

LANDLORD'S DISTRAINT (DISTRESS)



STATUTORY REFERENCES

The landlord's right to distraint for recovery of rent arrears is a common law right that is covered in the *Civil Enforcement Act* and Regulations. It is therefore **not** mentioned in the *Residential Tenancies Act* (RTA) or the regulations.

GUIDELINES

Distress is a remedy that a landlord can use to recover unpaid rent without having to go to court. The process of distress allows a landlord to hire a civil enforcement agency to seize property on the rented premises that belongs to the tenant in order to recover rent money that is owed. The property can then be sold and the proceeds used to repay the rent and costs incurred by the landlord.

The right to use distress arises as soon as rent is late and the process **must** be carried out in accordance with the law. The landlord **cannot** use this process to recover other money owing by the tenant. The Civil Enforcement Act and Regulations outline the process that **must** be followed in the seizure of goods (effecting a distraint).

1. A seizure of the tenant's personal property may only be made through a civil enforcement agency by a civil enforcement bailiff on instructions from a landlord in the form of a Warrant of Distress.
2. Some property is generally exempt from seizure under the authority of a Warrant of Distress and is specified in the Information for Debtor form. (see #4 below)
3. At the time of a seizure, the tenant **must** be provided with a Notice of Objection to Seizure and Information for Debtor form. The tenant can complete the form if he or she wishes to object to the seizure of some or all of the property. The Notice of Objection to Seizure **must** be completed and served on the civil enforcement agency at the address shown within 15 days of the person being served with the seizure documents.
4. If a tenant objects to the seizure of property, the seized property **cannot** be sold without the court's permission. However, if there is no valid reason for objecting to the seizure, the tenant may be responsible for paying the landlord's costs in taking the matter to court.
5. The landlord has priority over unsecured creditors.
6. If seized property has been pledged as security, but the security interest has **not** been registered in the Personal Property Registry before the seizure, the landlord may have priority over that secured creditor in relation to that property.
7. Generally only the property on the premises at the time of the seizure that belongs to the tenant, and any relative living on the premises as a member of the tenant's family, as well as a person who is liable for rent, may be seized.
8. If there is no objection to the seizure, the seized property may be sold without a court order by any commercially reasonable manner.

9. Distribution of the proceeds of the sale of the seized property is in the following order:
- (a.) All fees and charges for conducting the sale;
 - (b.) All fees and charges of the civil enforcement agency that effected the seizure;
 - (c.) All costs awarded by the court (if the matter required court application);
 - (d.) Rental arrears owed to the landlord; and
 - (e.) Any excess is returned to the tenant.

PRACTICAL APPLICATIONS

The common law remedy of landlord's distress is one that dates back almost a thousand years and is still available to the landlord today. Landlord's distress is a way to recover rent owing by a tenant. The landlord is responsible for the seizure costs, however, those costs can be added to the amount owed by the tenant. To satisfy those costs plus the amount owed for the rent arrears may require the seizure and sale of a significant portion of the tenant's property, or seizure and sale of items of significant value.

The tenancy continues during and after the distraint has been effected. This is because in order for the remedy to be available, there **must** be a legal relationship of landlord and tenant. If the tenancy is terminated, there is no such relationship, so the remedy of distress is **not** available to a previous landlord after termination of a tenancy. A landlord taking possession of the residential premises is a clear indication that a tenancy has been terminated.

The most important obligation of the tenant under the residential tenancy agreement and the RTA is to pay the rent in full, when it is due. If rent is **not** paid, for whatever reason, the landlord has the right to terminate the tenancy. In the alternative, landlords may choose to distrain for the arrears of rent owed.

- If the landlord terminates the tenancy, the landlord **cannot** distrain for arrears of rent. The landlord can only bring an action in court for a judgment against the tenant for the amount of the arrears.
- If the landlord decides to distrain for arrears of rent, then the tenancy continues.

A landlord does **not** have to give the tenant any notice or go to court before distraining. Landlords have to use the services of a civil enforcement agency and civil enforcement bailiff to seize the tenant's property.

MORE INFORMATION

Current information about distress for rent owing is available on the Alberta Courts website at

<http://www.qp.alberta.ca/documents/publications/civil.pdf>.