

Laws of Her Majesty's Province of Newfoundland, passed in the year 1867. J. C. Withers,
Queen's Printer, 1867.

30 Victoria – Chapter 5

**An Act to facilitate the Recovery of Tenements, after due determination of the Tenancy. (Passed
26th April, 1867.)**

Whereas it is expedient to provide for the more speedy and effectual recovery of the Possession of
Premises:

Be it therefore enacted, by the Governor, Legislative Council, and Assembly, in Legislative Session
convened, as follows:—

I. Whenever the term or interest of the Tenant of any House or Land, held by him or her, 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, it shall be lawful for the Landlord of the said premises, or his Agent, to 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 Act, signed by the Landlord or his Agent, of his intention to proceed to recover possession under the authority of this Act; 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 Act, 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 his Agent, it shall be lawful for such Landlord or Agent to give to such Stipendiary Justice of the Peace proof of the holding, and of the end or determination of the Tenancy, or 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, it shall be lawful for such Stipendiary Justice to issue a Warrant under his hand and seal, 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 case of a Tenant sought to be ejected for non-payment of rent, as aforesaid, it shall be lawful for the Justice to vacate his Warrant, if the rent be paid within the period to be named therein, as aforesaid, together with the cost of the Landlord's proceedings: Provided always 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; Provided also that nothing herein contained shall be deemed to 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.

II. Notice of application intended to be made under this Act 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 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 Summons, the posting up of the said Summons on some conspicuous part of the premises shall be deemed to be good service upon such person.

III. Any person who shall consider himself aggrieved by the decision of any Justice of the Peace in pursuance of this Act, may appeal from such decision to any of the Superior Courts of this Colony at the first sittings thereafter, on entering into a Bond, in the form set forth in the Schedule, with two sufficient 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.

IV. 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 the 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 defeazance of such Bond, and such Court may make such order as to the costs as may appear reasonable.

V. It shall not be lawful to bring any action or prosecution against the said Justice by whom such Warrant as aforesaid 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 shall be granted had not lawful right to the possession of the Premises.

VI. In cases of wrongful and forcible entry and detainer of Lands or Tenements, it shall be lawful for any Stipendiary Justice within whose jurisdiction the Land, or Premises lie, on Complaint on oath being made, to Summon such Person so in possession to answer such Complaint, and if he shall adjudge in favour of the Complainant, to 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, to arrest and imprison the Defendant for any term not exceeding One Month; and also, to issue his Warrant to take possession, as in other cases provided for by this Act. 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.

VII. 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 Act, 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	0.50
Hearing	0.25
Warrant to take possession	1.50
Mileage, per mile	0.25

VIII. In construing this Act, the word "Premises" shall be taken to signify Lands and Houses and Tenements, and the word "Agent" shall be taken to 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.

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 of _____, 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.

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 in writing of his intention to apply to recover possession; a Duplicate of which Notice is hereto annexed _____ (describing the mode of service); and that

notwithstanding the said Notice, the said _____ refused (or neglected) to deliver up possession of the said Premises, and still detains the same.

(Signed), A. B.

Taken before me on Oath, at _____
This _____ day of _____ A. D.

C. F., J. P.

Warrant to take Possession.

Whereas (set forth Complaint), I, _____, one of Her Majesty's Stipendiary Justices of the District of _____, do authorize and command you, on any day within _____ days from the date hereof, to enter, by force if needful, and with or without the aid of _____ (Owner or Agent), or other person, into and upon (the premises), and to eject thereout any person, and of the said _____ full and peaceable possession to deliver to the said _____ (the Owner or Agent.)

Given under my hand and seal this _____ day of _____ A. D., 18

To _____ and all other Constables for the District of _____.

Complaint on Forcible Entry.

The Complaint of _____ (Owner or Agent) made before me, _____, one of Her Majesty's Stipendiary Justices of the Peace, who saith that _____ within One Year, has taken wrongful and forcible possession of _____ Premises, belonging to _____, and still holds possession of the same, and refuses to deliver up the said Premises to _____.

Sworn, &c.

Summons.

Summon _____, to answer _____ who Complains that _____ has taken wrongful and forcible possession of _____ (Premises) belonging to the said _____, and still refuses to deliver up the same to _____, and to show cause why he should not be fined or imprisoned thereupon according to the Statute.

Form of Bond.

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 be paid to the said G. H., his Executors, Administrators and 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 Court of this Colony, now next following, 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 Act 30 Vic., Cap. 5, 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, or else to remain in full force and virtue.

Signed, sealed and delivered in the presence of

Seal.
Seal.
Seal.