

CHAPTER 234.

LANDLORDS AND TENANTS AND GENERAL PROVISIONS.

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234.01 Distress for rent. The common-law right of a landlord to distrain for rent is abolished.

234.02 Attornment to stranger. The attornment of a tenant to a stranger shall be absolutely void and shall not in anywise affect the possession of his landlord unless it be made:

- (1) With the consent of the landlord; or
- (2) Pursuant to or in consequence of a judgment or order of a court of competent jurisdiction; or
- (3) To a purchaser upon a judicial sale who shall have acquired title to the lands by a conveyance thereof after the period for redemption, if any, has expired.

Note: Landowner's agreement to give cropper one-half of crops for working premises held a contract for services with title to crops remaining in landowner until division, rendering cropper's chattel mortgage, given after having breached agreement, ineffective as against owner. *Herried v. Broadhead*, 211 W 512, 248 NW 470.

234.03 Tenancies, how terminated. Whenever there is a tenancy at will or by sufferance, created in any manner, the same may be terminated by giving at least 30 days' notice in writing to the tenant requiring him to remove from the demised premises, or by the tenant's giving at least 30 days' notice in writing that he shall remove from said premises, and by surrendering to the landlord the possession thereof within the time limited in such notice; but when the rent reserved in a lease at will is payable at periods of less than one month such notice shall be sufficient if it be equal to at least the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will at least 14 days' notice to remove given by the landlord, shall be sufficient to determine the lease. [1935 c. 78; 1943 c. 113]

Note: A provision in a lease for the forfeiture of a deposit if the lessee failed to fulfill the obligations of the lease, is construed as not a provision for liquidated damages which would release the lessee abandoning the premises from further liability for rent. *Elmor R. Co. v. Community Theatres*, 208 W 76, 241 NW 632.

The use of premises by a lessee under a mortgagor for the illegal sale of intoxicat-

ing liquor constituted a breach of a covenant in the lease that the lessee would not use the premises for any purpose calculated to injure its reputation, entitling the receiver in a foreclosure proceeding to the immediate possession of such premises under a covenant giving the right of re-entry for breach of the covenants contained in the lease. *Evans v. Orgel*, 221 W 152, 266 NW 176.

234.04 Notice, how served; re-entry by landlord. Such notice shall be served by delivering the same to such tenant, or to some person of proper age residing on the premises, or if the tenant cannot be found and there is no such person residing on the premises such notice may be served by affixing the same in a conspicuous part of the premises where it may be conveniently read; and at the expiration of the time required after the service of such notice the landlord may re-enter, or maintain an action for the recovery of the possession thereof, or proceed in the manner prescribed by law to remove such tenant without any further or other notice to quit.

Note: A landlord who has given the thirty-day statutory notice to terminate a tenancy at will may reenter in a peaceable manner after the period has expired. Its right to do so is not affected by the fact that it sought the additional protection of a writ

of restitution which was issued upon a void judgment. In such case, entry by the sheriff through the unlocking of the door by the janitor in the tenant's absence is peaceable. *Shefelker v. First Nat. Bank*, 212 W 659, 250 NW 870.

234.05 Liability for double rent. If any tenant shall give notice of his intention to quit the premises by him holden and shall not accordingly deliver up the possession thereof

at the time in such notice specified such tenant, his executors or administrators shall from thenceforward pay to the landlord, his heirs or assigns double the rent which he should otherwise have paid, to be recovered at the same time and in the same manner as the single rent, and such double rent shall continue to be paid during all the time such tenant shall continue in possession as aforesaid.

234.06 Tenants for life, etc., to pay double value, when. If any tenant for life or years, or if any other person who may come into the possession of any lands or tenements, under or by collusion with such tenant, shall wilfully hold over any lands or tenements after the termination of such time and after demand made and one month's notice in writing given, in the manner hereinbefore provided, requiring the possession thereof by the person entitled thereto, such person so holding over shall pay to the person so kept out of possession or his representatives at the rate of double the yearly value of the lands or tenements so retained for so long a time as he shall so hold over or keep the person entitled out of possession; and shall also pay and remunerate all special damage whatever to which the person so kept out of possession may be subjected by reason of such holding over.

234.07 Tenant holding over is tenant from year to year; how tenancy ended. If a tenant for a year or more shall hold over after the expiration of his term he may, at the election of his landlord, be considered a tenant from year to year upon the terms of the original lease. But such tenancy may be terminated at the end of any year after the expiration of said term by either party to said lease upon giving to the other party thereto a notice in writing, not less than thirty days prior to the date of such expiration, that he elects to terminate such lease at the end of such year.

Note: While in the absence of agreement as to future occupancy by the tenant and there has been a holding over after expiration of a lease for years, the term is presumed to be for a year, the option on the part of the landlord to regard the tenant as liable for another year period cannot be exercised when the tenant remains in possession under an agreement that he is to hold for a shorter period. *Hog v. Johnson*, 209 W 581, 245 NW 650.

Where the defendant took possession of garage premises under a five-year lease in his individual name, and was then doing business as an individual although operating and paying rent under a corporate

name, and he made no attempt to surrender possession on the expiration of the lease, he could be considered, at the election of the landlord, a holdover tenant from year to year on the terms of the original lease, and could be held personally liable for the rent during the years that there was a holding over, in view of the fact that neither the landlord nor her agent knew or should have known that the defendant was not the tenant, although the defendant in fact had incorporated his business and assigned the original lease to the corporation and rent checks were issued in its name. *Voelz v. Spengler*, 237 W 621, 296 NW 593.

234.08 Recovery of rent on life lease. Any person having any rent due upon any lease for life or lives may have the same remedy to recover such arrears as if such lease were for years.

234.09 Person in possession liable for rent. Every person in possession of land out of which any rent is due, whether it was originally demised in fee or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession although it be only a part of what was originally demised; and in any action for the recovery of such rent the deed of demise or other instrument in writing, if there be any, showing the provisions of the lease, may be used in evidence by either party to prove the amount due from the defendant.

Note: This section does not relieve mortgagors from liability under the mortgage for taxes by imposing such liability upon corporation, allegedly an agent of mortgagees, which had accepted assignment, after taxes had accrued, of leasehold interest in mortgaged property under lease requiring lessee

to pay taxes. *Brown v. Loewenbach*, 217 W 379, 258 NW 379.

Where the lessee permits a third party to occupy and use the premises the lease may be used as evidence to prove the amount of rent due the landlord. *Maas v. Lutz*, 231 W 422, 285 NW 345.

234.10 Legal remedy not impaired. Nothing contained in the preceding sections shall deprive landlords of any legal remedy for the recovery of their rents, whether secured to them by their leases or provided by law.

234.11 Remedy for arrears on termination of life estate. Every person entitled to any rents dependent upon the life of any other may, notwithstanding the death of such other person, have the same remedy by action for the recovery of all arrears of such rent that shall be behind and unpaid at the death of such other person as he might have had if such person were in full life.

234.12 Remedy of executors. The executors or administrators of every person to whom any rent shall have been due and unpaid at the time of his death may have the same remedy by action for the recovery of all such arrears that their testator or intestate might have had if living.

234.13 Life tenant's executors may recover rent. When a tenant for life, who shall have demised any lands, shall die on or after the day when any rent became due and payable his executors or administrators may recover from the undertenant the whole rent due; if he die before the day when any rent is to become due they may recover the proportion of rent which accrued before his death.

234.14 Remedy of lessor's grantees. The grantees of any demised lands, tenements, rents or other hereditaments or of the reversion thereof, the assignee of the lessor of any demise and the heirs and personal representatives of the lessor, grantee or assignee shall have the same remedies by entry, action or otherwise for the nonperformance of any agreement contained in the lease so assigned or for the recovery of any rent or for the doing of any waste or other cause of forfeiture as their grantor or lessor had or might have had if such reversion had remained in such lessor or grantor.

234.15 Remedies of lessees against assignee of lessor. The lessees of any lands, their assigns or personal representatives shall have the same remedy by action or otherwise against the lessor, his grantees, assignees or his or their representatives for the breach of any covenant or agreement in such lease contained as such lessee might have had against his immediate lessor. The provisions of this and section 234.14 shall extend as well to grants or leases in fee reserving rents as to leases for life and for years.

234.16 Recovery for use and occupation. Any landlord may recover a reasonable satisfaction for the use and occupation of any lands or tenements by any person under any agreement not made by deed; and if any parol demise or other agreement, not being by deed, by which a certain rent is reserved, shall appear in evidence on the trial of any such action the plaintiff shall not on that account be debarred from a recovery, but may make use thereof as evidence of the amount of damages to be recovered.

234.17 Lessee may surrender premises, when. Where any building, which is leased or occupied, is destroyed or so injured by the elements, or any other cause as to be untenable, and unfit for occupancy, and no express agreement to the contrary has been made in writing, the lessee or occupant may, if the destruction or injury occurred without his fault or neglect, quit and surrender possession of the leasehold premises, and of the land so leased or occupied; and he is not liable to pay to the lessor or owner, rent for the time subsequent to the surrender.

Note: Under lease of a building which provided for the abatement of rent if the building be destroyed or made unfit for occupancy or use either by the elements, inherent defects or other like causes, the lessee was not entitled to an abatement of rents where the condition of the building was due to normal deterioration. *Finnegan v. McGavock*, 230 W 112, 233 NW 321.

234.18 Notice of adverse proceedings. Every tenant upon whom any process, proceeding or notice of any proceeding to recover the land occupied by him or the possession thereof shall be served shall forthwith give notice thereof to his landlord, under the penalty of forfeiting the value of three years' rent of the premises occupied by him, which may be sued for and recovered by the landlord or person of whom such tenant holds.

234.19 Remedy on default in long terms; improvements. (1) Whenever there shall be any default in the conditions of any lease of lands or a breach of the covenants thereof and such lease shall provide for a term exceeding fifty years and require the lessee to erect or construct improvements or buildings upon the land demised at his own cost and exceeding in value the sum of five thousand dollars, and such improvements shall have been made, and the lessor desires to determine the lease and recover possession of the property described therein freed from all liens, claims or demands of such lessee, the lessor may, in case of any breach or default as aforesaid, institute an equitable action in the circuit court against the lessee and all persons claiming under him to recover the possession of the premises leased and proceed in all respects as if the action was brought under the statute to foreclose a mortgage upon real estate, except that no sale of the premises shall be ordered.

(2) The judgment shall determine the breach or default complained of, fix the amount due the lessor at such time, and state the several amounts to become due within one year from the entry thereof, and further provide that unless the amount adjudged to be due from the lessee, with interest thereon as provided in the lease or by law, shall be paid to the lessor within one year from the entry thereof as aforesaid, and the lessee shall, within such period, fully comply with the judgment requiring him to make good any default in the conditions of said lease, that said lessee and those claiming under him shall be forever barred and foreclosed of any title or interest in the premises described in said lease and that in default of payment thereof within such year the lessee shall be personally liable for the amount thereof. During said year ensuing the date of the entry of such judgment the possession of the demised premises shall remain in the lessee and he shall receive the rents, issues and profits thereof; but if he shall fail to comply with the terms of said judgment and the same is not fully satisfied, and shall refuse to surrender the possession of the demised premises at the expiration of said year, the lessor shall be entitled to a writ of assistance or execution to be issued and executed in the manner provided by law. Chapter 291 shall not apply to leases and property within this section.

Note: As against the lessor, a lessee under a lease for a term exceeding fifty years is entitled to continue to receive the rents, issues and profits until one year after the date of entry of judgment in an action to foreclose the lease. A receiver appointed in such action is not entitled to receive the rents for the year following entry of judgment foreclosing the lease, in the absence of the lessee's waiver of his right under the statute to receive the rent for such year. *Tweedy v. Johnston*, 222 W 302, 267 NW 232.

234.20 Remedy of remainderman. A person seized of real estate in remainder or reversion may maintain an action for any injury done to the inheritance notwithstanding any intervening estate for life or years.

234.21 Actions between cotenants. One joint tenant or tenant in common and his executors or administrators may maintain an action for money had and received against his cotenant for receiving more than his just proportion of the rents or profits of the estate owned by them as joint tenants or tenants in common.

234.22 Aliens may acquire lands. Subject to the limitations of section 234.23 an alien may acquire and hold lands or any right thereto or interest therein by purchase, devise or descent, and he may convey, mortgage and devise the same; and if he shall die intestate the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged or devised or shall descend in like manner and with like effect as if such alien were a native citizen of the state or of the United States.

234.23 Limitation on nonresident aliens and corporations. It shall be unlawful for any alien not a resident of this state, of some state or territory of the United States or of the District of Columbia, or for any corporation not created by or under the laws of the United States or of some state or territory thereof, to hereafter acquire, hold or own more than three hundred and twenty acres of land in this state or any interest therein except such as may be acquired by devise, inheritance or in good faith in the collection of debts by due process of law. No corporation or association more than twenty per centum of the stock of which is or may be owned by any person, corporation or association who are such non-resident aliens shall hereafter acquire, hold or own more than said quantity of land in this state or any interest in a greater quantity of land herein except such as may be acquired in good faith in the collection of debts by judicial proceedings. All lands acquired, held or owned in violation of the provisions hereof shall be forfeited to the state, and it shall be the duty of the attorney-general to enforce every such forfeiture.

234.24 Provision not retroactive. The title to any lands conveyed before the third day of May, one thousand eight hundred and eighty-seven, or any lands which nonresident aliens may hold under section 234.23 conveyed since that date, shall not be questioned nor in any manner affected by reason of the alienage of any person from or through whom such title may have been derived.

234.25 Conveyances by life tenant. A conveyance made by a tenant for life or years purporting to grant a greater estate than he possessed or could lawfully convey shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.