceeding two months, or to both such fine and such imprisonment.

Secrecy.

23. An inspector, a secretary, or any member of a rent board or a revision board who discloses, except when required to do so as a witness in a court of law, or for the purposes of this Ordinance, any information in relation to any person, establishment or business, acquired in the exercise of his powers under this Ordinance, or in the performance of his duties in carrying out the provisions of this Ordinance, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or imprisonment not exceeding two months, or both such fine and such imprisonment.

Notice by lessor in respect of leased dwellings.

24. (1) Subject to the provisions of section 35 the lessor of any dwelling, save an employer leasing a dwelling to his employee, shall within one calendar month of the lease of such dwelling for the first time give notice thereof to the rent board of the area in which such dwelling is situated, in a form prescribed by the Executive Committee, and he shall also state the amount of the rent.

(2) Any lessor of a dwelling shall give written notice to the rent board of the area in which such dwelling is situated

(i) immediately upon his being succeeded as lessor of such dwelling; and

(ii) immediately such dwelling is leased by him to any lessee other than a lessee of whom such rent board has already been notified.

(3) Any lessor who fails to give the notice required in terms of subsections (1) or (2), shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or imprisonment not exceeding six months, or to both such fine and such imprisonment.

(4) A lessor of a dwelling, in respect of which an order of a rent board is in force, shall —

(a) before he is succeeded as lessor of such dwelling by another person, or

(b) within seven days after leasing the dwelling to any person who was not the lessee on the date when the said order came into force

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notify such successor or lessee, as the case may be, in writing of the existence of such order and the conditions thereof.

(5) Any lessor who fails to comply with the provisions of subsection (4) shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred rand or imprisonment not exceeding two months, or to both such fine and such imprisonment.

(6) The Executive Committee may from time to time by proclamation in the *Official Gazette* and from a date specified in such proclamation exclude dwellings situated in an area, which is defined in such proclamation and for which a rent board has been constituted, from the operation of the provisions of this section.

Prohibition on the claiming or receiving of monies in excess of rent.

25. (1) No lessor of any dwelling shall claim or accept, and no lessee of such dwelling shall offer in consideration of the grant, renewal or continuance of the lease thereof, the payment by any person of any bonus, premium or any other sum in addition to the rent, and neither the lessor nor the lessee shall impose or accept any condition or enter into or carry out any agreement calculated to defeat the objects of this Ordinance.

(2) No person shall in respect of any dwelling claim or accept from the lessee or a prospective lessee of such dwelling payment of more than one month's rent in advance, or any payment as a deposit in addition to the rent, save a deposit not exceeding an amount equal to half of one month's rent, in respect of any damage to such dwelling or any loss of keys for which the lessee may become liable: Provided that —

- (a) such deposit shall be clearly specified as such in the receipt issued for payment;
- (b) such deposit, which shall be invested with a building society in such manner as the lessor may deem fit (proof of which investment shall on demand be furnished to an inspector), shall be refunded by the lessor to the lessee when the lessee vacates the dwelling, together with interest thereon at the same rate as that earned from time to time on deposits in a savings account in the post office savings bank, less the actual amount of the damage to the dwelling and the actual cost of replacing lost keys, for which the lessee is liable;
- (c) if the lessor and lessee fail to agree on the amount of such damage or on the cost of replacement of lost

keys, the lessor shall forthwith submit an application to the rent board for the determination of the lessee's liability in respect of damage to the dwelling or loss of keys, and the rent board's determination shall be final;

- (d) if the rent board is of the opinion that the lessor has unreasonably failed, after demand, to refund the said deposit to the former lessee or to submit an application in terms of paragraph (c) of this proviso, the rent board may order the lessor to refund the said deposit to the former lessee, together with interest at a rate not exceeding eight-and-one-half per cent per annum as from the date on which the former lessee vacated the dwelling to the date of payment, and such order shall have the effect of, and may be executed as if it were, a civil judgment.

(3) Any person who contravenes a provision of subsection (1) or (2), or fails to comply with any direction given therein, shall be guilty of an offence and be liable on conviction to a fine not exceeding five hundred rand or imprisonment not exceeding six months, or to both such fine and such imprisonment.

Compulsory issue of receipts for rent.

26. (1) A lessor shall, upon payment of any rent by a lessee, forthwith issue to such lessee a receipt for such payment, and such receipt shall clearly indicate the address of the dwelling and the period for which such rent has been paid.

(2) A lessor who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or imprisonment not exceeding fourteen days, or to both such fine and such imprisonment.

Stay of legal proceedings.

27. When a complaint has been lodged under section 8(1)(a) in respect of a dwelling, no legal proceedings shall be instituted for the ejectment of the lessee of such dwelling based on the non-payment of rent before the rent board or the chairman of the rent board (where he has to decide alone) has notified the lessor of its or his decision on the complaint: Provided that the provisions of this section shall not apply if at the time of the institution of such proceedings rent is due and payable in respect of a period of three months or longer during which that dwelling was occupied by the lessee.

Limitation on ejectment of lessees.

28. (1) Notwithstanding the provisions of section 32, no order for the recovery of possession of a dwelling or for the ejectment of the lessee therefrom based on the fact of the lease having expired either by effluxion of time or in consequence of lawful notice, shall be made by any court as

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long as the lessee continues to pay, within seven days of the due date, the rent in respect of such dwelling agreed upon with the lessor or determined under this Ordinance, and complies with the other conditions of the lease, except on the further grounds that

- (a) the lessee has done or is doing material damage to the dwelling; or
  - (b) the lessee has been guilty of conduct which is a nuisance to occupiers of adjoining or neighbouring properties; or
  - (c) the dwelling is reasonably required, for personal occupation by the lessor or one or more co-lessors, or for occupation by his or their parent or child or children, or by a parent or a child or children of one of them, or by an employee in his or their employ; or
  - (d) the dwelling is required on reasonable grounds for the purpose of a reconstruction or an alteration scheme: Provided that before any order for ejection or recovery of possession is made by the court on the grounds stated in this paragraph
    - (i) the lessor shall file an undertaking that such scheme has been started and that it will be carried out within a reasonable, specified time, and shall furnish such security as the court may consider sufficient for the purpose of meeting any obligation to pay compensation to the lessee which may arise under subsection (3) in the event of any failure to carry out such undertaking; and
    - (ii) the lessor shall satisfy the court that any permission necessary under any law for the carrying out of such scheme has been obtained from the authority from which it has in terms of such law to be obtained or on some other grounds which, regard being had to all the circumstances, the court deems to be sufficient.
- (2) (a) If a lessor has in any manner whatsoever caused or induced a lessee to vacate any dwelling on the grounds stated in subsection (1)(c), and such dwelling is without reasonable cause not occupied within one month from the date on which the lessee vacated the said dwelling, by the lessor or co-lessors, or by his or their parent or child, or by a parent or child of one of them, or by his or their employee, and is not uninterruptedly so occupied for a period of twelve consecutive months, the lessor shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or

imprisonment not exceeding six months, or to both such fine and such imprisonment, and the court convicting him may, in addition, order him to compensate the lessee for any loss which the lessee can prove to have suffered as a direct consequence of his removal from the dwelling.

(b) An order referred to in paragraph (a) shall have the effect of, and may be executed as if it were, a civil judgment in favour of the lessee.

(3) If the lessor has caused a lessee to vacate any dwelling on the grounds stated in subsection (1)(d), and the reconstruction or alteration scheme is not carried out in accordance with the undertaking filed by the lessor, the lessor shall, unless he proves that the failure to carry out the scheme as aforesaid is due to circumstances beyond his control, be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or imprisonment not exceeding six months, or to both such fine and such imprisonment, and shall in addition be liable to pay compensation to the lessee for any loss suffered by him as a direct consequence of his vacation of that dwelling.

(4) A lessor of a dwelling who, with intent to deprive the lessee of the peaceful enjoyment of the occupation of that dwelling and to induce him by such means to vacate the dwelling,

(a) threatens the said lessee in any way (save in an attempt to collect rent which is actually in arrear);  
or

(b) indulges in an activity which constitutes a nuisance to the lessee; or

(c) refuses facilities or suspends services to which the lessee is entitled,

shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or imprisonment not exceeding six months, or to both such fine and such imprisonment.

(5) If the lessor of a dwelling, without obtaining an order of court

(a) removes from that dwelling any property (or causes the removal of such property) belonging to the lessee of that dwelling without such lessee's consent;  
or

(b) prevents a lessee from using or occupying that dwelling,



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such lessor shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or imprisonment not exceeding two months, or to both such fine and such imprisonment.

Lessee entitled to benefit and subject to obligations arising from original lease.

29. A lessee who by virtue of the provisions of section 28(1), remains in occupation of any dwelling after the expiry of the lease of such dwelling, shall, as long as he so remains in occupation of such dwelling, observe all the terms and conditions of that lease, and shall be entitled to every benefit proceeding from the best utilisation and enjoyment normally associated with the occupation of such dwelling, as if the said lease were still in force.

Children no ground for refusal to lease.

30. (1) No lessor who has in any manner whatsoever made known that he has a dwelling to let shall —

(a) refuse to let such dwelling to any person merely on the grounds that such person intends to permit a child to reside therein;

(b) declare (whether expressly or by implication) in any notice issued by him or on his behalf, by way of advertisement or otherwise, that he is not prepared to let such dwelling to any person who intends to permit a child to reside therein, or that preference will be given to persons without children or to persons with children in certain age categories;

(c) enquire from any prospective lessee of such dwelling whether he intends to permit a child to reside therein.

(2) A lessor shall not place a restriction on the number of persons occupying the dwelling if such restriction is calculated to prohibit or restrict occupation by a child or children of the lessee.

(3) Any person who contravenes any provision of subsections (1) or (2) shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or imprisonment not exceeding six months, or to both such fine and such imprisonment.

(4) If in any prosecution for a contravention of the provisions of subsections (1)(a) or (2), it is proved that the lessor has refused to let a dwelling to a prospective lessee, or that a lessor has instituted action against a lessee on the grounds of a clause in a lease placing a limitation on the number of persons occupying a dwelling, after his becoming aware of the fact that such prospective lessee or such a lessee intended to permit a child to reside therein, or that a child has been born to such lessee, or that a child of a lessee

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lives with him, it shall be presumed, until the contrary is proved, that such refusal or such action is based solely on the grounds referred to in subsections (1)(a) or (2).

Notice to vacate dwelling.

31. (1) (a) When a lessor gives notice to a lessee to vacate a dwelling he shall do so in writing, stating the reasons, and a copy of such notice shall be lodged by the lessor with the secretary of the rent board in whose area of jurisdiction the dwelling is situated immediately after the notice has been served on the lessee.

(b) Any person who fails to comply with the provisions of subsection (1)(a) shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or imprisonment not exceeding two months, or to both such fine and such imprisonment.

(2) If in any notice to a lessee to vacate any dwelling the lessor has knowingly given any reason which is false, or made a false statement, he shall be guilty of an offence and liable to a fine not exceeding five hundred rand or imprisonment not exceeding six months, or to both such fine and such imprisonment, and the court which convicts him may, in addition, order him to compensate the lessee for any loss which the lessee may prove to have suffered as a result of having acted in terms of such notice.

Periods of notice to vacate.

32. (1) When a lessor gives notice to a lessee to vacate business premises or a dwelling, such lessor shall

(a) in the case of business premises, give notice of at least one year; and

(b) in the case of a dwelling, give notice of at least three months,

irrespective of whether the lease provides for a period of notice or not: Provided that

(i) the lessee of business premises or of a dwelling may consent in writing on a later date than the commencement or renewal of the lease to a shorter period of notice than that provided for in this section; and

(ii) an employee who leases a dwelling from his employer as a condition of service shall vacate the dwelling within seven days after termination of his services unless otherwise agreed between the lessor and lessee:

Provided further that the period of notice as required by this section shall not be applicable where the lessee of business premises has done material damage to such premises, or has

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indulged in conduct which constitutes a nuisance to the residents or occupants of adjoining or neighbouring premises, or is in arrear with the payment of rent for the said business premises.

(2) The notice of a lessor to a lessee of business premises to vacate the premises shall be in writing.

Lessor responsible for repairs and replacements necessitated by normal wear and tear, and for the payment of rates and taxes.

33. (1) In the absence of a written agreement to the contrary, the lessor of a leased dwelling, and not the lessee, shall be responsible for repairs to the leased dwelling and for the replacement of essential equipment therein in so far as such repairs and replacement are necessitated by normal wear and tear, and no such lessor shall recover in any way from such lessee any expenses incurred with regard to such repairs and replacement.

(2) The lessor of a leased dwelling, and not the lessee, shall be responsible for the payment of rates and taxes and other fees (save fees and monies in respect of the supply of water, electricity and gas) which are payable to the local authority with regard to that dwelling and the grounds on which it is situated, and no lessor shall claim such rates and taxes and other fees from the lessee in addition to the normal rent of which the secretary has been notified under section 24, or the amount of a reasonable rent as determined under section 12 or 19.

Jurisdiction of magistrates' courts.

34. Notwithstanding anything to the contrary contained in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by and make any order of court provided for in this Ordinance.

Limitation of application of Ordinance.

35. The provisions of this Ordinance shall not apply —

- (a) to a dwelling situated in an area for which no rent board has been established;
- (b) to a dwelling the rent of which is controlled or determined under any other law.

Exemptions.

36. (1) The Executive Committee may from time to time and with effect from a date determined by it exempt any kind or class of dwelling from the provisions of this Ordinance.

(2) Any such exemption and the date on which it takes effect shall be announced in the *Official Gazette*.

General penalty.

37. Any person convicted of contravening any provision of this Ordinance, or of failing to comply with any requirement or direction thereof, shall, where no penalty has been expressly provided, be liable to a fine not exceeding

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two hundred rand or imprisonment not exceeding two months, or to both such fine and such imprisonment.

Regulations.

38. (1) The Executive Committee may make regulations not inconsistent with the provisions of this Ordinance

- (a) prescribing the manner in which the proceedings of rent boards shall be conducted, the forms to be used and the notices to be given by such boards in connection with the exercise of their functions;
- (b) prescribing the procedure to be adopted, the forms to be used, and the notices to be given in connection with the review of any decision of a rent board by a revision board, or in connection with any proceedings under section 16;
- (c) empowering rent boards generally or for particular areas, to require lessors of dwellings within the respective areas of jurisdiction of such boards to furnish information, either at regular intervals or on such occasions as the board concerned may deem necessary, and prescribing the forms or returns to be used for this purpose;
- (d) in relation to the exercise of their functions and the carrying out of their duties by inspectors;
- (e) in relation to any matter which is required or permitted to be prescribed under this Ordinance;
- (f) generally in relation to all matters which it considers necessary or expedient to prescribe in order that the purposes of this Ordinance may be achieved.

(2) Any regulations promulgated under this section may prescribe penalties for any contravention thereof, or failure to comply therewith, not exceeding a fine of two hundred rand or imprisonment of two months.

Repeal of laws, and dissolution of existing rent boards.

39. (1) Subject to the provisions of subsection (3) the laws mentioned in Schedule B are hereby repealed to the extent set out in the third column of the said Schedule.

(2) Every rent board established under any of the laws referred to in Schedule B shall dissolve with effect from the date of the commencement of this Ordinance.

(3) Any notice issued or anything done under a provision of a law repealed by subsection (1) shall be deemed to have been issued or done under the corresponding provisions of this Ordinance.

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Short title.

40. This Ordinance shall be called the Rents Ordinance, 1977, and shall come into operation on a date to be determined by the Executive Committee and made known by proclamation in the *Official Gazette*.

**Schedule A**

DOCUMENTS TO BE PRODUCED BY A LESSOR IN THE CASE OF A COMPLAINT OR APPLICATION UNDER SECTION 8.

1. Written evidence of municipal rates and taxes and levies payable.
2. Written evidence of premiums paid in respect of fire insurance.
3. Evidence of expenses incurred in respect of service, water and lights, if any.
4. Evidence of collection fees paid, if any.
5. Estimated rent value of furniture supplied, if any.
6. Municipal certificate of —
  - (1) municipal valuation of the
    - (a) land; and
    - (b) improvements;
  - (2) the area of the land;
  - (3) mass-factor permissible coverage and actual coverage.
7. Applicable only to rooms and flats:

The floor area of

  - (a) each room or flat separately (inside measurements);
  - (b) habitable part of building.
8. Sworn statement by a quantity surveyor, architect or appraiser in respect of the
  - (a) replacement cost of the building with specific reference to the structure; finishing; date of erection; additional facilities such as built-in cupboards; extra geysers, lavatories, bathrooms; quality of material used; and any other important information.
  - (b) value depreciation factor as determined from the standard of repairs and maintenance.

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## Schedule B

## LAWS REPEALED

Number and year of law	Short title	Extent of repeal
Proclamation 4 of 1944	Rents Proclamation, 1944	The whole
Proclamation 54 of 1951	Rents Amendment Proclamation, 1951	The whole
Ordinance 16 of 1957	Rents Amendment Ordinance, 1957	The whole
Ordinance 27 of 1967	Rents Amendment Ordinance, 1967	The whole
Ordinance 5 of 1968	Rents Amendment Ordinance, 1968	The whole
Ordinance 10 of 1968	Rents Further Amendment Ordinance, 1968	The whole
Ordinance 10 of 1969	Rents Amendment Ordinance, 1969	The whole
Ordinance 22 of 1971	Rents Amendment Ordinance, 1971	The whole
Ordinance 18 of 1972	Rents Amendment Ordinance, 1972	The whole