



Province of Alberta

LANDLORD'S RIGHTS ON BANKRUPTCY ACT

Revised Statutes of Alberta 2000
Chapter L-5

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Assignment of property

1 A lessee against or by whom a receiving order or assignment is made under the *Bankruptcy and Insolvency Act* (Canada) is deemed to have made an assignment of all the lessee's property for the general benefit of the lessee's creditors before the date of the receiving order or assignment.

RSA 1980 cL-7 s1;1994 c23 s51

Payment of rent after assignment

2 As soon as the receiving order or assignment is made

- (a) the landlord of the lessee is not afterwards entitled to distrain or realize the rent by distress, and
- (b) repealed 2013 cS-19.3 s15.

RSA 2000 cL-5 s2;2013 cS-19.3 s15

Surplus rent

- 3** The lessee is a debtor to the landlord
- (a) for all surplus rent in excess of the 3 months' rent accrued due at the date of the receiving order or assignment, and
 - (b) for any accelerated rent to which the landlord may be entitled under the lease but not exceeding an amount equal to 3 months' rent.

RSA 1980 cL-7 s3

When landlord unable to claim from lessee

- 4** Subject to section 3, the landlord has no right to claim as a debt any money due to the landlord from the lessee for any portion of the unexpired term of the lessee's lease.

RSA 1980 cL-7 s4

Trustee

- 5(1)** The trustee is entitled to occupy and to continue in occupation of the leased premises for so long as the trustee requires the premises for the purposes of the trust estate vested in the trustee.
- (2)** The trustee shall pay to the landlord for the period during which the trustee actually occupies the leased premises from and after the date of the receiving order or assignment a rental calculated on the basis of the lease.
- (3)** A payment to be made to the landlord in respect of accelerated rent shall be credited against the amount payable by the trustee for the period of the trustee's occupation.

RSA 1980 cL-7 s5

Surrender of possession

- 6** The trustee may surrender possession at any time, but if the trustee occupies the leased premises for 3 months or more beyond the date of the receiving order or assignment the landlord is entitled to receive 3 months' notice in writing of the trustee's intention to surrender possession, or 3 months' rent instead of notice.

RSA 1980 cL-7 s6

Cessation of rights

- 7** After the trustee surrenders possession of the leased premises, any of the landlord's rights that are based on actual occupation by the trustee cease.

RSA 1980 cL-7 s7

Retention of premises by trustee

- 8(1)** This section applies only to premises leased by
- (a) a retail merchant, wholesale merchant, commission merchant or manufacturer, or

- (b) a person whose ostensible occupation is buying and selling goods, wares or merchandise that are ordinarily the subject of trade and commerce,

and used by the lessee for the purposes of that trade.

(2) Notwithstanding the legal effect of a provision or stipulation in the lease, the trustee

- (a) may, at any time while the trustee is in occupation of leased premises for the purposes of the trust estate and before the trustee has given notice of intention to surrender possession, or disclaimed, elect to retain the leased premises for the whole or a portion of the unexpired term, and
- (b) may, on payment to the landlord of all overdue rent, assign the lease to a person who
 - (i) will covenant to observe and perform its terms,
 - (ii) will agree to conduct on the demised premises a trade or business that is not reasonably of a more objectionable or more hazardous nature than that that was conducted on the premises by the lessee, and
 - (iii) is on application of the trustee approved by the Court of Queen's Bench as a person fit and proper to be put into possession of the leased premises.

(3) Notwithstanding subsection (2), before the person to whom the lease is assigned may go into occupation, the person shall

- (a) deposit with the landlord a sum equal to 6 months' rent, or
- (b) supply to the landlord a guarantee bond approved by the Court of Queen's Bench in a penal sum equal to 6 months' rent,

as security to the landlord that the person will observe and perform the terms of the lease and the covenants made by the person with respect to the person's occupation of the premises.

RSA 1980 cL-7 s8

Disclaimer of lease

9(1) The trustee may disclaim the lease at any time

- (a) before giving notice of the trustee's intention to surrender possession, or
- (b) before coming under an obligation to give notice in case of intention on the trustee's part to surrender possession.

(2) The entry of the trustee into possession of the leased premises and the occupation by the trustee of the leased premises while required for the purposes of the trust estate

- (a) is deemed not to be evidence of an intention on the trustee's part to elect to retain the premises, and
- (b) does not affect the trustee's right to disclaim or to surrender possession pursuant to this Act.

(3) If after occupation of the leased premises the trustee elects to retain them and afterwards assigns the lease to a person approved by the Court as provided by section 8,

- (a) the liability of the trustee whether personal or as trustee, and whether arising out of privity of contract or of estate, and
- (b) the liability of the estate of the lessee,

subject to this Act, is limited and confined to the payment of rent for the period of time during which the trustee remains in possession of the leased premises for the purposes of the trust estate.

RSA 1980 cL-7 s9

Under-lessee

10(1) If the lessee before the date of the receiving order or assignment has demised by way of under-lease any of the leased premises and the trustee disclaims or elects to assign the lease, the Court of Queen's Bench on the application of the under-lessee may make an order vesting in the under-lessee an interest in the property that is the subject of the demise to the under-lessee equivalent to that interest held by the under-lessee as under-lessee of the lessee.

(2) The equivalent interest referred to in subsection (1) shall be subject, except as to rent payable, to the same liabilities and obligations as the lessee was subject to at the date of the receiving order or assignment, and performance shall be secured under the same conditions as provided by section 8 in case of an assignment of lease made by a trustee.

RSA 1980 cL-7 s10

Covenant of under-lessee to pay

11 The under-lessee in a case falling within section 10

- (a) shall covenant to pay the landlord a rent not less than that payable by the under-lessee to the lessee, and

- (b) if the rent mentioned in clause (a) was greater than that payable by the lessee to the landlord, shall covenant to pay to the landlord the like greater rental.

RSA 1980 cL-7 s11

Rights of under-lessee

12(1) Section 8 is to be read subject to sections 10 and 11 so that an under-lessee if the under-lessee so desires may have prior opportunity to acquire the right to the possession for any unexpired term of the premises occupied or held by the under-lessee of the lessee.

(2) If it seems to the Court of Queen's Bench more desirable in the interest of the lessee's estate, and notwithstanding sections 10 and 11, an under-lessee may if the under-lessee so desires be given a prior opportunity to acquire pursuant to section 8 an assignment of the head lease.

RSA 1980 cL-7 s12



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