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RENT CONTROL AND EVICTIONS UNDER EMERGENCY PRICE CONTROL

E. P. McCARRON*

IN the language of the 77th Congress, price control was designed in the "interest of national defense and security," and was necessary to "the effective prosecution of our present global war."¹ Of all the various ramifications and aspects of the Emergency Price Control Act, and price schedules, orders and regulations issued thereunder, one feature which appears to be more directly connected with the war effort than others is the restrictions against the removal or eviction of tenants.²

Rather than approach the subject of "evictions" abruptly, it might be well to consider a few of the broader aspects of the Congressional act which affects our economic structure more so than any other law enacted heretofore .

Until a year ago, the word inflation had a vague meaning for most of us. Some thought that it meant the issuance of more "greenbacks" by the government, or the circulation of useless paper money. The term did, however, assume a definite meaning immediately after the enactment of the Lease-Lend Bill.³ Prices began to rise, particularly on destructible commodities used as War material. And it necessarily followed that prices on cost of living commodities started to rise also. Between the date of the Lease-Lend Bill and America's entry into the War the difference between normal prices and inflated prices on purchases by the government alone, amounted to more than the entire cost of the last World War. Inflation was on its dizzy and destructive way. It effects not only government buying, but the public as well. When the cost of goods increases, the wage earner needs a higher wage or salary, and his demanding higher wages causes an industrial maladjustment which in turn results in labor disputes. It hardly seems necessary to point out the disastrous effects of labor disputes and strikes on production. It can be assumed, therefore, that the Congress gave consideration to these facts in declaring the Emergency Price Control Act necessary to the effective prosecution of the present War.

In addition to its beneficial present effects on the war program, the control of prices now, is expected to avoid an economic collapse at some future date, such as was experienced after the inflationary

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¹ Public Laws 421, 77th Congress, Ch. 26, Sec. 1.

² *Ibid.* Sec. 2 (b).

³ March 11, 1941. C. 11, 55 Stat. 31, 22 U.S.C. Sec. 411-419.

movement of World War I. It is an attempt to forestall a recurrence of the practices which led to the state of affairs following the economic collapse in 1929. Our highways were crowded with men on foot, traveling from one town to another, looking for employment; breadlines were formed in the larger cities; riots and bloodshed were prevalent; sheriffs, elected by the people, were shot in the State of Iowa in the performance of their duties in connection with foreclosure proceedings, and business failures resulted in suicide. These conditions, and many more, can be attributed directly to the inflationary movement which started during the first World War.

The Emergency Price Control Act of January 30, 1942, created the Office of Price Administration, whose function it is to prevent inflation.⁴ The Administrator of the Office of Price Administration was vested with considerable authority, and was directed to issue price schedules, orders and regulations necessary to carry out the purposes and intents of the act.⁵ One of the purposes set forth in the Act is to prevent abnormal increases in rents, and to regulate "renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense area housing accommodations."⁶ The Price Administrator proceeded to place a ceiling on rents, after having given due consideration to conditions in centers of defense activities, which either resulted, or threatened to result, in increases in rents for housing accommodations. Relevant factors⁷ in the Milwaukee Defense Rental Area led to the selection of March 1, 1942, as the "freeze" date. To protect from puncture the ceilings so established, complimentary provisions were inserted in the rent regulation restricting the landlord's statutory right to remove his tenant.⁸ The law had to eliminate competitive bidding among tenants for housing accommodations which were all too scarce. That, however, is not the only purpose behind the provisions prohibiting the removal of tenants.

During the last world war 20% of the total manpower in the country was lost to the war effort solely because war workers were forced to migrate from one center of war activity to another in search for living quarters available to them at a price within their means. Our country cannot afford to sustain such a loss during the present war, where capacity to produce war material seems to be one of our greatest weapons. The stability of war workers in their present locations is entirely essential to the war effort and must be maintained. The wheels of production would slow down likewise if the workers responsible for their turning were disturbed and harassed with the threat of dispos-

⁴ Public Laws 421, Sec. 1(a).

⁵ *Ibid.*, Sec. 2(a) (e).

⁶ *Ibid.*, Sec. 1.

⁷ *Ibid.*, Sec. 2(b).

⁸ 234.03, .04 Wis. Stats., 1941.

session. Men cannot perform satisfactorily on a production line with the shadow of eviction at the whim of the landlord hanging over their heads, because they know that an eviction means a long search for other shelter and removal to another town if the search is unsuccessful.

With a full understanding of the background so thoroughly justified, the legal profession can more readily accept the fact that case law and statutory law is asked to step aside and give way to this new federal law, because that is just what the Emergency Price Control Act, and the regulations issued thereunder, demands and requires. The landowner is now limited and restricted in the free use and management of his property such as he enjoyed under the state statutes and case law. An eviction judgment cannot be granted to a landlord plaintiff who desires the removal of his tenant and has complied with the statutory requirements terminating the tenancy. The Federal Rent Regulation is superimposed upon that part of the state laws which is in conflict with it. The language of the Wisconsin Supreme Court, in *Konkel v. State*, "Congress having spoken full on the subject, the power of the State to enact a law on the same subject is suspended" is for the duration of the war applicable to the landlord tenant relationship.⁹

One of the thirteen sections of the Maximum Rent Regulation is devoted to "Restrictions on the Removal of Tenant." Section 6 is set out here in full:

"SECTION 6. RESTRICTIONS ON REMOVAL OF TENANT.—(a) So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, unless:

(1) The tenant, who had a written lease or other written rental agreement, has refused upon demand of the landlord to execute a written extension or renewal thereof for a further term of like duration but not in excess of one year but otherwise on the same terms and conditions as the previous lease or agreement, except insofar as such terms and conditions are inconsistent with this Maximum Rent Regulation; or

(2) The Tenant has unreasonably refused the landlord access to the housing accommodations for the purpose of inspection or of showing the accommodations to a prospective purchaser, mortgagee or prospective mortgagee, or other person

⁹ 168 Wis. 335.

having a legitimate interest therein: *Provided, however*, That such refusal shall not be ground for removal or eviction if such inspection or showing of the accommodations is contrary to the provisions of the tenant's lease or other rental agreement; or

(3) The tenant (i) has violated a substantial obligation of his tenancy, other than an obligation to pay rent, and has continued, or failed to cure, such violation after written notice by the landlord that the violation cease, or (ii) is committing or permitting a nuisance or is using or permitting a use of the housing accommodations for an immoral or illegal purpose; or

(4) The tenant's lease or other rental agreement has expired or otherwise terminated, and at the time of termination the housing accommodations or a predominant part thereof are occupied by one or more subtenants or other persons who occupied under a rental agreement with the tenant; or

(5) The landlord seeks in good faith to recover possession for the immediate purposes of demolishing the housing accommodations or of substantially altering or remodeling it in a manner which cannot practicably be done with the tenant in occupancy and the plans for such alteration or remodeling have been approved by the proper authorities, if such approval is required by local law; or

(6) The landlord owned, or acquired an enforceable right to buy or the right to possession of, the housing accommodations prior to the effective date of this maximum rent regulation,¹⁰ and seeks in good faith to recover possession of such accommodations for immediate use and occupancy as a dwelling for himself. If a tenant has been removed or evicted under this paragraph (a) (6) from housing accommodations, the landlord shall file a written report on a form provided therefor before renting the accommodations or any part thereof during a period of six months after such removal or eviction.

(b) (1) No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the Act or this Maximum Rent Regulation and would not be likely to result in the circumvention or evasion thereof.

(2) Removal or eviction of a tenant for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after the effective date of this maximum rent regulation, is inconsistent with the purposes of the Act and this Maximum Rent Regulation and would be likely to result in the circumvention or evasion thereof, unless (i) the payment or payments of principal made by the purchaser, excluding any

¹⁰ October 20, 1942.

payments made from funds borrowed for the purpose of making such principal payments, aggregate $33 \frac{1}{3}$ per cent or more of the purchase price, and (ii) a period of three months has elapsed after the issuance of a certificate by the Administrator as hereinafter provided. For the purposes of this paragraph (b) (2), the payments of principal may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in the event the Administrator denies a petition for a certificate. If the Administrator finds that the required payments of principal have been made, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law at the expiration of three months after the date of issuance of such certificate. In no other case shall the Administrator issue a certificate for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after the effective date of this Maximum Rent Regulation, unless he finds that the vendor has or had a substantial necessity requiring the sale and that a reasonable sale or disposition of the accommodations could not be made without removal or eviction of the tenant, or unless he finds that other special hardship would result; under such circumstances the payment by the purchaser of $33 \frac{1}{3}$ per cent of the purchase price shall not be a condition to the issuance of a certificate, and the certificate shall authorize the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law.

(c) (1) The provisions of this section do not apply to a subtenant or other person who occupied under a rental agreement with the tenant, where removal or eviction of the subtenant or other such occupant is sought by the landlord of the tenant, unless under the local law there is a tenancy relationship between the landlord and the subtenant or other such occupant.

(2) The provisions of this section shall not apply to housing accommodations rented to either Army or Navy personnel, including civilian employees of the War and Navy Departments, for which the rent is fixed by the national rent schedule of the War or Navy Department.

(3) The provisions of this section shall not apply to an occupant of a furnished room or room not constituting an apartment, located within the residence occupied by the landlord or his immediate family, where such landlord rents to not more than two occupants within such residence.

(d) (1) Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant. A written copy of such notice shall be given to the Area Rent Office with 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations, by court process or otherwise, unless, at least ten days prior to the time specified for surrender of possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or eviction to the tenant and to the Area Rent Office, stating the ground under this section upon which such removal or eviction is sought and specifying the time when the tenant is required to surrender possession.

Where the ground for removal or eviction of a tenant is nonpayment of rent, every notice under this paragraph (d)(1) shall state the rent for the housing accommodations, the amount of rent due and the rental period or period for which such rent is due. The provisions of this paragraph (d)(1) shall not apply where a certificate has been issued by the Administrator pursuant to the provisions of paragraph (b) of this section.

(2) At the time of commencing any action to remove or evict a tenant, including an action based upon nonpayment of rent, the landlord shall give written notice thereof to the Area Rent Office stating the title of the case, the number of the case where that is possible, the court in which it is filed, the name and address of the tenant, and the ground under this section on which removal or eviction is sought.

(e) No provision of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under the local law."

The foregoing section 6 is an excerpt from the Maximum Rent Regulation applicable to housing accommodations. The same law governs tenancies in rooming houses and hotels, with the exception of hotels or rooming houses renting rooms on a daily basis; dwellings in the two categories are specifically exempted from the restrictions on evictions.

Eviction actions are still brought before and tried in the local courts, but it does not seem amiss to point out the possibility of withdrawing all such actions from the judiciary; it could be done by eliminating paragraphs (a) (1), (2), (3), (4), (5) and (6), thus requiring an Administrator's certificate on petition of landlord before the commencement of any eviction action. The Price Administrator has not as yet deemed it necessary to assume such rigid control.

It can be noted that the law not only prohibits the removal of tenants from possession, but also prohibits attempts at such removal or exclusion from possession. This provision in the Price Administrator's rent regulation has a corollary in the Emergency Price Control Act which can be found in section 4 under *Prohibitions*:

"It shall be unlawful for any person to remove or attempt to remove from any defense area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or

agreement for the use of such accommodations, because such tenant or occupant has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder."

Such reprisals on the part of the landlord are apparently of serious consequence because the Price Control Act prescribes heavy penalties for any person "who willfully violates any provision of Section 4 of this Act."¹¹

From a practical standpoint the Area Rent Office has been represented by a member of the legal staff in the eviction courts of Milwaukee daily since the enactment of the regulation, August 1, 1942. Upon receipt of eviction notices, appropriate entries are made in a docket at the rent office. Cases involving factual disputes become the subject of field investigations conducted impartially and proper reports on the results of the investigation are submitted to the trial court.

It is recognized that the notice requirements as well as the substantive law is more highly technical under the rent regulation than under the Wisconsin statutes. Attorneys who handle eviction actions only occasionally may consequently deem it advisable to solicit information on procedure from the Area Rent Office, and thus avail themselves of a service which the office renders to all attorneys regardless of whom they represent—the landlord or the tenant.

¹¹ Public Laws 421, Sec. 205 (b).

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