

**Distress Act
(CHAPTER 84)**

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DISTRESS ACT

(CHAPTER 84)

(Original Enactment: Ordinance 28 of 1934)

REVISED EDITION 2013

(30th November 2013)

An Act relating to distress for rent.

[1st January 1935]

Short title

1. This Act may be cited as the Distress Act.

Interpretation

2. In this Act, unless the context otherwise requires —

“judge” means a Judge of the High Court in all cases where proceedings are taken in the High Court, and means a District Judge in all cases where proceedings are taken in a District Court;

“landlord” means the lessor or sub-lessor of any premises under any lease or agreement of tenancy, and includes any person claiming to be entitled in any capacity to receive rents due under any such lease or agreement;

“prescribed form” means the form prescribed by the Rules of Court;

“registrar” means a Registrar, a Deputy Registrar or an Assistant Registrar of the Supreme Court in all cases where proceedings are taken in the High Court and means a Registrar, a Deputy Registrar or an Assistant Registrar of a District Court in all cases where proceedings are taken in a District Court;

“sheriff” includes a bailiff of a District Court in all cases where proceedings are taken in a District Court;

“tenant” means any person from whom a landlord claims rent to be due under any such lease or agreement.

[19/35; 30/38; 57/40; 16/93; S 71/96]

Act not to apply to Government rents

3. This Act shall not apply to rents due to the Government.

No distress otherwise than under this Act

4. No landlord shall distrain for rent except in the manner provided by this Act.

Application for writ of distress

5.—(1) A landlord or his agent duly authorised in writing may apply ex parte to a judge or registrar for an order for the issue of a writ, to be called a writ of distress, for the recovery of rent due or payable to the landlord by a tenant of any premises for a period not exceeding 12 completed months of the tenancy immediately preceding the date of the application; and the judge or registrar may make such order accordingly.

[30/38]

(2) Such authority may be in the prescribed form, with such variations as circumstances require, and shall be produced at the time of the application.

(3) Arrears of rent may be distrained for after the determination of the tenancy, provided that either the tenant is still in occupation of the premises in respect of which the rent is claimed to be due, or any goods of the tenant are still on the premises.

Provision for distress by one of joint owners

6. Where a right to a distraint accrues to persons jointly or together interested in any premises, such right may be exercised by any one of such persons in his own name and the names of those jointly or together interested with him, and the levy shall be a complete discharge to the defendant for the amount recovered; but the judge or registrar may in any case require the party so applying to produce a written authority to distrain, signed by the other persons jointly or together interested with him.

[30/38]

Writ of distress

7. A writ of distress shall be addressed to the sheriff, directing him forthwith to distrain any movable property found by him on the premises named therein, or such part of the property as may in his judgment be sufficient, when sold, to realise the amount of rent therein stated to be due to the applicant, together with such sum as may be due to the applicant by way of costs and to the sheriff for his fees and expenses.

Property exempted from seizure

8. Property seizable under a writ of distress shall not include —

- (a) things in actual use in the hands of a person at the time of the seizure;
- (b) tools and implements not in use where there is other movable property in or upon the house or premises sufficient to cover such amount and costs;
- (c) the tenant's necessary wearing apparel and necessary bedding for himself and his family;
- (d) goods in the possession of the tenant for the purpose of being carried, wrought, worked up, or otherwise dealt with in the course of his ordinary trade or business;
- (e) goods belonging to guests at an inn; and
- (f) goods in the custody of the law.

[26/95]

Inventory and estimate of property seized, and notice to tenant of seizure

9.—(1) After seizing any property under a writ of distress, the sheriff shall make an inventory and an approximate valuation thereof, and shall give to the tenant a notice of the seizure in the prescribed form, with a copy of the inventory and valuation attached, informing him of the amount due under the writ and that the property seized will be sold at a time and place to be named therein (not being less than 6 days from the date thereof), unless he pays the amount due within 5 days from the date thereof, or obtains an order restraining such sale.

(2) If the tenant is not on the premises, such notice may be given to any person appearing to be in occupation thereof, or if there is no such person, by posting it in some conspicuous place thereon.

Application by under-tenant, lodger, etc., for discharge, suspension or release

10.—(1) Where any movable property of —

- (a) any under-tenant;
- (b) any lodger; or
- (c) any other person whatsoever not being a tenant of the premises or any part thereof, and not having any beneficial interest in any tenancy of the premises or of any part thereof,

has been seized under a writ of distress issued to recover arrears of rent due to a superior landlord by his immediate tenant, such under-tenant, lodger or other person may apply to a judge to discharge or suspend the writ, or to release a distrained article.

[57/40]

(2) No order shall be made unless such under-tenant, lodger or other person satisfies the court that the tenant has no right of property or beneficial interest in the furniture, goods or chattels and that such furniture, goods or chattels are the property or in the lawful possession of such under-tenant, lodger or other person; and also in the case of an under-tenant or a lodger unless such under-tenant or lodger pays to the landlord or into court an amount equal to the arrears of rent in respect of which distress has been levied and also undertakes to pay to the landlord future rent, if any, due from him to the tenant.

[19/35]

(3) In no case shall such under-tenant paying at least 75% of the full monthly letting value of the premises comprised in the under-tenancy or lodger be liable under this section to pay to the landlord or into court a sum greater than the rent which he owes to his immediate landlord.

(4) For the purposes of this section and of sections 11 and 14, a lodger's rent shall include such sum as he pays or owes to his immediate landlord for lodging, board, attendance and use of furniture.