

CHAPTER 60.

Of the recovery of possession of Tenements, in certain cases.

SECTION

- 1.—Proceedings before Justice of the Peace.
- 2.—Service of notice of application.
- 3.—Appeal to Supreme Court.
- 4.—Bond to be approved.

SECTION

- 5.—Non-liability of Justice or constable.
- 6.—Forcible entry and detainer.
- 7.—Fees.
- 8.—Interpretation clause. Schedule.

1. Whenever the term or interest of the tenant of any house or land, held by him either at will or for a term of years, either without being liable to the payment of rent or at a rent not exceeding one hundred dollars annually, shall have been duly determined, or whenever such

tenant shall be a half year in arrear in payment of his rent, and there shall be no sufficient distress upon the premises, the said rent not being for ground on which a house shall have been built by the tenant, and such tenant or other person who shall occupy any part of the premises shall neglect or refuse to quit and deliver up possession of the same, the landlord of the said premises or his agent may cause the person so neglecting or refusing to quit and deliver up possession to be served (in the manner hereinafter mentioned) with a written notice in the form set forth in the schedule to this chapter, signed by the landlord or his agent, of his intention to proceed to recover possession under the authority of this chapter; and if the tenant or occupier shall not thereupon appear at the time and place appointed in such notice, and show, to the satisfaction of a stipendiary Justice of the Peace, as hereinafter mentioned, reasonable cause why possession should not be given under the provisions of this chapter, and shall still neglect or refuse to deliver up possession of the premises or any part thereof of which he is then in possession to the said landlord or agent, such landlord or agent may give to such stipendiary Justice of the Peace proof of the holding, and of the end or determination of the tenancy, or of the rent being in arrear and unpaid as aforesaid, and no sufficient distress on the premises to satisfy the same; and upon proof of the service of the notice, and of the neglect or refusal of the tenant or occupier to quit, such stipendiary Justice of the Peace shall issue a warrant, directed to the constables of the district, commanding them within a period to be therein named, not less than five nor more than fifteen days from the date of such warrant, to enter (by force if needful) into the premises and give possession of the same to the landlord or agent: Provided that in the case of a tenant sought to be ejected for non-payment of rent as aforesaid, the Justice may vacate his warrant if the rent be paid within the period to be named therein as aforesaid, together with the costs of the landlord's proceedings: Provided that entry upon any such warrant shall not be made at any time except between the hours of nine in the morning and four in the afternoon; and also, that nothing herein contained shall protect any person on whose application and to whom any warrant shall be granted from any action which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession, where such person had not, at the time of granting the same, lawful right to the possession of the said premises.

2. Notice of application intended to be made under this chapter may be served either personally or by leaving the same with some person being in and apparently residing at the place of abode of the person so holding over or being in arrear as aforesaid; and the person serving the same shall read over the same to the person served, or with whom the same shall be left as aforesaid, and explain the purport and intent thereof: Provided, that if the person so holding over or being in arrear as aforesaid cannot be found, and the place of abode of such person shall either not be known or admission thereto cannot be obtained for serving such notice, the posting up of the said notice on some conspicuous part of the premises shall be deemed to be good service upon such person.

3 Any person who shall consider himself aggrieved by the decision of any Justice in pursuance of this chapter may appeal from such decision to the Supreme Court at the first sittings thereafter, on entering into a bond, in the form set forth in the schedule to this chapter annexed, with two sureties, as hereinafter mentioned; and the decision of such Court as last aforesaid shall be final: Provided that the penal sum of such bond shall not exceed two hundred dollars.

4. Every such bond as aforesaid shall be made to the landlord or his agent, and the same, and said sureties, shall be approved of in writing on said bond by said Justice; and if the bond so taken be forfeited, or if upon the hearing of such appeal for the securing of which such bond was given the Court before whom the same shall be heard shall not certify that the condition of the bond hath been fulfilled, the party to whom the same shall have been made, as aforesaid, may bring an action and recover thereon: Provided, that the Court before whom such an appeal shall be heard may, by rule of Court, give such relief to the parties upon such bond as may be agreeable to justice; and such rule shall have the nature and effect of a defeasance of such bond, and such Court may make such order as to the costs as may appear reasonable.

5. No action or prosecution shall be brought against the Justice by whom such warrant shall have been issued, or against any constable or peace officer by whom such warrant shall have been executed, for issuing such warrant or executing the same by reason that the person on whose application the same was granted had not lawful right to the possession of the premises.

6. In cases of wrongful and forcible entry and detainer of lands or tenements, any stipendiary Justice within whose jurisdiction the land or premises lie, on complaint on oath being made, shall summon such person so in possession to answer such complaint, and, if he shall adjudge in favour of the complainant, punish the defendant, if he shall see fit, by fine not exceeding twenty dollars and costs; and in case of non-payment of such fine and costs within a time to be appointed by such Justice, may arrest and imprison the defendant for any term not exceeding one month; and also issue his warrant to take possession, as in other cases provided for by this chapter. The provisions of this section shall not apply where the party complained of, or the person under whom he claims, has been in quiet possession for one year before the making of the complaint.

7. The following scale of fees shall be paid in the first instance by the landlord or agent to the Clerk of the Peace and constables for proceeding under this chapter, and may be levied by execution on the goods and chattels of the tenant or the person wrongfully holding over:

Notice and service	...	...	...	...	...	\$1.00
Complaint	...	...	...	...	...	50
Hearing	...	...	...	...	...	25

Warrant to take possession...	...	...	...	...	\$1.50
Mileage, per mile...	...	...	...	...	25

8. In construing this chapter, the word "premises" shall signify lands and houses and tenements, and the word "agent" shall signify any person usually employed by the landlord in the letting of the premises, or in the collection of the rents, or specially authorized to act in the matter.

SCHEDULE.

NOTICE OF LANDLORD TO TENANT.

I, _____ (owner, or agent to the owner, as the case may be), give you notice that unless peaceable possession of the (shortly describing the premises), situate _____ which was held (of me or of _____ as the case may be), which expired or was determined on _____ and which is now held over and detained from _____ (or for which six months rent is in arrear and unpaid, and no sufficient distress to satisfy the same,) be given to _____ on or before the expiration of seven days from the service of this notice, unless the rent so in arrear and unpaid as aforesaid be paid, I shall on the _____ day of _____ apply to one of Her Majesty's stipendiary Justices of the Peace, for the _____ district to issue his warrant directing the constables of the said district to enter and take possession of the said _____ and to eject any person therefrom.

(Signed),

A. B.
(Owner or agent.)

To Mr. C. D.

(The party in possession.)

COMPLAINT BEFORE JUSTICE OF THE PEACE

The complaint of _____ (owner or agent), made before me, _____ one of Her Majesty's stipendiary Justices of the Peace, who saith that the said _____ did let to _____ (premises), for _____ under a rent of _____ and the said tenancy was determined on the _____ (or that six months rent was in arrear and unpaid, and no sufficient distress to be found on the premises to satisfy the same), and that on the _____ the said _____ did serve on (the tenant overholding) a notice

FORM OF BOND ON APPEAL.

Know all men by these presents, that we, A. B., C. D., and E. F. of are held and firmly bound unto G. H., of in the penal sum of dollars, to pay to the said G. H., his executors, administrators or assigns, and for which payment well and truly to be made we jointly and severally bind ourselves, our executors and administrators, by these presents.

Sealed with our seals, and dated at this day of , A. D. 18 .

The condition of the within written recognizance is such that if the said A. B. shall, in the term of the Supreme Court of this colony, now next following, to be held (at St. John's or on the circuit, as the case may be), enter and prosecute an appeal against a certain judgment bearing date the day of and made by one of Her Majesty's stipendiary Justices of the Peace, in a proceeding for summary eviction under the law providing for the recovery of tenements after due determination of the tenancy, and in the case instituted by the said G. H.; and further, that if the said A. B. shall abide by and duly perform the order of the Court to be made upon the trial of such appeal, then the said recognizance to be void, otherwise to remain in full force and virtue.

Signed, sealed, and delivered
in the presence of

[Seal]

[Seal]

[Seal.]