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RESIDENTIAL TENANCIES: DISTRESS FOR RENT

FINAL REPORT

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RESIDENTIAL TENANCIES: DISTRESS FOR RENT

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REPORT

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Alberta Law Reform Institute

The Alberta Law Reform Institute (ALRI) was established on November 15, 1967 by the Government of Alberta, the University of Alberta and the Law Society of Alberta for the purposes, among others, of conducting legal research and recommending reforms in the law. Funding for ALRI's operations is provided by the Government of Alberta, the University of Alberta and the Alberta Law Foundation.

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This is the first final report in ALRI's project on the *Residential Tenancies Act*.

We would like to express our thanks to everyone who provided input in our early consultation. This includes everyone who attended one of our five consultation events, everyone who participated in an interview, the organizations who invited us to present to various groups, and the people attending those meetings who shared comments and questions. Some participants also helped in other ways, like making introductions or providing examples of written residential tenancy agreements. We promised participants that we would not identify specific individuals or organizations who provided information. However, we are immensely grateful for the information that they shared. It has been essential to shaping this project.

Laura Buckingham, legal counsel, reviewed the consultation feedback and compared it against the laws governing residential tenancies to assess the legal basis for the problems raised in consultation. The topic addressed in this report was raised in consultation and is one that can be addressed by changing the law.

The task of considering whether and then how the distress for rent should be changed was taken on by Joe Sellman, legal counsel. Alongside writing this report, Joe carried out considerable research and a fulsome analysis of which laws relevant to distress were still in force in England in 1870 and, as such, were carried over as part of the law of Alberta. His dexterity with received legislation made him the ideal choice to check the references in the appendices. ALRI research students, Rachel Poznikoff and Sawyer Senekal contributed additional research, and Georgja Saunders-McConomy checked the report footnotes. Susan Emam, research associate, prepared the report summary. Kyla Krysko prepared the report for publication. Barry Chung provided graphics and communication support.

ALRI also expresses our thanks to former Board member, Professor Roderick Wood, for his comments on draft of the report. As always, we appreciate the guidance and input of our whole Board in developing these recommendations.

Summary

This is one out of a series of reports related to residential tenancy issues in Alberta. This report addresses issues eight and nine identified in ALRI's *Residential Tenancies Act: General Issues* paper:¹

ISSUE 8

Should distress for rent be abolished for residential tenancies?

ISSUE 9

If distress for rent is not abolished, should the rules for distress be codified in legislation?

This report recommends that distress for rent should be abolished for residential tenancies in Alberta.

This report, and its recommendations, are limited to distress for rent in residential tenancies. It does not apply to distress for rent in non-residential tenancies such as commercial or mobile home site tenancies, or other forms of distress.

1. WHAT IS DISTRESS FOR RENT?

a. Historically

Distress for rent is an ancient English self-help remedy, designed to assist a landlord in collecting unpaid rent while also allowing the tenancy to continue. Using the remedy, a landlord would seize personal property found on the rental premises and hold it until the rent was paid. Landlords were not allowed to sell the property, and the property could only be held until rent was paid.

Over centuries English legislation modified distress for rent significantly. Most notable, in 1689 landlords were allowed to sell a tenant's property to recover unpaid rent. This transformed distress for rent from a persuasive remedy which inconvenienced a tenant, to a much harsher penalty for unpaid rent. Rather than a tenant only losing access to their property, tenants faced losing their property entirely.

¹ Alberta Law Reform Institute, *Residential Tenancies Act: General Issues*, Issue Paper 6 (2025) at 52-55 [*Residential Tenancies Act: General Issues* (ALRI)], online: <alri.ualberta.ca/2025/03/the-residential-tenancies-act-general-issues/>.

b. Distress for rent in Alberta

The laws of Alberta were originally based on, and included significant portions of, English law.² Unusually, the law of distress for rent in Alberta remains mostly unchanged since its reception in Alberta from 1870 English law.

As it is a common law remedy, there is no mention of distress for rent in the *Residential Tenancies Act*,³ nor is it contained or referenced in most residential tenancy agreements.

The procedure of distress for rent in Alberta has been modified by the *Civil Enforcement Act (CEA)* and the *Civil Enforcement Regulation (CER)*.⁴ Under this legislation, a landlord must engage and instruct a civil enforcement agency. The Agency works with a bailiff to seize the tenant's property located on the rental premises. Once property has been seized, the property can be either released if the rent is paid or sold.

A landlord can unilaterally decide to proceed without having to provide evidence or otherwise prove entitlement to the amount they claim is owed. Tenants are not given advance notice before a seizure of property, and the process can be incredibly quick.

2. DISTRESS FOR RENT IS OUTDATED AND DOESN'T WORK

Alberta is the only common law jurisdiction in Canada that allows the remedy of distress for rent in residential tenancies. Moreover, most Canadian common law jurisdictions abolished distress for rent in residential tenancies over 50 years ago.⁵ There are several issues with distress for rent in residential tenancies in Alberta, these include:

- Distress for rent is uncodified and overly complicated;
- Distress for rent can be socially and economically devastating to tenants;
- The lack of oversight is risky for the landlord; and
- Distress for rent fails to meet its intended purpose.

² Refer to Appendix B for more information and history of the reception of English law in Alberta.

³ *Residential Tenancies Act*, SA 2004, c R-17.1 [*Residential Tenancies Act*].

⁴ *Civil Enforcement Act*, RSA 2000, c C-15 [*Civil Enforcement Act*]; *Civil Enforcement Regulation*, Alta Reg 276/1995 [*Civil Enforcement Regulation*].

⁵ The majority of Canadian common law jurisdiction abolished distress for rent in residential tenancies between 1968 and 1975. Refer to Appendix A for more information.

a. Uncodified and overly complicated

While the simplified description provided above is relatively straightforward, there are numerous nuanced and consequential requirements and limitations arising from the *CEA*, *CER*, and various aspects of the English law still in effect in Alberta. For example, a tenant can refuse to allow a bailiff entry to the rental premises, which would require a landlord to seek Court authorization to enter the residence.

There are also issues with the scope of the remedy. Distress for rent is generally limited to the tenant's personal property found on rental premises. However, there are various exceptions that, depending on the specific circumstances, allow other people's property to be taken, and for property to be seized when it has been removed from the premises.

Further, the process is difficult for a tenant to navigate. Tenants are unable to challenge distress for rent through the Residential Tenancy Dispute Resolution Service. Instead the tenant can either challenge the distress for rent by following the notice of objection process (as detailed in the *CEA*), or bringing a separate application or lawsuit against the landlord. Neither option is simple or quick.

Distress for rent proceedings can easily get tied up in court processes that can result in the seizure and sale being paused until the matter is resolved. This inconveniences both the tenant and the landlord. Until court resolution, the tenant is deprived of access to their property and the landlord is unable to recover the unpaid rent through the sale of the tenant's property.

b. Economic and social harms

Distress for rent can have devastating economic and social consequences for the tenant.

A tenant struggling to pay rent is unlikely to be able to afford to replace the items taken and sold. This economic harm is compounded for several reasons:

- The cost of replacement is likely to be much higher than the amount the tenant's property was sold for.
- The tenant bears the costs of the seizure and sale.
- The value realized in a sale is unlikely to satisfy the cost of the seizure and sale, and the unpaid rent.
- The tenant no longer has their property and this could impact their ability to earn an income.

Further, the process can result in the loss of items that are irreplaceable or hold sentimental value and can result in negative social repercussions. While the *Civil Enforcement Act* provides some exemptions for seized property, it doesn't take into account the specific impact that the seizure of certain items can have on a tenant.

c. Risks to the Landlord

Generally, civil enforcement agencies require indemnification from the landlord. This results in the landlord being responsible to ensure they have the right to distress for rent, and also that the distress for rent is levied correctly.

Considering the complexity and the lack of a clear and codified body of law, distress for rent can be inherently risky for a landlord. Risks to the landlord can arise from when the remedy is available, how the distress for rent is conducted, and extent of the property seized and sold.

For example, distress for rent cannot generally be used in conjunction with the termination of the tenancy. Issues also appear to arise from a failure to follow specific requirements when seizing or selling the tenant's property.

Depending on the specific circumstances, a failure to abide by the strict requirements of the remedy can render the landlord's conduct illegal, irregular, or excessive. All of which can result in the landlord being liable to the tenant for damages caused.

d. Failure to meet intended purpose

Distress for rent is undermined by its ineffectiveness. Distress for rent rarely results in sufficient sale proceeds to recover the unpaid rent. This is primarily due to the relatively low value of the second hand personal property; value is often driven even lower in forced sales. Additionally, the cost of the seizure and sale is recovered from the proceeds of the sale. In practice, this means these costs are borne by the tenant and are taken before any proceeds are applied to the unpaid rent.

Further, while it historically was a tool for landlords to recover rent while allowing a tenancy to continue, in contemporary practice, it often results in the tenant leaving.

Originally, the self-help nature of distress for rent was considered a benefit as it was meant to be a quick and simple method for landlords to recover outstanding rent payments. However in practice, distress for rent is a complicated and costly process.

Unlike in feudal England, Alberta has several more effective and less harsh remedies available to a landlord to recover unpaid rent.

3. ALRI'S RECOMMENDATION

For the reasons outlined in this report, ALRI recommends abolishing distress for rent for residential tenancies in Alberta. This will result in:

- Simplifying the law by removing an overly complicated and rarely used remedy to recover unpaid rent;
- Reducing the potentially devastating harms to tenants that can arise from distress for rent;
- Reducing the risk to landlords if the remedy is used incorrectly; and
- Aligning Alberta with other common law jurisdictions in Canada.

ALRI does not anticipate any negative impacts will arise from abolishing distress for rent in residential tenancies. Further, this will not interfere with distress for rent in other forms of tenancies (such as commercial or mobile home site tenancies) nor will it impact any other forms of distress.

Recommendations

RECOMMENDATION 1

Distress for rent should be abolished for residential tenancies in Alberta.52

RECOMMENDATION 2

The abolition of distress for rent in residential tenancies should apply to all residential tenancies as soon as the legislative changes are made.53

Table of Abbreviations

LEGISLATION

<i>Civil Enforcement Act</i>	<i>Civil Enforcement Act</i> , RSA 2000, c C-15
<i>Civil Enforcement Regulation</i>	<i>Civil Enforcement Regulation</i> , Alta Reg 276/1995
<i>Residential Tenancies Act</i>	<i>Residential Tenancies Act</i> , SA 2004, c R-17.1

LAW REFORM PUBLICATIONS

Survey of Landlord and Tenant Law (New Brunswick)	Law Reform Division of the Department of Justice, New Brunswick, <i>Survey of Landlord and Tenant Law</i> , Working report (1973)
<i>Distress for Rent in Commercial Tenancies</i> (Manitoba)	Manitoba Law Reform Commission, <i>Distress for Rent in Commercial Tenancies</i> , Report #81 (1994), online: < manitobalawreform.ca/pubs/pdf/fullreports/81-full_report.pdf > [perma.cc/C5HU-472C]
<i>Landlord and Tenant Law Applicable to Residential Tenancies</i> (Ontario)	Ontario Law Reform Commission, <i>Landlord and Tenant Law Applicable to Residential Tenancies</i> , Interim Report (1968) at 16, online: < archive.org/details/interimreportof00onta >
<i>Distress for Rent Working Paper</i> (England and Wales)	The Law Commission (England and Wales), <i>Distress for Rent</i> , Working Paper No. 97 (1986), online: < webarchive.nationalarchives.gov.uk/ukgwa/20250109101824mp_/https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2016/08/No.097-Distress-for-Rent.pdf > [perma.cc/RUE9-R5PL].

Secondary Sources

Bell	Edwin Bell, <i>A Treatise on the Law of Landlord and Tenant in Canada</i> (Toronto: The Canada Law Book Company, 1904)
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- Dunlop & Buckwold Dick Dunlop & Tamara M. Buckwold, *Debt Recovery in Alberta* (Toronto: Carswell, 2012)
- Enforcement Remedies Roderick J. Wood, "Enforcement Remedies of Creditors" (1996) 34:4 Alta L Rev 783
- Williams et al. Kenneth Esten Williams et al, *Williams and Rhodes Canadian Law of Landlord and Tenant*, vol 1, 6th ed (Toronto: Carswell, 1988) (loose-leaf updated 2011, release 4)
- Wonnacott Mark Wonnacott, *The History of the Law of Landlord and Tenant in England and Wales* (Clark, NJ: Lawbook Exchange, 2012)

CHAPTER 1

Introduction

[1] Alberta is the only common law jurisdiction in Canada where distress for rent is available to landlords as a self-help remedy for the non-payment of rent in residential tenancies.⁶

[2] Over nearly a millennium, distress for rent has evolved from a simple self-help common law remedy in a feudal society, to a complex web of now ancient and poorly known statutes and case law, with a thin overlay of modern legislation.

[3] In the context of residential tenancies, at best, distress for rent is an archaic, overly complicated, and harsh remedy ripe for substantive reform. At worst, it can be considered a remedy that fails to meet a societally valuable purpose and is ready to be abolished.

[4] In this report, in the context of residential tenancies ALRI:

- Reviews the remedy of distress for rent (Chapter 2);
- Considers the history of reform of distress for rent in Alberta and other common law jurisdictions (Chapter 3);
- Explores the purpose of distress for rent, and whether the purpose is being met (Chapter 4);
- Considers the options for reform (Chapter 5); and
- Recommends abolishing distress for rent, and provides an analysis on how to do this (also Chapter 5).

A. Approach of this report

1. RESEARCH

[5] This report is based on three main sources of relevant information:

- A review of current and historic Alberta legislation and case law;

⁶ Refer to Appendix A for a comparison of legislation from other common law jurisdictions in Canada.

- A review of received legislation regarding distress for rent in residential tenancies; and
- A literature review with a primary focus on materials from Canada, including various secondary sources such as books, articles, research reports, and government reports.

[6] In light of the responses from the early consultation,⁷ and other considerations that are explored in more depth in this report (such as the lack of awareness and the infrequent use of the remedy, as well as the extensive literature on the topic) ALRI determined no additional consultation was necessary for the purposes of this report.

2. SCOPE

[7] Aligned with ALRI's ongoing Residential Tenancies Act Project, this report only considers distress for rent in residential tenancies within Alberta.⁸

[8] While distress for rent is primarily a common law remedy, contractual distress found in tenancy agreements, and statutory amendments to distress for rent are also considered to the extent they modify or otherwise impact distress for rent in residential tenancies.

[9] Except to the extent that they relate to distress for rent in residential tenancies, the following topics are out of scope of this report:

- Consideration of alternative landlord remedies for the non-payment of rent in residential tenancies (these can be found in section 26 of the *Residential Tenancies Act*⁹);
- Property abandoned in the rental premises (this is addressed in section 31 of the *Residential Tenancies Act*);
- Distress for rent in non-residential tenancies, specifically:
 - Distress for rent in commercial tenancies;
 - Distress for rent in mobile home sites tenancies;

⁷ Refer to *Residential Tenancies Act: General Issues* (ALRI), note 1 at 4 for more information about the consultation. In the consultation, there were only three instances where distress for rent was raised.

⁸ Refer to *Residential Tenancies Act: General Issues* (ALRI), note 1 at Chapter 3 for more information regarding the scope of the Residential Tenancies Act project.

⁹ *Residential Tenancies Act*, SA 2004, c R-17.1 [*Residential Tenancies Act*].

- Distress for rent arising from a rentcharge or a rent seck;¹⁰ and
- Distress for rent for a mortgage;¹¹
- Other forms of distress, including:
 - Contractual distress;
 - Statutory distress; and
 - Distress for damage feasant.

¹⁰ Rentcharges and rent secks operate outside of regular tenancies and are therefore beyond the scope of this report. For more information refer to: Bruce Ziff, *Principles of Property Law*, 6th ed (Toronto: Carswell, 2014) at 426 [Ziff]; Law Commission (England and Wales) *Transfer of Land: Report on Rentcharges*, Law Com. No. 68 (1995), online: <webarchive.nationalarchives.gov.uk/ukgwa/20250109102143mp_/https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2024/07/LC068.pdf> [perma.cc/H8JD-5SUE].

¹¹ Ie, via an attornment clause, as contemplated by the *Civil Enforcement Act*, s 105. For more information refer to: Dick Dunlop & Tamara M. Buckwold, *Debt Recovery in Alberta* (Toronto: Carswell, 2012) at 809-814 [Dunlop & Buckwold]; Alberta Law Reform Institute, *Mortgage Remedies in Alberta*, Report No. 70 (1994) at 108-109, online: <alri.ualberta.ca/1994/06/mortgage-remedies-in-alberta-final-report-70/> [*Mortgage Remedies in Alberta* (ALRI)].

CHAPTER 2

What is Distress for Rent

A. Summary

[10] In Alberta, distress for rent is a self-help legal remedy that gives a landlord the right to direct a civil enforcement agency to seize, impound, and sell a tenant's personal property found on the rental premises to recover unpaid rent.

[11] The remedy of distress for rent directly traces its roots to ancient English common law, and has been modified over the course of centuries by English,¹² Northwest Territories, and Alberta legislation and case law.

[12] Distress for rent remains a primarily common law remedy, with scant legislation applicable to distress for rent in Alberta. This results in a remedy that is poorly known, uncodified, and an "area of arcane rules accessible only to specialized lawyers".¹³

[13] In this chapter, we provide a summary of the current state of the law of distress for rent in Alberta in the context of residential tenancies.¹⁴

1. TERMINOLOGY USED IN THIS REPORT

[14] The term "distress", in the legal sense, refers to the seizing of property to secure performance of a payment (or a duty).¹⁵

[15] "Distress for rent" is the specific type of distress available to a landlord when a tenant has not paid rent, allowing the landlord to seize and sell the tenant's personal property.

¹² Specifically, the English law received into Alberta. Received law relevant to distress for rent in Alberta is considered in depth in Appendix B and Appendix C.

¹³ Manitoba Law Reform Commission, *Distress for Rent in Commercial Tenancies*, Report #81 (1994) at 1, online: <manitobalawreform.ca/pubs/pdf/fullreports/81-full_report.pdf> [perma.cc/C5HU-472C] [*Distress for Rent in Commercial Tenancies* (Manitoba)].

¹⁴ Refer to Appendix B for a more detailed and chronological history of distress for rent from feudal England to contemporary Alberta. Note: while the scope of this report is limited to residential tenancies, distress for rent is available in other types of tenancies (for example, commercial and mobile home sites tenancies).

¹⁵ Bryan A. Garner, ed, *Black's Law Dictionary*, 11th ed, (ST. Paul, MN: Thomson Reuters, 2019) sub verbo "distress" [*Black's Law Dictionary*]; see also Edwin Bell, *A Treatise on the Law of Landlord and Tenant in Canada* (Toronto: The Canada Law Book Company, 1904) at 249 [Bell]; the definition of "distress" found in the *Civil Enforcement Act*, s 1(1)(m).

[16] While “distress” is often used as the shorthand for “distress for rent”, for clarity in this report, we consistently use the terms as follows:

- “Distress” to refer to the broad legal concept; and
- “Distress for rent” to refer to the specific legal remedy available to a landlord.¹⁶

[17] Additional terms used in this report are:

- “Right of distress for rent” refers to the legal remedy being potentially available to a landlord;
- “Levying” and “levied” refer to the act of using the legal remedy;¹⁷
- “Premises” refers to the landlord’s real property being rented to the tenant; and
- “Property” refers to the personal property found on the premises (ie, the goods and chattel that can be subject to distress for rent).

B. When is Distress for Rent Available?

[18] The common law implies the right of distress for rent exists when there is a tenancy,¹⁸ and this right can be exercised (ie, the remedy can be levied) when rent is in arrears.

[19] The remainder of this section provides more information on when there is a tenancy, when rent is in arrears, when distress for rent cannot be levied, and the impact of contracts on the common law.

1. TENANCIES

[20] A tenancy arises when:¹⁹

¹⁶ Note: literature on this topic can also use the longer term “distress for rent and services”.

¹⁷ Note: literature on this topic often uses the terms “distrain”, “distrainment”, and “distrained”.

¹⁸ The common law right is implied regardless of whether the tenancy is explicit (eg, by agreement) or implicit (eg, by conduct) (Bell at 253-254).

¹⁹ This is an intentionally simplified description of a leasehold tenancy for the purposes of contextualizing the requirements of distress for rent. The topic of leasehold tenancies is significantly more complicated and nuanced, see for example Ziff, note 10 at 290-296, upon which this simplified description is based.

- A tenant has exclusive use and possession of the premises belonging to the landlord;
- There is a rental payment; and
- At the end of the tenancy, possession of the premises will return to the landlord.²⁰

[21] Distress for rent is intended to provide a landlord with a remedy to collect rental arrears while allowing the tenancy to continue. Therefore, distress for rent is only available while the landlord and tenant relationship remains in effect during the term of the tenancy.²¹ The remedy is not available when the tenancy has ended for any reason, for example this could include:

- The tenancy period ends (for example, the date specified for the end of a fixed term tenancy);
- The landlord terminates the tenancy;²²
- The landlord's interest in the premises has ended;²³ or
- The tenant terminates the tenancy.²⁴

[22] Further, even when a tenancy continues, certain changes in a tenancy can limit the right of distress to only be available to rental arrears that arise after the change. For example; renewing a lease,²⁵ a change in the tenant,²⁶ or an assignment of a landlord's interest in the tenancy.²⁷

²⁰ I.e., the landlord retains a reversionary interest in the premises.

²¹ *Brown Ltd v Carling O'Keefe Breweries of Canada*, 1989 CanLII 3305 (ABKB) at para 15 [Brown]; Kenneth Esten Williams et al, *Williams and Rhodes Canadian Law of Landlord and Tenant*, vol 1, 6th ed (Toronto: Carswell, 1988) (loose-leaf updated 2011, release 4) ch 8 at 8-2, s 8:1:2 [Williams et al.].

²² Note, one decision found that distress for rent can still be available if the tenancy is still in effect, even when the landlord has provided notice of termination. As long as the notice of termination is not a forfeiture for the failure to pay rent. See *420868 Alberta Ltd v 5 Star Trading*, 2012 ABQB 25 [5 Star Trading].

²³ Bell at 272.

²⁴ Bell at 272.

²⁵ When the landlord and tenant renew a lease, the landlord loses the right to distress for rent for any rental arrears from the prior term (Harvey M. Haber, "What is Distress" in Harvey M. Haber, ed, *Distress: A Commercial Landlord's Remedy* (Aurora, ON: Canada Law Book, 2001) at 3 [Haber]; George M. Valentini & Kristi Green, "Loss of Landlord's Right of Distress" in Harvey M. Haber, ed, *Distress A Commercial Landlord's Remedy* (Aurora, ON: Canada Law Book, 2001) at 85 [Valentini & Green]; Williams et al., ch 8 at 8-3, s 8:1:2).

²⁶ For example, as found in *Edmonton Centre Ltd. v Amass Systems Inc.*, 1998 ABQB 1064.

²⁷ See Williams et al., ch 8 at 8-4 to 8-4.1, ss 8:1:4-8:1:8; Bell at 271. Note: this does not include assignment of rents, for which it is most likely there is no ability for the assignee to levy distress for rent (an assignment of rent is often considered a rent seck, which the *Landlord and Tenant Act* (Great Britain), 1730, 4 Geo 2, c 28 did extend the remedy to, but this was later repealed for tenancies (see *Bank of Montreal v Unit Liner Western Ltd.*,

[23] There is one exception that allows distress for rent to be levied after the tenancy has ended. Distress for rent can be levied up to six months after the end of the term of the tenancy when the landlord retains their reversionary interest and the tenant retains possession²⁸ (for example, an over holding tenant²⁹). However, this does not extend to situations where the lease was forfeited for non-payment of rent.³⁰

[24] There is also legislation that allows for personal representatives to retain the right to distress for rent in certain circumstances.³¹

2. RENTAL ARREARS

[25] Distress for rent is only available for rent in arrears, otherwise it is illegal.³²

a. What is included in “rent”

[26] In the common law and in the context of a tenancy, “rent”, is the compensation paid by the tenant for the possession and use of the landlord’s premises.³³ Therefore, under the common law, the right of distress for rent only applies to “rent” owed for the use and occupation of the premises.³⁴

1984 ABCA 180 [*Unit Liner*]), although it is possible that distress for rent is still available for an assignment of rent via s 9 of the *Administration of Justice Act* (England) 1705, 4&5 Anne c 3 [*Administration of Justice Act*, 1705] (Bell at 281-282)..

²⁸ This is a statutory exception arising in the received legislation *Landlord and Tenant Act* (Great Britain), 1709, 8 Anne c 18 (note this legislation is also cited as 8 Anne c 14) [*Landlord and Tenant Act*, 1709] which is still in effect in Alberta (refer to section D in Appendix B); see also Mark Wonnacott, *The History of the Law of Landlord and Tenant in England and Wales* (Clark, NJ: Lawbook Exchange, 2012) at 119 [Wonnacott]; Williams et al., ch 8 at 8-2 to 8-3, s 8:1:2.

²⁹ This legislation has also been used to levy distress for rent against a deceased tenant where the deceased administrator remained in possession of the premises (Williams et al., ch 8 at 8-8 to 8-9, s 8:1:16, citing *Braithwaite v Cooksey* (1790), 126 ER 269, 1 HB1 464). Presumably, if the requirements were met, the *Landlord and Tenant Act*, 1709 could potentially also apply to allow recovery of rental arrears accrued before a lease renewal.

³⁰ Leo Regehr & George Francis Takach, *Alberta Residential Tenancies Law*, 1993 (Toronto: Carswell, 1993) at 63 [Regehr & Takach], citing *Manufacturers Life Insurance Company v Bullwinkle's General Stores Ltd.*, 1983 CanLII 1052 (ABKB) [*Bullwinkle's General Stores*]; Bell at 270; *Brown*, note 21 at para 16.

³¹ See for example the legislation discussed in Williams et al., ch 8 at 8-5 to 8-8, ss 8:1:10, 8:1:13, 8:1:14; Bell at 283.

³² Regehr & Takach, note 30 at 63, citing *Town of Cobourg v Cyclone Woven Wire Fence Co.*, 1918 CanLII 5 (SCC); Williams et al., ch 8 at 8-17, s 8:7:1.

³³ For a more detailed discussion, see Bell at 188-191; Williams et al., ch 6.

³⁴ Bell at 189, 258. Noting that technically rent in this context is a rent service (Sir Robert Megarry et al, *The Law of Real Property*, 8th ed (London, UK: Sweet & Maxwell, 2012) at 1362, s 31-014).

[27] However, there is uncertainty surrounding the impact of contractual and statutory definitions of “rent” on the common law remedy of distress for rent.³⁵ For example, a tenancy agreement can define rent broadly,³⁶ and the *Residential Tenancies Act* defines rent as: “‘rent’ means the consideration to be paid by a tenant to a landlord under a residential tenancy agreement, but does not include a security deposit.”³⁷

b. When is rent in arrears?

[28] Rent is in arrears the day after it is due, therefore the distress for rent can only be levied the day after rent is due and remains unpaid.³⁸

[29] Further, distress for rent is a backwards looking remedy that only allows the recovery of rental arrears owed at the date of the seizure of goods.³⁹ That is, a landlord cannot use the proceeds from a sale to satisfy rental arrears that arose after the seizure.⁴⁰

3. LOSING THE ABILITY TO EXERCISE DISTRESS FOR RENT

[30] Even when there is a right to distress for rent that can be exercised, this can be lost in multiple ways such as the following:⁴¹

³⁵ The Law Commission (England and Wales), *Distress for Rent*, Working Paper No. 97 (1986) at 19-22, online: <webarchive.nationalarchives.gov.uk/ukgwa/20250109101824mp_/https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2016/08/No.097-Distress-for-Rent.pdf> [perma.cc/RUE9-R5PL] [*Distress for Rent Working Paper (England and Wales)*]; Law Reform Commission of Saskatchewan, *Proposals Relating to Distress for Rent* (1993) at 13, online: <lawreformcommission.sk.ca/distress.pdf> [perma.cc/M5A7-GM8R] [*Proposals Relating to Distress for Rent (Saskatchewan)*]; *Distress for Rent in Commercial Tenancies* (Manitoba) at 7.

³⁶ For example, to include other monetary obligations and can include provisions for rent due in advance or accelerated rent. See the discussion below (CHAPTER 2B.4) for more information.

³⁷ *Residential Tenancies Act*, s 1(1)(k).

³⁸ Williams et al., ch 8 at 8-17, s 8:7:1.

³⁹ Regehr & Takach, note 30 at 63, citing *Glenmac Corp Ltd. v McConigal* (1991), 1991 CarswellAlta 547, [1991] AWLD 210 (CA); see also *Robix Environmental Technologies Group Inc (Re)*, 2019 ABQB 240 at para 42 [Robix].

⁴⁰ *Distress for Rent in Commercial Tenancies* (Manitoba) at 8. Instead, if additional/later rental arrears arose after a seizure for the original/earlier rental arrears, then a new separate and subsequent seizure would be required for the additional/later rental arrears (Regehr & Takach, note 30 at 63, citing *Spruce Grove's Industrial Cafe Ltd. v Grove Bowling Lanes Ltd.* (1983), 1983 CarswellAlta 369, [1983] AWLD 566 (QB)).

⁴¹ Valentini & Green, note 25 at 78-109. Note, the list from Valentini & Green also included when the goods are in the custody of the law (*custodia legis*), however, in Alberta since 2011, the *Civil Enforcement Act*, s 48.2(1)(a) indicates that this doctrine no longer applies in this context (per the amendment found in the *Justice and Court Statutes Amendment Act, 2011*, SA 2011, c 20, s 5).

- The landlord contracts out of their right of distress for rent (either explicitly in the agreement, or implicitly as inferred from the landlord's conduct);
- The landlord receives the rental arrears owed;⁴²
- The ending of the tenancy (with notable exceptions);⁴³
- The actions of the landlord, for example if the landlord voluntarily abandons the distress for rent (except if at the request of the tenant), or if the landlord has already seized property at the premises for those rental arrears; or
- The tenant is in bankruptcy proceedings.

[31] Levying distress for rent if the right to exercise distress for rent is lost is most likely illegal.⁴⁴

[32] Further, the ability to exercise the right of distress for rent will be impacted if the landlord seeks to recover rental arrears through alternative remedies.

a. Distress for rent and other landlord remedies for rental arrears

[33] The three remedies available to a landlord during the tenancy for the non-payment of rent are: distress for rent, sue for rental arrears, or forfeiture for non-payment of rent.⁴⁵ The remedy a landlord pursues impacts the availability of the alternatives.

⁴² Note: if distress for rent has already been levied:

- And the property is seized, then the rent can be tendered along with costs making any further impounding or sale unlawful (and presumably requiring the landlord to return the property);
- And the property was seized and impounded, then an attempt by the tenant to tender the rent is too late as the property is in the custody of the law. Instead, the tenant would need to bring an action in replevin to recover the property.

Williams et al., ch 8 at 8-45, s 8:14; Valentini & Green, note 25 at 82, citing *Singleton v Williamson* (1862) 7 H & N 747, 158 ER 670.

⁴³ Refer to the discussion in CHAPTER 2B.1: Tenancies.

⁴⁴ Refer to the discussion in CHAPTER 2D.3: Legal Applications and Actions.

⁴⁵ Note, a potential fourth remedy available at the end of a tenancy is for the landlord to withhold the security deposit to cover unpaid rent.

i. Distress for rent versus forfeiture

[34] The *Residential Tenancies Act* uses the general term “termination” to refer to the ending of a tenancy in all circumstances. Whereas, in the context of distress for rent, how and why the tenancy is ended can have significant implications.

[35] Forfeiture is a type of termination that is essentially an “at fault termination” for a substantial breach of the tenancy, including for the non-payment of rent.⁴⁶

[36] Distress for rent and forfeiture for non-payment of rent are mutually exclusive as the purpose of distress for rent is to allow the tenancy to continue, whereas forfeiture ends the landlord and tenant relationship.⁴⁷

[37] If the landlord exercises their right of forfeiture for the non payment of rent, then the remedy of distress for rent is no longer available to them.⁴⁸ However, where termination of a lease arises from a separate issue (other than for the non-payment of rent), then distress for rent is still an available remedy if rent is unpaid during the notice period.⁴⁹

ii. Distress for rent versus suing for rental arrears

[38] If a landlord elects to sue for rental arrears, they cannot also levy distress for rent for the same rental arrears, especially if a judgment has been obtained.⁵⁰

⁴⁶ See for example *Brown*, note 21 at paras 1921.

⁴⁷ Williams et al., ch 8 at 8-58, s 8:19:3; *Pelley v Streeper*, 2024 ABCJ 24 at paras 20-23 [*Pelley*]; *5 Star Trading*, note 22; Valentini & Green, note 25 at 81.

⁴⁸ *Pelley*, note 47 at paras 21-23, citing *A & M Enterprises v B.J. Millwork*, 1985 CanLII 1310 (ABKB); *Brown*, note 21; Regehr & Takach, note 30 at 63, citing *Brown*, note 21. Although note, in the anomalous decision *Lansdowne Equity Ventures Ltd. v. Folland*, 2000 ABQB 809, the 14 day notice of termination for non-payment of rent was considered to only become forfeiture for non-payment after the notice period ended, thus enabling distress for rent during the notice period. This analysis and result seems inconsistent with the majority of decisions and the principle that a landlord cannot levy distress for rent and also forfeit the tenancy for non-payment of rent (for example, *Brown* note 21 at para 22 considers forfeiture occurs when the landlord “acts upon a default to terminate the lease”; further in *Able Oil & Gas Installations Ltd. v Ethnicorp. Foods International Inc.*, 1989 CanLII 3388 (AB KB) at para 13: “[the landlord cannot] after distraining, purport to terminate for the non-payment of the rent distrained for”).

⁴⁹ In *5 Star Trading*, note 22, a landlord terminated the month-to-month lease as they had sold the property providing the tenant with 60 days notice. After notice of the termination, but before the end of the tenancy, the landlord was able to levy distress for rent against the tenant for unpaid rent that the landlord alleged was not paid during the notice period.

⁵⁰ Richard Olsen, *Commercial Tenancy Handbook* (Toronto, ON: Carswell, 2004) (loose-leaf revision), ch 8, s 8:13 (accessed online), citing *Hoyes v Creery* (1917), 1917 CarswellBC 138, [1918] 1 WWR 873; Haber, note 25 at 3; *Distress for Rent Working Paper* (England and Wales) at 68 (noting this relies on English case law from after the reception of English Law in Alberta). Note: the right is lost for the rental arrears addressed by the

[39] Similarly, when a landlord levies distress for rent, their right to sue to recover for the same rental arrears is suspended until the goods are sold or released.⁵¹ A landlord can only sue for the same rental arrears (after distress for rent) if there was a shortfall.⁵²

4. THE IMPACT OF CONTRACTS ON DISTRESS FOR RENT

a. Modifying distress for rent in residential tenancy agreements

[40] The specific terms and clauses in a tenancy agreement can have significant impacts on distress for rent.

[41] For example, historically tenancy agreements have contractually modified distress for rent by: defining rent broadly to include service charges, insurance, or similar,⁵³ allowing the seizure of property elsewhere,⁵⁴ including rent in advance or rental acceleration clauses,⁵⁵ and contracting out of exemptions.⁵⁶

[42] The legal effect of these contractual modifications is unclear, especially those which attempt to expand the remedy as these could either:

- Extend the boundaries and the reach of common law distress for rent;
- or

action/judgment, the right of distress for rent would remain for any other rental arrears not addressed by the action/judgment.

⁵¹ *Distress for Rent in Commercial Tenancies* (Manitoba) at 6, citing *William and Rhodes Canadian Law of Landlord and Tenant* vol. 1 (6th ed., 1988) at 7-25 (in the edition cited in this report: Williams et al., ch 7 at 7-26.1, s 7:2).

⁵² Haber, note 25 at 3; Valentini & Green, note 25 at 81; *Distress for Rent* Working Paper (England and Wales) at 68.

⁵³ See for example Haber, note 25 at 4.

⁵⁴ For example, the remedy can extend beyond the rental premises (if expressly part of the agreement): Bell at 251, 276.

⁵⁵ Williams et al., ch 8 at 8-18, s 8:8. **Note:** there is no prohibition of acceleration clauses in residential tenancies in Alberta. These clauses are prohibited in the following Canadian jurisdictions: British Columbia (*Residential Tenancy Act*, SBC 2002, c 78, s 22), Saskatchewan (*The Residential Tenancies Act, 2006*, SS 2006, c R-22.0001, s 41), Manitoba (*The Residential Tenancies Act*, CCSM c R119, s 15), New Brunswick (*The Residential Tenancies Act*, SNB 1975, c R-10.2, s 22), Ontario (*Residential Tenancies Act, 2006*, SO 2006, c 17, s 15), and Prince Edward Island (*Residential Tenancy Act*, RSPEI 1988, c R-13-11, s 17).

⁵⁶ Historically, there are instances where landlords included provisions in tenancy agreements where tenants surrendered the exemption rights in legislation (Law Reform Division of the Department of Justice, New Brunswick, *Survey of Landlord and Tenant Law*, Working report (1973) at 95 [*Survey of Landlord and Tenant Law* (New Brunswick)]; Ontario Law Reform Commission, *Landlord and Tenant Law Applicable to Residential Tenancies*, Interim Report (1968) at 16, online: <archive.org/details/interimreportof00onta> [*Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario)]). Note: in Alberta, the *Civil Enforcement Act*, s 2(i) voids any waiver of exceptions given by the *Civil Enforcement Act*.

- Create a separate and additional private contractual right that is limited to governing the relationship between the parties to the contract (ie, contractual distress⁵⁷).

[43] In the case of contractual distress, the contractual rights available are not as extensive as the rights arising out of the common law distress for rent.⁵⁸

[44] Further, the circumstances and nature of contractual distress, even in the context of a tenancy, will determine if the *Civil Enforcement Act* procedures and requirements apply.⁵⁹

b. Contracts “creating” a landlord and tenant relationship

[45] Historically, attornment clauses in mortgages have been found to create a landlord and tenant relationship between the mortgagor and mortgagee, with the borrower agreeing to become the tenant of the lender (aka “distress by mortgage”).⁶⁰ However, for the most part, distress by mortgage no longer applies in Alberta.⁶¹

⁵⁷ Note: while contractual distress can arise in any manner of contracts, this report only considers the impact of contractual terms in residential tenancies on distress for rent.

⁵⁸ *Distress for Rent Working Paper* (England and Wales) at 21-22. For example, in cases of contractual distress: the exceptions that allow seizure of third party goods would not apply (CED 4th (online), *Distress* (West), “Nature of Distress: By Contract” (I.4 at § 4); Bell at 252, 276, 291); the torts of rescous and pound-breach would likely not apply (*Distress for Rent Working Paper* (England and Wales), note 35 at 22); and presumably, the priority position of a landlord against other creditors and interests would not apply. Note: each of these topics are discussed later in this report at CHAPTER 2C.4.c “Whose property can be seized”, Appendix B F1. “Landlord Remedies”, and CHAPTER 4C “The Landlord’s Priority” respectively.

⁵⁹ For example, the *Civil Enforcement Act* applies to contractual distress arising from a security agreement, (by virtue of the relevant sections of the *Personal Property Security Act*, RSA 2000, c P-7; see for example 954470 *Alberta Ltd. v GDS & Associates Systems Ltd.*, 2007 ABQB 242 at paras 12-14 [*GDS & Associates Systems*]). However in other circumstances the *Civil Enforcement Act* was found not to apply; see *Schickerowski v Calgary Airport Authority*, 2009 ABPC 121 at paras 20-25 [*Schickerowski*]; *Jovalco Group Corporation v Heritage Station Inc*, 2009 ABQB 577 at paras 11-17 [*Jovalco*].

⁶⁰ For more information see *Mortgage Remedies in Alberta* (ALRI), note 11 at 108-113; Bell at 252-253. However, note if the attornment clause is merely a scheme to enable satisfied of a debt in priority to other creditors it is not deemed a valid tenancy (Bell at 256).

⁶¹ The *Law of Property Act* declares attornment clauses are void in Alberta (*Law of Property Act*, RSA 2000, c L-7, ss 34-36 [*Law of Property Act*]). However, there are limited exceptions that could apply to residential mortgages (*Mortgage Remedies in Alberta* (ALRI), note 11 at 108-113, 231-233).

C. Levying Distress for Rent

1. SUMMARY

[46] There are four parts to levying distress for rent:⁶²

- Entry of the premises;
- Seizure of the property;
- Impounding the property; and
- Releasing or selling the property.

[47] In Alberta, the procedure for distress for rent is partially governed by the *Civil Enforcement Act* and the associated *Civil Enforcement Regulation*.⁶³ This legislative scheme is generally understood to not affect the landlord's right to distress for rent, even though the procedure impacts the extent, value, and distribution of proceeds for distress for rent.⁶⁴

⁶² *Distress for Rent Working Paper* (England and Wales) at 52-53, 61-64. Note, in terms of interest in the property at common law: when goods are seized, but not impounded, they were being moved under lawful authority of the landlord; when goods were impounded, they were in the custody of the law. Only when the property is sold is title passed to the purchaser (*Distress for Rent Working Paper* (England and Wales) at 109). See also *First City Shopping Centre Group Inc. v Gleddie*, 1991 CanLII 5825 (ABKB) [*First City Shopping Centre*].

⁶³ Although not all aspects of the legislation apply to distress for rent. The applicability of various sections of the *Civil Enforcement Act* and associated regulations to distress for rent is based on:

- Distress for rent being a type of civil enforcement proceeding (the definition of "distress" includes distress for rent per the *Civil Enforcement Act*, s 1(1)(m)(i), and the definition of "civil enforcement proceedings" includes distress proceedings per the *Civil Enforcement Act*, s 1(1)(g)(ii). Therefore, sections of the legislation that apply to civil enforcement proceedings apply to distress for rent);
- In some instances, distress for rent is treated as if were a seizure pursuant to writ proceedings (*Civil Enforcement Act*, ss 34(2), 45, 46, 47(1), 48, per ss 47(2)-(3), 104(a) with noted exception per s 104(a.1); and
- Sections of the act specific to distress for rent (*Civil Enforcement Act*, ss 96(2), 104(b)-(d); *Civil Enforcement Regulation*, ss 11, 14(2)).

Dunlop & Buckwold at 768-769. See Appendix B for more details. Note, in some circumstances of contractual distress the *Civil Enforcement Act* does not apply, refer to n 59.

⁶⁴ Regehr & Takach, note 30 at 62, noting that this references the *Seizures Act*, RSA 1980 c. S-11 which is the predecessor legislation to the *Civil Enforcement Act*. Dunlop & Buckwold at 767, citing *Douglas Properties Ltd v Olde World Antiques Ltd* (1980), 1980 CarswellAlta 90 (QB) at para 16.

2. WHO CAN LEVY DISTRESS FOR RENT

[48] In Alberta, only a bailiff who is working for a civil enforcement agency can seize and remove property pursuant to the common law right of distress for rent.⁶⁵

[49] As the right of distress for rent sits with the landlord,⁶⁶ the landlord must retain the services of a civil enforcement agency and provide instructions to levy the distress for rent. One estimate of the approximate cost of seizure and sale is in the range of \$1,000 to \$1,500.⁶⁷ In practice, the tenant pays for these costs, as the fees and expenses incurred are the first distribution from the proceeds of the sale.⁶⁸

3. ENTRY OF THE PREMISES

[50] The *Civil Enforcement Act* creates a right of entry for a bailiff to conduct civil enforcement proceedings, including for distress for rent.⁶⁹

[51] For residences, generally the right of entry is limited by requiring that: the seizure is conducted between 6AM and 10PM; the bailiff cannot use force to enter; the bailiff can only enter if an adult who lives at the premises is present; and the bailiff cannot enter if entry has been refused.⁷⁰

⁶⁵ *Civil Enforcement Act*, ss 9(3)(a), 9(4).

⁶⁶ I.e., the person holding the reversionary interest in the property (Regehr & Takach, note 30 at 63). The right for distress for rent is impacted if the landlord assigns their reversionary interest, refer to paragraph [22] and n 27.

⁶⁷ See Consolidated Civil Enforcement, “Residential Landlord’s Distress Seizure” (last modified 21 June 2024), online (pdf): [ccebailiff.ca/ab/our_services/documents/Landlord%20Seizure%20\(Residential\)%20Instruction%20Package.pdf](https://ccebailiff.ca/ab/our_services/documents/Landlord%20Seizure%20(Residential)%20Instruction%20Package.pdf) [perma.cc/G67B-T6KF] [Residential Landlord’s Distress Seizure]. Noting that civil enforcement expenses are limited by to the tariff of fees (for carrying out duties and functions under the *Civil Enforcement Act*) the civil enforcement agency submits to the sheriff (per the *Civil Enforcement Regulation*, s 6). While an enforcement debtor can request a review of the statement of account (*Civil Enforcement Act*, s 13.2; *Civil Enforcement Regulation*, s 6.1), a review of the definition of enforcement debtors (i.e., those whom a writ is in force against per the *Civil Enforcement Act*, s 1(1)(r)) indicates a request to review the statement of accounts is not available for a person whose property has been seized and sold in distress for rent proceedings.

⁶⁸ *Civil Enforcement Regulation*, s 11(1).

⁶⁹ *Civil Enforcement Act*, s 13(2)(a)(i), noting that for this section “debtor” includes a person against whom civil enforcement proceedings may be taken (per s 13(1)), and civil enforcement proceedings includes distress for rent (per s 1(1)(g)).

⁷⁰ *Civil Enforcement Regulation*, s 8(1); *Civil Enforcement Act*, s 13(2)(c). Although these sections all allow for the requirements to be dispensed with via an order of the Court. Note, while “residence” is not defined in the act, it is reasonable to assume that a residential tenancy is a residence.

[52] If rent has been paid, then the landlord/bailiff cannot enter to levy distress for rent.⁷¹ At common law, a tenant could potentially use physical force to prevent an unlawful entry in these circumstances.⁷² Although, such efforts now risk falling under offences relating to public or peace officers under the *Criminal Code*.⁷³

4. SEIZURE OF THE PROPERTY

[53] The *Civil Enforcement Act* establishes the requirements that determine when a seizure is effective.⁷⁴ The property being seized must be clearly identified and the seizure must be clearly communicated in the prescribed manner.⁷⁵

[54] The bailiff must also complete the bailiff's report and addendum and provide it to the landlord, and the civil enforcement agency must register the seizure in the Personal Property Registry.⁷⁶

[55] In practice, the remedy of distress for rent allows for the seizure of goods and chattel:

- That are on leased premises (with notable exceptions);
- That belong to the tenant (with notable exceptions);
- That are not exempt property;
- When the seizure of goods is reasonable; and

⁷¹ Wonnacott at 123.

⁷² Wonnacott at 123-124, citing *Bennett v Bayes* (1860) 5 H&N 391.

⁷³ *Criminal Code*, RSC 1985, c C-46, s 129(a) [*Criminal Code*].

⁷⁴ The seizure requirements found in *Civil Enforcement Act* and *Civil Enforcement Regulation*, are a partial codification of the common law (Roderick J. Wood, "Enforcement Remedies of Creditors" (1996) 34:4 *Alta L Rev* 783 at 795-796 [Enforcement Remedies]) and are considered comprehensive to the extent these likely oust any other seizure related common law requirements (Dunlop & Buckwold at 439-440 {specifically at n 153} for a discussion on the requirement of a bailiff to "see and be able to lay [their] hands on the personal property").

⁷⁵ Dunlop & Buckwold at 439, per the *Civil Enforcement Act*, s 45, applicable to distress for rent via the *Civil Enforcement Act*, s 104(a). Property is identified via the notice of seizure, implicitly required in the wording of the *Civil Enforcement Act*, s 45(1), with the notice itself being found in the *Civil Enforcement Regulation*, Schedule 4. The seizure is communicated through the service of the seizure documents per the *Civil Enforcement Act*, s 45(1). Seizure documents can be served in numerous ways: *Civil Enforcement Act*, ss 45(1), (3). The seizure documents comprise the warrant, the notice of seizure of personal property and addendum, the notice of objection, and the information for debtor (*Civil Enforcement Regulation*, s 2; *Civil Enforcement Act*, s 1(1)(pp)), all of which are prescribed forms (*Civil Enforcement Regulation*, s 3) found in the *Civil Enforcement Regulation*, Schedule 4.

⁷⁶ *Civil Enforcement Regulation* ss 7, 13(1)(a).

- When there has been no prior seizures for the same rental arrears.

a. Goods and chattel

[56] Distress for rent is limited to goods and chattel, and does not apply to intangible personal property.⁷⁷

b. Location of the property

[57] Distress for rent can only be levied at the leased premises where the rental arrears arose.⁷⁸

[58] However, there is a statutory exception that allows 30 days for property to be seized from elsewhere, if the property was removed fraudulently or clandestinely from the lease premises to prevent distress for rent being levied.⁷⁹

c. Whose property can be seized

[59] Generally, only the property of the tenant (or a person who is liable for the rent) can be seized.⁸⁰

[60] There are two exceptions that allow a landlord to seize the property of a third party:

- Property that is transferred or sold to a third party can be seized if the property remains on the premises;⁸¹ and
- Property of a relative of the tenant that lives on the premises as a member of the family.⁸²

⁷⁷ Williams et al., ch 8 at 8-62, s 8:22; Dunlop & Buckwold at 776.

⁷⁸ Williams et al., ch 8 at 8-62, s 8:22; Bell at 273-274.

⁷⁹ This is a statutory power arising from section 1 of the *Distress for Rent Act* (Great Britain), 1737, 11 Geo 2, c 19 [*Distress for Rent Act*, 1737]. Note: this is limited to only allow recovery of goods if they were removed on the day, or after, the rent was due. (Bell note 15 at 279-280). See *Tona Holdings Ltd. v Mount Royal Village Ltd.*, 1996 ABCA 97 at para 2 [*Tona Holdings*]; *Kaye v Royal Bank*, 1990 CanLII 5565 (ABKB). The *Distress for Rent Act*, 1737 also allows for the seizure of cattle feeding on “any common appendant or appurtenant” (Bell note 15 at 275).

⁸⁰ *Civil Enforcement Act*, s 104(b), refer to *CriticalControl Solutions Corp. v 954470 Alberta Ltd.*, 2005 ABQB 753 at paras 18-29 for a review of case law on who is a “person who is liable for rent”, upheld in *GDS & Associates Systems*, note 59 at paras 35-40, including upholding the approach taken for who is a “person who is liable for rent”.

⁸¹ *Civil Enforcement Act*, s 104(c)(ii); Dunlop & Buckwold at 793-794.

⁸² *Civil Enforcement Act*, s 104(c)(v).

d. Exempt property

[61] Pursuant to the *Civil Enforcement Act*, twelve months of food, clothing (up to \$4,000), household furnishings and appliances (up to \$1,000), required medical and dental aids, and personal property used to earn an income (up to \$10,000) are exempt from seizure during distress for rent proceedings.⁸³ The tenant has the onus of proving property is exempt.⁸⁴

[62] In addition to the exemptions found in the *Civil Enforcement Act*, it is unclear if the historic common law exemptions and specific exemptions found in received legislation continue to apply Alberta.⁸⁵

e. Reasonable seizure (not excessive)

[63] A landlord cannot seize more than is reasonably necessary to satisfy the rental arrears.⁸⁶

f. Prior seizures

[64] While distress for rent can be levied for each missed rental payment,⁸⁷ distress for rent cannot be levied multiple times for the same rental period, unless there was insufficient property on the premises at the first attempt.⁸⁸

[65] Before the *Civil Enforcement Act*, property that had already been seized and was in the custody of the law (*custodia legis*) could not be seized in distress

⁸³ Generally, exempt property is listed in the *Civil Enforcement Act*, s 88. The applicability of this list is narrowed for distress for rent by the *Civil Enforcement Act*, s 104(d). Note: the exemptions for food, clothing, and medical and dental aids also extend to the tenant's dependants (as defined in the *Civil Enforcement Regulation*, s 36). The prescribed amounts are generally found in the *Civil Enforcement Regulations*, s 37(1), with further specific modifications to distress for rent found in s 38. The notable differences for distress for rent exemptions are: the lack of an exemption for a motor vehicle (up to \$5,000); that household furnishings and appliances are defined, and the maximum value of these being \$3,000 lower than for other types of seizure; and the exemption for proceeds arising from the sale of exempt property does not apply (this exemption is found in the *Civil Enforcement Regulation*, s 37(2), applicable generally per the *Civil Enforcement Act*, s 88(j), however, s 88(j) is not included in the list of applicable exemptions found in the *Civil Enforcement Act*, s 104(d)(i)).

⁸⁴ *M & S Equity Ltd. v Benjamin*, 1994 CanLII 9103 (AB KB) at paras 14-19 [*M & S Equity*].

⁸⁵ For example, see *Distress for Rent in Commercial Tenancies* (Manitoba) at 10, which suggests that common law exceptions continue along side the statutory exemptions in Manitoba. Refer to Appendix B for a summary of the common law exemptions, and Appendix C for the list of potentially applicable received legislation.

⁸⁶ Wonnacott at 125; Williams et al., ch 8 at 8-85, s 8:24:2; see also *Robix*, note 39 at para 44; Regehr & Takach, note 30 at 64, citing *Seigman v Miller Spencer & Co.*, 1915 CanLII 413 (ABKB).

⁸⁷ For example, if rent is due monthly, distress for rent can be levied for the first month that rent is unpaid, and then a second distress for rent can be levied for the second rent that is unpaid, and so on.

⁸⁸ Williams et al., ch 8 at 8-46, s 8:17. For example, if the bailiff fails to seize sufficient property to satisfy the rental arrears, they cannot go back again to seize more property.

for rent proceedings.⁸⁹ However, the legislation currently allows seizure of property that has already been seized.⁹⁰

5. IMPOUNDING THE PROPERTY

[66] Historically, the distinction between seizing and impounding property was clear. Seizing was carried out by the landlord (or agent), and property remained seized until it was impounded (ie, removed and placed under lock and key in the custody of the law). Contemporarily, the distinction is less clear as:

- The *Distress for Rent Act 1737*,⁹¹ allowed for property to be impounded on the premises if possession of the property was maintained;⁹² and
- While, the *Civil Enforcement Act* governs the seizure and the sale of seized property,⁹³ impounding is not addressed in this act.

[67] Practically, it appears that bailiffs either leave the property at the premises under a bailee's undertaking, or remove the property from the premises.⁹⁴ Unfortunately, it is unclear if either of these approaches is sufficient to impound the property.⁹⁵

[68] Further, an attempt to impound property on the premises by securing the entire premises could also be problematic as:

⁸⁹ Dunlop & Buckwold at 779-780, citing *Canada Life Assurance Co. v Kupa*, 1991 CarswellAlta 393 (QB), noting this relates to the status of the seized property and not the nature of the claims.

⁹⁰ *Civil Enforcement Act*, s 48.2(1)(a). Interestingly, up until 2012, the *Civil Enforcement Act* inversely prevented seizure of already seized property which left uncertainty as to whether the doctrine of *custodia legis* applied (see discussion in Dunlop & Buckwold at 780-783).

⁹¹ *Distress for Rent Act 1737*, note 79, s 10.

⁹² For example by taking all the seized goods into one room and maintaining possession of the room (Sheldon L. Disenhouse & Christina C. Kobi, "The Distress Process - Exercising the Remedy" in Harvey M. Haber, ed, *Distress A Commercial Landlord's Remedy* (Aurora, ON: Canada Law Book, 2001) at 30 [Disenhouse & Kobi], citing *Woods v Durrant* (1846) 6 M & W 149, 153 ER 1137).

⁹³ *Civil Enforcement Act*, ss 45, 48, 104.

⁹⁴ "Civil Enforcement Procedure Manual" (last modified October 2025) at 8.13-8.16, online: *Government of Alberta* <kings-printer.alberta.ca/documents/publications/civil.pdf> [perma.cc/ AKT3-QGX6].

⁹⁵ While property seized by a sheriff is considered to be in the custody of the law (*Westchester Equities v Thorne Riddell Inc.*, 1988 CanLII 3432 (ABKB) at para 10 [*Westchester*]), it is unclear if this extends to property seized by a bailiff (*Westchester* is based on the *Seizures Act*, RSA 1980, c S-11, s 25(2), where seizure was by a sheriff (an officer of the court and considered an agent of the law)). The *Civil Enforcement Act*, s 47(1) is similar, however, it is unclear if the same applies seizure under by a private agency under the *Civil Enforcement Act* (Dunlop & Buckwold at 779-780). Further, it is unclear if a bailee's undertaking constitutes impounding the property (*Distress for Rent in Commercial Tenancies* (Manitoba) at 19; *Westchester*, note 95). Although, in *First City Shopping Centre*, note 62 at paras 33-35, 75, where the Court questions the distinction between property being "in the custody of the law" and the requirement "to take and hold" (i.e., impound) the property, potentially suggesting the impounding requirement can be met through seizure alone.

- This could forfeit the lease by preventing the tenant from accessing the premises, which in turn would render the distress for rent illegal;⁹⁶ and
- The *Residential Tenancies Act* requires the landlord obtain the tenant's consent before changing the locks, or provide the tenant with a key.⁹⁷

[69] There could be significant consequences if property is not impounded as required. For example, historically a "landlord could not pass good title to a purchaser in a distress sale, because the lack of impounding would render the distress unlawful".⁹⁸ Although, the *Civil Enforcement Act* might inadvertently validate such a sale.⁹⁹

6. RELEASING OR SELLING THE PROPERTY

[70] Once property has been seized, the seizure can only be terminated through the sale or release of the property.¹⁰⁰

a. Releasing the property

[71] Property can be released by instruction from the landlord, a court order, or by the civil enforcement agency.¹⁰¹

[72] Once released, the civil enforcement agency should notify the tenant and amend the registration in the Personal Property Registry.¹⁰²

⁹⁶ Disenhouse & Kobi, note 92 at 30-31. Refer to paragraph [141] and n 186 for a discussion on the impact of changing the lock in terms of forfeiture.

⁹⁷ *Residential Tenancies Act*, s 24(1) prevents the landlord changing locks without consent of the tenant. *Residential Tenancies Act*, s 24(2) allows for a change to the locks if a key is provided to the tenant as soon as the change is made. Contravening section 24 is an offence under section *Residential Tenancies Act*, s 60(1), which can result in a fine of up to \$5,000.

⁹⁸ *Distress for Rent in Commercial Tenancies* (Manitoba) at 19, citing the *Distress for Rent Working Paper* (England and Wales) at 58-60; *Distress for Rent Working Paper* (England and Wales) at 63-64; Bell at 335, 344.

⁹⁹ Sales arising from illegal distress for rent might be unintentionally validated by the *Civil Enforcement Act*, s 48(j), as this section appears to provide the buyer with the debtors (i.e., tenants) interest.

¹⁰⁰ *Civil Enforcement Act*, s 47(1).

¹⁰¹ Interestingly, unlike writ proceedings or garnishments, there is no requirement for notice of discontinuance to be given for distress for rent proceedings (as the *Civil Enforcement Act*, s 7 specifies it applies to writ proceedings and garnishment). Generally, the *Civil Enforcement Act*, s 47(2) notice is intended to apply to situations where the civil enforcement agency is releasing the property without instruction or a court order, however, absent s 7 notice for distress for rent, s 47(2) presumably applies (Dunlop & Buckwold at 451-453, 773).

¹⁰² *Civil Enforcement Regulation*, ss 13(1)(b), 15(2), indicates notice to a debtor. Presumably, the same notice requirement applies to a tenant in distress for rent proceedings.

b. Selling the property

[73] The sale of property is a received statutory power, that allows (but does not require) a landlord to sell the property.¹⁰³

[74] The *Civil Enforcement Act* requires that the sale is managed by the civil enforcement agency retained by the landlord.¹⁰⁴ The sale cannot occur until after the notice of objection period has expired, and requires 15 days notice is given before the sale takes place.¹⁰⁵

[75] After the sale, proceeds are distributed in accordance with the legislation,¹⁰⁶ and the purchaser receives ownership of the property.¹⁰⁷

[76] As with other areas of distress for rent, it is unclear the extent to which common law requirements surrounding the sale of goods are still in effect.¹⁰⁸

D. Challenging Distress for Rent

[77] Once distress for rent has been levied, if the tenant wishes to challenge the distress for rent they can:

- In theory and in very limited circumstances, resort to self-help remedies to seize back property themselves (when the distress for rent was illegal);
- Follow the notice of objection process found in the *Civil Enforcement Act*; or

¹⁰³ The *Distress for Rent Act* (England), 1689, 2 Will & Mar c 5 [*Distress for Rent Act*, 1689]; Ziff, note 10 at 307-308; *Distress for Rent Working Paper* (England and Wales) at 61-63.

¹⁰⁴ *Civil Enforcement Act*, ss 9(1)(c), 9(3)(a).

¹⁰⁵ The *Civil Enforcement Act*, s 48 is applicable to distress for rent per s 104(a). Note: *Civil Enforcement Act*, s 48 also contains additional requirements relating to the sale of property.

¹⁰⁶ *Civil Enforcement Regulation*, ss 11, 14(3). Although note, this could be clearer; Dunlop & Buckwold at 774, indicating that the *Civil Enforcement Act*, s 96(4) implicitly applies, so that priority interests would be paid out before the list found in the *Civil Enforcement Regulation*, s 11(1).

¹⁰⁷ The purchaser receives the interest in the property that was held by the tenant. The *Civil Enforcement Act*, s 104(a) applies s 48 to distress for rent “as if it were a seizure made pursuant to writ proceedings,” which presumably makes the tenant the “enforcement debtor” (Dunlop & Buckwold at 772). The *Civil Enforcement Act*, s 48(j) provides the buyer with “only” the interest of the enforcement debtor. The intention of this provision appears to be to ensure the protection of prior interests (e.g. a security interest or a lien), except as otherwise modified by the *Civil Enforcement Act*, such as s 34(2); see Dunlop & Buckwold at 463-466. The transfer of title occurs on the date of the sale (*Robix*, note 39 at paras 8-9).

¹⁰⁸ Refer to Williams et al., ch 8 at 8-96 to 8-101, s 8:31:2 for a detailed review of potentially applicable common law cases.

- Bring an application or commence a legal action: there are multiple potential applications or actions that could apply, depending on the circumstances.

[78] The tenant cannot challenge distress for rent through the Residential Tenancy Dispute Resolution Service (RTDRS).¹⁰⁹ Although, perhaps confusingly from a tenant’s perspective, the RTDRS can consider issues where a landlord disposes of property they claim is abandoned.¹¹⁰

1. SELF HELP REMEDIES

[79] Under the common law, when property was taken via distress for rent, there was a very limited ability for a tenant to lawfully seize back the property themselves:¹¹¹

- If the distress for rent was illegal, then the tenant could lawfully retrieve the property when it was seized but not yet impounded;¹¹² or
- If the distress for rent was legal, but the impounding was unlawful.¹¹³

[80] However, there could be significant consequences if a tenant incorrectly, and unlawfully, interferes with distress for rent.¹¹⁴

¹⁰⁹ The RTDRS has previously found it does not have jurisdiction to consider matters falling under the *Civil Enforcement Act*, including distress for rent. See 21005320 (*Re*), 2021 ABRTDRS 29.

¹¹⁰ As abandoned goods are addressed in *Residential Tenancies Act*, s 31. See for example 20009763 (*Re*), 2021 ABRTDRS 4; 19008905 (*Re*), 2021 ABRTDRS 7.

¹¹¹ Williams et al., ch 8 at 8-92, s 8:28:2; *Distress for Rent Working Paper* (England and Wales), at 70. Note, this limited “right of recaption” needs to be timely and requires that no breach of the peace is caused (Bell at 355, citing *Rich v Woolley* (1831); F.A. Enever, *History of the Law of Distress for Rent and Damage Feasant* (London, UK: George Routledge and Sons, LTD., 1931) at 246-247 [Enever]).

¹¹² After the property was impounded it was in the custody of the law and self-help remedies were not permissible. Note: this self-help remedy only applies to illegal distress for rent. There is no such self help remedy for irregular or excessive distress for rent.

¹¹³ For example, if the tenant tendered the rent after seizure but before impounding (Enever, note 111 at 247) or if the landlord made an unlawful use of impounded property (this is based on a single case, *Smith v Wright* (1861), 158 ER 338, 6 H & N 821, where the distrainer seized and impounded two horses and put them to work, the court found the owner of the horses was not liable in rescue or pound-breach for re-seizing them).

¹¹⁴ They could be: (1) liable for the torts of rescous or pound-breach (refer to Appendix B for more information); (2) committing an offence under the *Civil Enforcement Act*, s 45(5); or (3) committing a criminal offence under the *Criminal Code*, note 73, ss 129(a), (c) (this is a hybrid offence, that can result in a prison term of up to 2 years per ss 129(d), (e)).

2. STATUTORY PROCESS: NOTICE OF OBJECTION

[81] The notice of objection requirements are established in section 46 of the *Civil Enforcement Act*, with the prescribed form being found in the *Civil Enforcement Regulation*.¹¹⁵ The tenant is made aware of the notice of objection process through the seizure documents served at the time of seizure.¹¹⁶

[82] In the notice the tenant must specify the reason for the objection and serve the notice on the civil enforcement agency within 15 days.¹¹⁷ If either of these requirements are not met, then the notice of objection is void and can be disregarded by the civil enforcement agency.¹¹⁸

[83] Once the notice of objection is served, the property cannot be sold without a court order, resulting in the property waiting until:

- The landlord brings an application seeking permission to sell the property;¹¹⁹
- The landlord releases the property;¹²⁰ or
- The tenant brings an application, or commences an action, against the landlord.

[84] One potential issue with the notice of objection process is that a tenant might be unaware of valid reasons for objection.¹²¹ Failing to serve the notice of objection within the 15 day time period does not prevent the tenant bringing an application,¹²² or commencing an action against the landlord.

¹¹⁵ *Civil Enforcement Act*, s 46; “Notice of Objection to Seizure of Personal Property” form found in the *Civil Enforcement Regulation*, Schedule 4.

¹¹⁶ The bailiff is required to include a blank copy of the “Notice of Objection” form in the seizure documents provided (*Civil Enforcement Regulation*, s 2; *Civil Enforcement Act*, s 1(1)(pp)). Note: service of the seizure documents does not require personal service on the tenant, although presumably service in any form would likely come to a tenant’s attention (see *Civil Enforcement Act*, ss 45(1), 45(3), for service requirements).

¹¹⁷ *Civil Enforcement Act*, s 46(1). 15 days from when the seizure documents were served, and noting that the address of the civil enforcement agency will be on the Warrant (distress) and the Notice of Seizure of Personal Property provided in the seizure documents.

¹¹⁸ *Civil Enforcement Act*, s 46(3); see also Dunlop & Buckwold at 444-445.

¹¹⁹ Presumably bringing the application per the *Civil Enforcement Act*, s 5(1).

¹²⁰ *Civil Enforcement Act*, s 47.

¹²¹ Valid grounds can be legal objections (challenging the validity, extent, and process of the seizure) or equitable (challenging the fairness of the seizure) (Enforcement Remedies at 817). However, this is not made clear on the form, nor does this information appear readily available in residential tenancy legal resources.

¹²² Dunlop & Buckwold at 447-449, suggest that it is ambiguous if the debtor (or in the context of distress for rent, the tenant) would be able to bring an application on the basis of a Notice of Objection after the 15 day time period to prevent the sale of the property, then noting that the case *Freightland Carriers Inc. v Ace*

3. LEGAL APPLICATIONS AND ACTIONS

[85] Depending upon the specific circumstances relating to the distress for rent levied, a tenant can seek interlocutory relief, or bring an action in tort, equity, or via a statutory cause of action.

[86] Further, the appropriate and applicable remedy available to the tenant can depend upon whether the distress for rent is alleged as:¹²³

- **Illegal:** when there was never a right to exercise distress for rent to begin with or other irregularities at the outset;
- **Irregular:** when there was a right to exercise distress for rent, but an aspect of the levying of distress for rent was incorrect; or
- **Excessive:** where the amount of property seized is unreasonable.

[87] The table below summarizes the applications and actions that are potentially available to a tenant:¹²⁴

	Application or Action	Illegal	Irregular	Excessive
Interlocutory	Injunction	Available		
	Stays	Available		
	Replevin	Available	Not available	
Torts	Negligence	Potentially Available		
	Conversion	Available	Potentially Available	
	Detinue		Potentially Available	
	Trespass to chattel		Not available	
	Trespass	Not available		
	Trespass <i>ab initio</i>	No longer available		
Statutory	Wrongful distress	Available		
	Excessive distress	Not applicable		Available
Equitable	Unjust enrichment	Potentially available		

[88] It is unclear if the distinction between irregular and illegal distress for rent continues to exist in Alberta. As a number of recent decisions have found distress

Towing & Recovery Ltd., 2005 ABQB 371 favours an interpretation where missing the 15 day time period does not prevent the debtor (or tenant) from bringing any other application.

¹²³ See Wonnacott at 124-125.

¹²⁴ This table is a summary of the review of potential remedies found in section F in Appendix B. Where no directly applicable case law (or secondary sources) relating to applicability based on the distinction between illegal, irregular, and excessive distress, the principles found for other similar remedies were considered. For example, conversion is available when distress for rent is illegal, irregular, or excessive (Stephen Posen, "The Tenant's Remedies for Wrongful Distress" in Harvey M. Haber, ed, *Distress A Commercial Landlord's Remedy* (Aurora, ON: Canada Law Book, 2001) at 134-135 [Posen]), considering the similarities of these remedies, the assumption was made the same approach applies equally for detinue.

for rent to be unlawful when conducted without strict adherence to the requirements found in the *Civil Enforcement Act*.¹²⁵

¹²⁵ See for example, *Grisdale v 816-838 11th Avenue SW*, 2024 ABKB 500 at paras 24-25 [*Grisdale*]; *GDS & Associates Systems*, note 59 at para 55.

CHAPTER 3

Legal Reform of Distress for Rent

A. History of Reform

[89] In this section, we provide a quick review of the history of legal reform of distress for rent, with a focus on residential tenancies in Canada.

1. ALBERTA

[90] In Alberta, distress for rent in residential tenancies has previously been considered in:

- 1975: in the ALRI *Resolution of Disputes Landlord and Tenant (Advisory) Boards; Distress Background paper*;¹²⁶
- 1977: in the ALRI *Residential Tenancies Final Report 22*;¹²⁷ and
- 1990: in the Ministerial Advisory Committee on Residential Tenancies report *Achieving a Balance*.¹²⁸

a. ALRI resolution of disputes landlord and tenant (advisory) boards; distress background paper (1975)

[91] ALRI (then called the Institute of Law Research and Reform) considered distress for rent in residential tenancies noting:¹²⁹

The most important consideration, when dealing with the remedy of distress [for rent], is the problem which a tenant faces when he is unable to pay his rent and thereupon potentially subject to the distress [for rent] provisions invoked by his landlord. When considered from the viewpoint of the tenant his problems are compounded when the possessions which he acquired in the nature of household effects become subject to removal by the landlord.

¹²⁶ Institute of Law Research and Reform (Alberta), “Residential Tenancies Distress” in *Resolution of Disputes; Landlord and Tenant (Advisory) Boards; Distress, Background Paper 6* (1975), online: alri.ualberta.ca/1975/11/resolution-of-disputes-landlord-and-tenant-advisory-boards-distress-research-paper-6/ [Background Paper 1975].

¹²⁷ Institute of Law Research and Reform (Alberta), *Residential Tenancies, Final Report 22* (1977), online: alri.ualberta.ca/1977/02/residential-tenancies/ [Residential Tenancies 1977].

¹²⁸ Ministerial Advisory Committee on Residential Tenancies (Alberta), *Achieving a Balance* (Edmonton: Consumer and Corporate Affairs, 1990) [Achieving a Balance].

¹²⁹ Background Paper 1975, note 126 at 1.

Society as a whole and third persons are thereby affected when a bad situation is made worse.

[92] However, the background paper notes the continued desirability of the remedy was based on the broader debtor protections that operated in Alberta at that time.¹³⁰

b. ALRI *residential tenancies*, final report 22 (1977)

[93] Informed by the background paper, ALRI's Final Report identified a range of disadvantages of distress for rent to both the landlord and tenant, including the expense of the process, the ability of the tenant to readily delay the procedure, that sales are seldom made, that tenants' possessions are often exempt, and that goods sold will seldom fetch market value.¹³¹

[94] The 1977 report recommended retaining distress for rent as it remained useful in the context of the broader creditor/debtor legislative scheme.¹³² Key to this recommendation appears to be that:¹³³

[...] landlords tell us that distress is useful; that in some situations its mere availability can be used to induce defaulting tenants to pay their rent, and that in other cases seizure and sale does result in recovery of rent which could not otherwise be collected.

[95] Further, the report implies that the statutory exemptions¹³⁴ to property that can be seized and the requirement for a Sheriff to seize the property both reduced the harshness of the remedy.

[96] The 1977 report also recommended making the following portions of received legislation inapplicable to residential tenancies in Alberta:¹³⁵

¹³⁰ Specifically, quoting the City of Edmonton Landlord and Tenant Advisory Board, which referred to Alberta as a "debtors' paradise" based on debtor protections legislated in the depression years; *Background Paper 1975*, note 126 at 4.

¹³¹ *Residential Tenancies 1977*, note 127 at 62-63.

¹³² Note: at the time, security deposits were generally "substantially less than one month's rent" (*Residential Tenancies 1977*, note 127 at 89).

¹³³ *Residential Tenancies 1977*, note 127 at 63.

¹³⁴ Referencing the *Exemptions Act* and *Seizures Act*, the equivalent statutory exemptions are now listed in the *Civil Enforcement Act*, s 88, noting the exemptions for distress for rent in residential tenancies are modified by the *Civil Enforcement Act*, s 104(d)(i).

¹³⁵ In the context of the discussion of overholding tenants and new tenants (see *Residential Tenancies 1977*, note 127 at 76-79, 178, specifically this forms part of recommendation 23(6)). The legislature enacted this part of the recommendation for all tenancies (see *Law of Property Act*, note 61 at s 66(2)).

- The *Landlord and Tenant Act* (Great Britain), 1730 4 Geo 2 c 28 (Imp.); and
- The *Distress for Rent Act* (Great Britain), 1737 11 Geo 2 c 19, s 18 (Imp.).

[97] However, the reason for this is related to over holding tenants rather than distress for rent.

c. Ministerial advisory committee on residential tenancies report achieving a balance (1990)

[98] The 1990 *Achieving a Balance* report recommends that, to recover unpaid rent without ending the tenancy, landlords should continue to have the choice of either suing the tenant or levying distress for rent. Unfortunately, the report provides limited rationale for this recommendation, other than recognising a residential lease is both a demise of land and a contract.¹³⁶

[99] Additionally, the report recommends the codification of the landlord's right to distress for rent.¹³⁷

2. OTHER COMMON LAW JURISDICTIONS IN CANADA

[100] All other common law jurisdictions in Canada have abolished distress for rent in residential tenancies.¹³⁸ The law reform publications that consider distress for rent in residential tenancies are summarized below.

a. Ontario

[101] The Ontario Law Reform Commission published its *Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies* in 1968.¹³⁹

[102] The Ontario report considered the potential benefits to landlords, which essentially all relate to distress for rent being an easier method to recover rent arrears, primarily through the threat of the remedy. However, it ultimately concluded that landlords should be responsible for assessing the risk associated

¹³⁶ *Achieving a Balance* at 93-94.

¹³⁷ *Achieving a Balance* at 94-95.

¹³⁸ Refer to Appendix A.

¹³⁹ *Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario).

with potential tenants (in the same way creditors are expected to conduct due diligence).¹⁴⁰

[103] The report recommended abolishing both the common law and contractual remedy of distress for rent in residential tenancies as the advantages to the landlords are far outweighed by the disadvantages to tenants.¹⁴¹

b. British Columbia

[104] Influenced by the Ontario *Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies* and the subsequent abolishment of distress for rent in Ontario, British Columbia abolished distress for rent in residential tenancies in 1970, for two main policy reasons:¹⁴²

- (a) the threat of distress being held over tenants; and
- (b) the incidence of illegal distress against tenants who did not know the statutory limitations in relation to distress.

c. New Brunswick

[105] The 1973 *Survey of landlord and tenant law* working report was commissioned by the Law Reform Division of the Department of Justice of the Province of New Brunswick. This report recommended abolishing distress for rent in residential tenancies.¹⁴³ Distress for rent was abolished in 1975.

[106] Based on the discussion in the report, we can infer the reasons for recommending abolition were that it was rarely used, ineffective as a remedy (except as a threat), and of limited relevance in a modern society.

¹⁴⁰ *Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 14-16.

¹⁴¹ *Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 18. Note, at that time in Ontario, it appears that exemptions were limited as the legality of contracting out of the seizure exceptions was unsettled at the time (*Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 15).

¹⁴² Law Reform Commission of British Columbia, *Report on Landlord and Tenant Relationships*, Project No. 12 Residential Tenancies LCR 13 (1973), online: <bcli.org/sites/default/files/report13.pdf> [perma.cc/9586-9VAN] [*Report on Landlord and Tenant Relationships* (British Columbia)] at 165, citing Donald H.L.Lamont, *Residential tenancies: the Landlord and tenant act, part IV*, 2nd ed (Toronto: Carswell Co., 1973).

¹⁴³ *Survey of Landlord and Tenant Law* (New Brunswick) at 102.

3. OTHER NOTABLE LEGAL REFORM

a. Common law jurisdictions

[107] Ontario was not the first common law jurisdiction to abolish distress for rent for residential tenancies, even in 1968 it had been abolished in parts of Australia (New South Wales and Victoria), as well as parts of the United States of America (New York and California).¹⁴⁴

[108] Since then, distress for rent in residential tenancies has been considered, recommended for either full or partial abolition, and/or abolished in various common law jurisdictions, including England, Wales, and Ireland.¹⁴⁵

b. Distress for rent in commercial tenancies

[109] While distress for rent in commercial tenancies is out of scope of both this report and the wider Residential Tenancies Act project, the following Canadian law reform publications were reviewed as part of the research for this project:

- *Report on Distress for Rent, British Columbia 1981 (and the related Background Report on Distress for rent, 1981)*;¹⁴⁶
- *Proposal for Distress for Rent, Saskatchewan 1993*;¹⁴⁷
- *Distress for Rent in Commercial Tenancies, Manitoba 1994*;¹⁴⁸

¹⁴⁴ *Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 15.

¹⁴⁵ The Law Commission (England and Wales) *Landlord and Tenant Distress for Rent*, Law Com. No. 194 (1991), online: <webarchive.nationalarchives.gov.uk/ukgwa/20241223105421/https://lawcom.gov.uk/project/distress-for-rent/> [perma.cc/5NW9-5HQD] [*Landlord and Tenant Distress for Rent* (England and Wales)]; The Law Reform Commission (Ireland) *General Law of Landlord and Tenant*, Consultation paper LRC CP 28 (2003) at 121-122, online: <lawreform.ie/_fileupload/consultation%20papers/cpLandT.pdf> [perma.cc/X5MU-YYGS], and the corresponding Law Reform Commission (Ireland), *The Law of Landlord and Tenant*, Report LRC 85 (2007) at 112, online: <lawreform.ie/_fileupload/Reports/r85Landlord&Tenant&Bill.pdf>.

¹⁴⁶ Law Reform Commission of British Columbia, *Report on Distress for Rent*, LCR 53 (1981), online: <bcli.org/publication/53-report-distress-rent/> [perma.cc/WJQ4-RZFF] [*Report on Distress for Rent* (British Columbia)]; Law Reform Commission of British Columbia, *Report of Distress for Rent*, Backgrounder LCR 53 (1981), online: <bcli.org/sites/default/files/LRC_53-Distress_for_Rent-Backgrounder.pdf> [perma.cc/8XVX-FT24].

¹⁴⁷ *Proposals Relating to Distress for Rent* (Saskatchewan), note 35.

¹⁴⁸ *Distress for Rent in Commercial Tenancies* (Manitoba).

- Uniform Commercial Tenancies Act, (ULCC 2019) (and the related *Uniform Commercial Tenancies Act: Progress Report 3*, 2014); and¹⁴⁹
- *Implementation of the Uniform Commercial Tenancies Act: Tentative Proposals*, Saskatchewan 2005.¹⁵⁰

B. Revisiting Distress for Rent in Residential Tenancies

[110] There are four main reasons for revisiting distress for rent in residential tenancies:

- Alberta is the outlier in Canada, distress for rent in residential tenancies has been abolished in all other Canadian Jurisdictions;¹⁵¹
- Since ALRI last considered distress for rent in Alberta, there have been significant changes to:
 - The debtor/creditor laws in Alberta, which have undergone an “unparalleled restructuring”;¹⁵² and
 - The management of disputes, especially the availability of the Residential Tenancy Dispute Resolution Service (RTDRS);¹⁵³
- Distress for rent is ineffective in residential tenancies, and alternative simpler and more effective remedies are available; and

¹⁴⁹ Uniform Law Conference of Canada, *Uniform Commercial Tenancies Act (2019)*, online: <ulcc-chlc.ca/ULCC/media/EN-Uniform-Acts/UNIFORM-COMMERCIAL-TENANCIES-ACT-%282019%29.pdf> [perma.cc/DX6U-U56E] [*Uniform Commercial Tenancies Act*]; Uniform Law Conference of Canada, *Uniform Commercial Tenancies Act: Progress Report #3*, Joint Project with the Law Reform Commission of Saskatchewan (2014), online: <ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2014/A-Joint-Project-with-the-Law-Reform-Commission-of-Saskatchewan-Uniform-Commercial-Tenancies-Act.pdf> [perma.cc/7VXK-23WH].

¹⁵⁰ Law Reform Commission of Saskatchewan, *Implementation of the Uniform Commercial Tenancies Act: Tentative Proposals* (2025), online: <lawreformcommission.sk.ca/Uniform_Commercial_Tenancies_Act_Tentative_Proposals_Report_Final_Version.pdf> [perma.cc/RR4V-992G] [*Implementation of the Uniform Commercial Tenancies Act: Tentative Proposals*, Saskatchewan].

¹⁵¹ Refer to Appendix A, which compares relevant residential tenancy legislation across the common law Canada jurisdictions (ie, Quebec is excluded), where either distress for rent has been abolished or effectively abolished as a self-help remedy by requiring a prior court order.

¹⁵² Through the coming into force of the *Personal Property Security Act* in 1990 and *Civil Enforcement Act* in 1996 (Enforcement Remedies at 784, 788).

¹⁵³ Through the *Residential Tenancies Amendment Act, 2005 (No. 2)*, SA 2005, c 46; *Residential Tenancy Dispute Resolution Service Regulation*, Alta Reg 98/2006.

- Distress for rent is mainly used in commercial tenancies,¹⁵⁴ is rarely used in residential tenancies,¹⁵⁵ and is being used less frequently in all contexts.¹⁵⁶

¹⁵⁴ Ziff, note 10 at 308; *Distress for Rent* Working Paper (England and Wales) at 81.

¹⁵⁵ Both in common law jurisdictions generally; see Wonnacott at 121; *Distress for Rent* Working Paper (England and Wales) at 78-80; and specifically in jurisdictions within Canada before being abolished, see Williams et al., ch 8 at 8-1, s 8:1. In Ontario in 1968, it was reportedly used in less than 1% of residential tenancies (*Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 15); in 1973 NB report, responses to questionnaire likewise indicated a less than 1% usage (*Survey of Landlord and Tenant Law* (New Brunswick) at 93-94).

¹⁵⁶ The Office of the Sheriff – Civil Enforcement compiles civil enforcement agencies activities, including distress for rent (although there is no differentiation for the type of tenancy, ie, commercial, residential, or mobile home sites). For each of the last four years with complete data (ie, up to March 2025), there were approximately between 110 and 160 distress for rent seizures made, compared with the late 1990's where there were between approximately between 620 and 1,580 annually: “Civil Enforcement Agencies Activity”, online: *Government of Alberta* <open.alberta.ca/publications/civil-enforcement-agencies-activity>.

CHAPTER 4

Purpose of Distress for Rent

If distress for rent is to be retained it should be retained on the basis that the substance of the law deserves to be retained¹⁵⁷

[111] The original purpose of distress for rent was to allow a landlord to recover unpaid rent without ending the tenancy.¹⁵⁸

[112] Across centuries of common law and statutory developments of the remedy, additional justifications for and purposes of distress for rent emerged, including that it provides:

- A simpler and effective method for recovering rental arrears;
- Superior priority for a landlord's claim for unpaid rent in certain circumstances; and
- Protections to prevent a tenant's assets from disappearing.

[113] This section reviews each of these purposes in turn, considering whether the intended purpose is achieved in the context of residential tenancies in Alberta.

A. Recovering Rental Arrears without Ending the Tenancy

[114] Distress for rent arose as a less harsh and less extreme remedy than the alternative right of forfeiture (ie, the landlord ending the tenancy for non-payment of rent).¹⁵⁹ The goal of distress for rent is to persuade the tenant to pay rent owed and to allow the tenancy to continue.¹⁶⁰

¹⁵⁷ *Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 13.

¹⁵⁸ Note: initially the remedy developed in the context of services owed to a lord. See Appendix B for more information on the early history of distress for rent.

¹⁵⁹ Bell at 250.

¹⁶⁰ Bell at 250.

1. DISTRESS FOR RENT AS A LESS HARSH REMEDY

a. Before the power of sale

[115] Historically, there was no ability for a landlord to sell property seized and impounded in distress for rent proceedings.

[116] Instead, property would remain impounded until the rental arrears were paid and the tenant would then have their property returned to them. Upon return of the property, the tenant was in the same position as before the distress for rent occurred. The benefit to the tenant was clear, distress for rent allowed for the continuation of the tenancy albeit with some inconvenience and it was most likely in many circumstances more preferable to forfeiture.

b. After the power of sale

[117] The power of sale, added in 1689, significantly increases the harshness of the remedy. When a tenant is unable to pay rent, the removal and then sale of their property has often been described as making a bad situation worse¹⁶¹ and can have a devastating and lasting impact on the tenant that outweighs any benefit to the landlord.

i. *Economic harms*

[118] To the detriment of both the landlord and the tenant, the sale of personal property inevitably fails to realize the full economic value of the property. For example second hand value of personal possessions is already extremely low, and forced sales can depress prices even further.¹⁶²

[119] The potential economic harm to the tenant extends further, as the tenant bears the costs of the seizure and sale and would likely face significantly higher costs to later repurchase and replace the items sold than their original items were sold for.

ii. *Social harms*

[120] To the detriment of the tenant, the sale of the property deprives the tenant of the use and enjoyment of that personal property, which can impact the loss of

¹⁶¹ *Survey of Landlord and Tenant Law* (New Brunswick) at 93; *Background Paper* 1975, note 126 at 1.

¹⁶² See for example, the discussion in *Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 17 and in the *Landlord and Tenant Distress for Rent* (England and Wales), note 145 at 13.

functional property for personal and work purposes as well as the loss of items with sentimental value.

[121] The *Civil Enforcement Act* provides exemptions to seizure, to reduce the potential impacts and harms.¹⁶³ However, these exemptions are fairly limited and take a general approach that do not account for the specific impact on a tenant.¹⁶⁴

2. PERSUADING THE TENANT TO PAY RENTAL ARREARS

[122] Before the landlord had the ability to sell property, distress for rent was persuasive because, once levied, it persuaded the tenant to pay the rent owed to avoid the continued inconvenience of the loss of access to their personal property.

[123] With the added power of sale, the persuasive nature of the remedy changes because the potential consequences change. That is, the landlord can threaten that if the tenant does not pay the rent owed, then the landlord will seize and then sell the tenant's personal property which can inflict potentially devastating economic and social harms on the tenant.

[124] This change imposes a different, albeit likely significantly more effective, method of persuasion (ie, the threat of levying distress for rent). The threat of levying distress for rent is generally considered to be effective,¹⁶⁵ and formed part of the rationale to retain distress for rent in residential tenancies in Alberta in the ALRI 1977 report.

[125] However, the threat of distress for rent is more likely to be effective in the rare circumstances where the tenant has the ability to pay rent but refuses to pay.¹⁶⁶ The main issue with relying on the effectiveness of the threat of distress for rent to justify the remedy is it assumes that tenants can pay rent, but are refusing to pay rent.

¹⁶³ Based on both paternalistic and communitarian principles (Enforcement Remedies at 815). In this context, the principled reasons for the different exemptions for distress for rent compared to writ proceedings is unclear (see n 83 for a summary of the different exemptions that apply).

¹⁶⁴ Refer to paragraph [61] for more information on the property exempt from seizure in distress for rent proceedings.

¹⁶⁵ *Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 15; *Survey of Landlord and Tenant Law* (New Brunswick) at 94; *Report on Distress for Rent* (British Columbia), note 146 at Chapter 6: B(b); *Landlord and Tenant Distress for Rent* (England and Wales), note 145 at 11-12.

¹⁶⁶ *Landlord and Tenant Distress for Rent* (England and Wales), note 145 at 13; *Distress for Rent Working Paper* (England and Wales) at 82-86.

[126] When a tenant is unable to pay rent, which anecdotally appears to be the primary reason that rent is unpaid, threatening devastating consequences puts the tenant in an impossible position.

3. UNIQUE HARMS OF DISTRESS FOR RENT IN RESIDENTIAL TENANCIES

[127] While the potential economic and social harms arising from the sale of seized goods are not unique to distress for rent in residential settings,¹⁶⁷ distress for rent is uniquely harmful for the following reasons:

- If no prior notice or warning is given by the landlord, a tenant might be unaware that a landlord could levy distress for rent until a bailiff turns up on their doorstep.¹⁶⁸
- The seizure and sale in distress for rent proceedings is highly unlikely to recover the unpaid rent, and, in that sense, could be considered a *de facto* punitive response to unpaid rent rather than a remedy to recover unpaid rent.
- Correspondingly, in most cases this would make the threat of levying distress for rent a threat of a punitive response to coerce payment.¹⁶⁹
- When distress for rent is levied incorrectly, while the tenant has remedies available, they will still more than likely disproportionately suffer economic and social harms.¹⁷⁰

¹⁶⁷ For example, similar harms can arise from writ proceedings, the enforcement of security interests, or from statutory distress.

¹⁶⁸ As compared to other forms of seizure, where prior knowledge is comparatively readily available in the relevant legislation, written agreement, or otherwise would be reasonably expected as an outcome after a legal action. Additionally, this could result in tenants being unaware of their options (such as refusing entry to the bailiff) and prevents the opportunity to take preventative actions to avoid the seizure (for example, if the unpaid rent was an innocent mistake),

¹⁶⁹ As compared to other forms of secured debts, where the “threat” of seizure can more often be viewed as notice of the actions being considered to legitimately recover from assets to at least partially satisfy a debt.

¹⁷⁰ Specifically, while monetary damages are available, it is unclear if such monetary damages are a sufficient remedy when considering the context of distress for rent includes: a complex, nuanced, and poorly understood body of law; the many ways in which distress for rent might be illegal, irregular, or excessive and the lack of any prior oversight; the onus on the tenant to challenge the distress for rent; the complexity, cost, and time involved in challenging the distress for rent that was levied; the potentially immediate devastating impact of the loss of personal property and need to replace the same while already economically stretched; and the potential desire to maintain good relations with a landlord the tenant relies upon for housing.

4. ALLOWING THE TENANCY TO CONTINUE

[128] In theory, distress for rent continues to provide a method to recovering rental arrears without ending the tenancy. However, in practice the addition of the power of sale significantly shifts the focus of the remedy.

[129] Before the power of sale, distress for rent could be considered as a very basic form of revolving security that has relatively minimal impact on the tenant, and any impact is easily reversible if rent is later paid. This appears consistent with a goal of maintaining relatively good relations between a landlord and tenant, and indicative that the intention of the remedy is to allow the tenancy to continue.

[130] After the power of sale, distress for rent seems to be reimagined as a form of debt recovery with a focus on recovering the debt owed. Presumably, such an approach cannot be repeated with the same ease and frequency as merely seizing, impounding, and then returning property. Further, in these circumstances, it is easy to imagine that the seizure and sale of a tenant's personal property, and the resulting harms, could easily cause a breakdown of trust in the tenancy relationship. For example, it has been observed that the practical result of a landlord using the remedy of distress for rent is often the tenant leaving.¹⁷¹ All of these factors suggest it is no longer a remedy that is primarily focused on allowing the tenancy to continue.

5. IS THIS STILL A RELEVANT PURPOSE?

[131] To a limited extent, distress for rent continues to operate as a tool of persuasion (or threat) for a landlord to recover rental arrears while allowing the tenancy to continue in the narrow set of instances when a tenant can pay rent but is refusing to do so.

[132] In all other circumstances, in practice, compared to its original purpose, distress for rent in contemporary Alberta is more likely to create harsher conditions for the tenant than avoid them. Further, unlike in feudal England, there are now less harsh alternatives available to a landlord that allow them to either attempt to persuade a tenant to pay rental arrears and/or recover rental arrears without ending the tenancy.¹⁷²

¹⁷¹ *Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 14-15.

¹⁷² See *Residential Tenancies Act*, Part 3.

[133] The more modern approach towards debt recovery and tenancy disputes appears to prioritise flexibility and reasonableness.¹⁷³ Societal preferences have moved away from self-help remedies,¹⁷⁴ and the remaining concern is that the threat of distress for rent is a form of coercion that is undesirable in the context of residential tenancies.¹⁷⁵

B. Simple and Effective Method to Recover Rental Arrears

[134] The self-help nature of distress for rent is often considered a benefit as it is seen as providing a simple and quick method to recover rental arrears. That is, distress for rent is comparatively a simple and speedy remedy as there is no prior judicial or administrative consideration or adjudication, nor is there any prior ability for the tenant to object.

[135] This appears logical, when compared to the alternative remedies of applying to a court or the Residential Tenancy Dispute Resolution Service to either recover the rental arrears or terminate the tenancy for substantial breach (ie, forfeiture for non-payment of rent).¹⁷⁶

[136] Perhaps unfortunately, the view that distress for rent is a simple and effective remedy is hampered by the general ineffectiveness of the remedy, and the potential risks to a landlord.

1. DISTRESS FOR RENT IS INEFFECTIVE

[137] As already discussed, distress for rent in residential tenancies has long been considered ineffective,¹⁷⁷ and rarely results in proceeds sufficient to pay the rental arrears.¹⁷⁸ The only “effective” aspect of the remedy is when a landlord

¹⁷³ For example, considering the reforms to enforcement remedies in Alberta (see discussion in Enforcement Remedies at 785-792); the principle of proportionality (see Alberta Law Reform Institute, *Alberta Rules of Court Project: Enforcement of Judgments and Orders*, Consultation Memorandum No. 12.11 (2004) at 2, online: <alri.ualberta.ca/2004/08/rules-enforcement-of-judgments-and-orders-2/>); see also the Law Commission (England and Wales) which stated “[t]he concept of distress for rent has become foreign to modern notions of acceptable practices” (*Distress for Rent Working Paper* (England and Wales) at 135).

¹⁷⁴ Enforcement Remedies at 802, “A persistent theme in history has been the “continuous attempt by political societies to suppress self-help remedies and substitute for it judicial processes,” quoting F.H. Lawson, *Remedies of English law*, 2d ed. (Middlesex, England: Penguin Books, 1980) at 25.

¹⁷⁵ *Landlord and Tenant Distress for Rent* (England and Wales), note 145 at 13.

¹⁷⁶ *Residential Tenancies Act*, ss 26(1)(a), 26(1)(c), s 29 (for remedies), Part 5, Part 5.1 (for dispute resolution).

¹⁷⁷ For example, see *Survey of Landlord and Tenant Law* (New Brunswick) at 94; *Residential Tenancies 1977*, note 126 at 63.

¹⁷⁸ *Distress for Rent Working Paper* (England and Wales) at 88.

attempts to persuade (or threatens) a tenant to pay rent, or face the consequences of distress for rent.

[138] When distress for rent is levied, the tenant ultimately bears the expenses incurred in levying distress for rent, which further hampers the ability to recover the amount owed in unpaid rent.¹⁷⁹

[139] Even if distress for rent was generally effective, the simplicity and effectiveness of distress for rent as a self-help remedy can readily be rendered practically ineffective for the following reasons:

- The tenant can refuse to allow a bailiff entry to their residence (requiring a landlord to seek Court authorization to enter to levy distress for rent).¹⁸⁰
- The tenant can serve a notice of objection, requiring the matter go to court.¹⁸¹
- When the matter proceeds to court, the court retains judicial discretion to stay enforcement proceedings.¹⁸²

2. DISTRESS FOR RENT IS RISKY FOR THE LANDLORD

[140] A landlord is almost always required to indemnify a civil enforcement agency before they proceed with a seizure,¹⁸³ this effectively makes the landlord responsible for all the actions of the civil enforcement agency and bailiff levying distress for rent.¹⁸⁴

¹⁷⁹ *Civil Enforcement Act*, s 11(1), with the costs of levying distress for rent being between \$1,000 and \$1,500 (see paragraph [49]).

¹⁸⁰ *Civil Enforcement Act*, s 13(2)(c). In *First City Shopping Centre*, note 62 at paras 70-77, where the inability to access the residential premises (where property had been moved to) and subsequent time taken to obtain an order defeated the attempt at distress (ie, the 30 day period found in the *Distress for Rent Act*, 1737, note 79, expired). Additionally, arguably, at the point a Court authorization is required this is no longer a self-help remedy. For example, in the England and Wales, before distress for rent was abolished Court permission was needed prior to distress for rent being levied in certain situations. Judges became increasingly hostile to the remedy this resulted in the remedy being rarely being used in the residential context: Wonnacott at 122.

¹⁸¹ *Civil Enforcement Act*, s 46(2).

¹⁸² Enforcement Remedies at 786, 818, citing both *Royal Trust Corp. of Canada v Kendel Adjusters Ltd. (Dairy Queen)*, 1984 ABCA 241 [*Royal Trust*] and the *Judicature Act*, RSA 1980, c J-1, s 18 (since repealed and replaced by *Judicature Act*, RSA 2000 c J-2, s 17(1)).

¹⁸³ See for example, the indemnity requirement found in Residential Landlord's Distress Seizure, note 67 at 2.

¹⁸⁴ Noting that the specific wording on the indemnity will determine the full scope of the landlord's potential responsibility. Outside of indemnity agreements, a landlord is responsible for ensuring they have

[141] As a result of this, a landlord can potentially be liable if distress for rent is levied incorrectly, depending on the circumstances and whether the distress for rent was illegal, irregular, or excessive.¹⁸⁵ For example:

- If a landlord levies distress for rent and also locks the tenant out of the rental premises, this can be deemed to be a forfeiture.¹⁸⁶
- If a landlord is found liable for incorrectly levying the remedy, there is the potential for significant and enhanced damages.¹⁸⁷
- Any attempt of a landlord levying distress for rent themselves (ie, without hiring a civil enforcement agency) would be an offence under the *Civil Enforcement Act*, with the potential for fines or even imprisonment.¹⁸⁸

3. IS THIS STILL A RELEVANT PURPOSE?

[142] In summary, distress for rent is neither simple nor effective in residential tenancies. Levying distress for rent is generally ineffective for residential tenancies. Distress for rent can become very complicated very quickly, and can result in substantial liability of the landlord if levied incorrectly.

the right of distress for rent and that it can be lawfully exercised (the warrant of distress creates an express or implied indemnity (Williams et al., ch 8 at 8-58, s 8:19:3) and a landlord is generally not responsible for any illegal acts committed by the bailiff (except as authorized, ratified, or otherwise taken responsibility by the landlord); however, a landlord can still be responsible for irregular acts committed by the bailiff (including excessive distress) (Williams et al., ch 8 at 8-57 to 8-59, s 8:19:3).

¹⁸⁵ Refer to paragraphs [86] through [88] for more details.

¹⁸⁶ Locking the tenant out of the premises is often considered forfeiture. Further, the sequence of seizing the property and locking the premises can impact if the distress for rent is illegal or irregular. Although, case law suggests forfeiture can potentially be avoided by posting a notice that: 1) makes clear the securing of the premises is only for the purposes of distress for rent and the tenant is entitled to access the premises by contacting the landlord (or agent); and 2) specifically states the tenancy was not forfeited (Disenhouse & Kobi, note 92 at 31; Valentini & Green, note 25 at 88-89).

¹⁸⁷ For example, the *Distress for Rent Act* 1689, note 103 s 4, allowed for damages of double the value of the goods when the distress for rent was illegal (Williams et al., ch 8 at 8-106.1, s 8:34:3).

¹⁸⁸ *Civil Enforcement Act*, s 15. The maximum fine amount depends on whether the landlord is a corporation or individual and whether it was a first-time offence; see *Civil Enforcement Act*, s 15(2).

C. The Landlord's Priority

[143] Distress for rent provides an improved priority to a landlord over the tenant's property compared to other interests (mostly other creditors).¹⁸⁹

1. RATIONALE FOR A LANDLORD'S PRIORITY IS UNCLEAR AND UNCONVINCING

[144] The justification for a landlord's priority is unclear, although a number of reasons are proposed.

[145] The first reason is the importance of farming in a feudal agricultural economy.¹⁹⁰ Clearly, contemporary society generally, and residential tenancies in Alberta specifically have little in common with feudal-agricultural England.

[146] The second and more common reason is the unique vulnerability of a landlord as a "creditor" to the tenant compared to other creditors in a mercantile society.¹⁹¹ However, a landlord is not "uniquely vulnerable" as they can "cut-off" credit, by terminating the tenancy for non-payment of rent. Similar to any creditor, the landlord can reasonably be expected to conduct due diligence with potential tenants and assess risk.¹⁹²

[147] The third reason is that distress for rent evolved at a time before a landlord could otherwise acquire rights in a tenant's property through agreement (ie, before chattel mortgages, secured debenture, or other security interests).¹⁹³

¹⁸⁹ The relative priority of distress for rent is a complex topic, and one that is beyond the scope of this report. For a more detailed discussion refer to: Dunlop & Buckwold at 778-804; see also Williams et al., ch 8 at 8-30 to 8-39, s 8:9:3. Note: in some instances, the landlord's priority arises from legislation (for example: in the received legislation, *Landlord and Tenant Act*, 1709 (note 28) provides a landlord with priority of up to a year of rental arrears when goods are seized by an execution creditor; and the federal *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 136(f), provides a priority for three months prior to, and accelerated rent up to three months following, a bankruptcy.

¹⁹⁰ *Report on Distress for Rent* (British Columbia), note 146 at Chapter 4: A.

¹⁹¹ I.e., the concern is that a landlord has no effective means of terminating the continuing granting of "credit" (in this case, continuing rental arrears) as compare to other creditors, for example a retail merchant that could cut off credit and the potential losses arising from additional time and effort in finding a new tenant (*Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 14; *Distress for Rent Working Paper* (England and Wales) at 80-81; *Distress for Rent in Commercial Tenancies* (Manitoba) at 2).

¹⁹² *Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 16.

¹⁹³ *Report on Distress for Rent* (British Columbia), note 146 at Chapter 4: A.

2. IS THIS STILL A RELEVANT PURPOSE?

[148] The majority of recent distress for rent case law in Alberta relates to priorities of interests in commercial tenancies. In theory a landlord has the same priority status in residential tenancies. However, in practice, as already discussed, levying distress for rent is generally ineffective in residential tenants making any priority interest for a landlord moot.

[149] Further, the landlord's priority arising out of distress for rent is, for the most part, not rationalized with the comparatively modern approach found in personal property security legislation.¹⁹⁴

D. Preventing Assets from Disappearing

[150] Another suggested potential benefit to the landlord is that there is no requirement to give advance notice to the tenant. This provides the element of "surprise" that operates to prevent the dissipation of assets by forewarned tenants.

[151] This suggested benefit is inconsistent with the idea that distress for rent is effective as a form of persuasion. That is, distress for rent as a form of persuasion provides the tenant with advance notice that it might be levied.

[152] Further, this suggested benefit is problematic as distress for rent is a broad remedy and is not limited to situations where there is a genuine risk of flight of property and the element of surprise is part of the harm the remedy can cause.¹⁹⁵ There are already sufficient measures that can be taken in such situations, for example, a Mareva injunction or an attachment order under the *Civil Enforcement Act*.¹⁹⁶

¹⁹⁴ *Proposals Relating to Distress for Rent* (Saskatchewan), note 35 at 2-3; *Report on Distress for Rent* (British Columbia), note 146 at Chapter 4: A; *Implementation of the Uniform Commercial Tenancies Act: Tentative Proposals*, Saskatchewan note 150, at 16; see also extensive discussion in Dunlop & Buckwold at 778-804.

¹⁹⁵ *Distress for Rent Working Paper* (England and Wales) at 33-34.

¹⁹⁶ The difference between a Mareva Injunction and attachment order is considered in *SanLing Energy Ltd v Liu*, 2022 ABQB 767 at paras 46-52. Interestingly, both the Mareva injunction and attachment order require a prior application to the court, which could be interpreted as a societal preference that generally such extraordinary measures, when taken without prior notice, should require judicial oversight. Noting that while the *Civil Enforcement Act*, Part 3, does not apply to distress for rent (see paragraph [253] and n 308 in Appendix B), an attachment order would be available if an action was brought for the recovery of unpaid rent (*Civil Enforcement Act*, s 17).

[153] Finally, even if this is a valid purpose, the removal of assets to defeat a distress for rent claim appears to be more relevant in the commercial rather than residential setting.

E. Conclusion

[154] Overwhelmingly, distress for rent in residential tenancies no longer meets any of its stated purposes, and exists untethered from the foundations and principles required to justify the remedy's continued existence.

[155] The only remaining effective aspect of distress for rent is as a means of persuasion or as threat when a tenant can pay the rent owed but otherwise refuses. What is clear, however, is the potentially devastating personal impact distress for rent can have on tenants.

[156] The potential impact of distress for rent on a tenant is disproportionate to any potential advantage to the landlord. Moreover, landlords have alternative remedies that are less harsh than distress for rent.

CHAPTER 5

Reforming Distress for Rent in Residential Tenancies

A. Summary

[157] This chapter outlines the options available for the reform of distress for rent, and provides relevant analysis supporting ALRI's recommendation to abolish distress for rent in residential tenancies in Alberta.

B. Options for Reform

[158] There are four potential options available for addressing distress for rent in residential tenancies:

- Leave the remedy as is (ie, the *status quo* with no reform);
- Codify the remedy of distress for rent for residential tenancies;
- Substantively reform the remedy of distress for rent in residential tenancies; or
- Abolish distress for rent in residential tenancies.

[159] The *status quo* is undesirable, as without reform or abolition, distress for rent will continue to be an archaic, uncodified, unclear, overly complex, and poorly known remedy that can be devastating to tenants while also being generally ineffective in recovering rental arrears for landlords.

[160] In addition to making the law more accessible, codification could also make moderate improvements to the awareness, clarity, and complexity of the remedy. However, the codification alone is insufficient to fix distress for rent, specifically it would not reduce the devastating effects to tenants or make the remedy effective.

[161] Any attempt to substantively reform distress for rent would take significant time and effort to clarify, codify, simplify, and rationalize this remedy

with contemporary personal property security legislation.¹⁹⁷ Significant issues, limited benefits, the infrequent use, and the likely cost and effort required to reform distress for rent raises questions as to the value and benefit of significant reform.¹⁹⁸

[162] Additionally, in the context of residential tenancies there are inherent tensions that any reform efforts would be unlikely to satisfactorily resolve. For example, any reform to reduce the potential harshness of the remedy to the tenant (such as increasing fairness, transparency, or oversight) would likely involve removing the self-help nature of the remedy and reduce the effectiveness of persuasion/threat, increase the administrative burden on all parties (including the courts), and become much more similar to the process to recover rental arrears through a court action.¹⁹⁹

[163] Abolishing distress for rent in residential tenancies addresses the significant shortcomings of the remedy identified in this report, with minimal negative consequences. Given the complexity and limited benefit to codifying or reforming distress for rent, the preferred option is to abolish the remedy for residential tenancies.

¹⁹⁷ For example, reform of distress for rent would likely need to review, clarify, and simply: the interaction between distress for rent and other remedies; a landlord's priority; the distinction between seizure and impounding; third party property; the process for disputes and remedies available (including available actions); the impact of contractual distress for rent; codification of received legislation and substantive case law principles; alignment with existing legislative schemes (such as personal property security and civil enforcement); alignment with other forms of distress (such as distress for damage feasant, statutory distress, etc.). Alternatively, the Law Commission of Saskatchewan has recently proposed eliminating distress for rent in commercial tenancies and replacing it with a limited deemed statutory security interest in personal property and fixtures of the tenant (see *Implementation of the Uniform Commercial Tenancies Act: Tentative Proposals*, Saskatchewan, note 150 at 18-20).

¹⁹⁸ A similar consideration formed part of the assessment of *Distress for Rent* Working Paper (England and Wales) at 6-7, 134.

¹⁹⁹ Again, the Law Commission (England and Wales) raised a similar observation about the inherent conflict and its impact on any proposed reform (*Distress for Rent* Working Paper (England and Wales) at 131-132). For example, both the *Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 18; *Distress for Rent* Working Paper (England and Wales) at 61, concluded that requiring a court order would impair the usefulness of the remedy of distress for rent.

C. Abolishing Distress for Rent for Residential Tenancies

1. THE BENEFITS OF ABOLISHING DISTRESS FOR RENT IN RESIDENTIAL TENANCIES

[164] Abolishing distress for rent in residential tenancies is the simplest solution to resolve the issues identified in this report, and with minimal negative consequences and risks.

[165] Overall, the benefits of abolishing distress for rent in residential tenancies are:

- Simplifying the law, by removing an overly complicated and rarely used remedy for the recovery of rental arrears;
- Reducing the potentially devastating harms to tenants that can arise from distress for rent; and
- Reducing the risk to landlords of using the remedy incorrectly.

[166] Abolishing distress for rent in residential tenancies has the additional benefit of aligning Alberta law with the law in all other common law jurisdictions in Canada.

2. POTENTIAL CONSEQUENCES AND RISKS OF ABOLISHING DISTRESS FOR RENT IN RESIDENTIAL TENANCIES

a. Expected consequences

[167] If distress for rent was abolished for residential tenancies, landlords would clearly lose both the threat of using, and ability to use, the remedy. The loss of the use of the remedy should be of little concern, as it is mostly ineffective at recovering rental arrears in the residential context. Landlords will continue to have more effective, adequate, and fair remedies available to them to recover unpaid rent.²⁰⁰

[168] Landlords will continue to be able to attempt to persuade tenants to pay rental arrears through threatening to take legal action based on the remedies available in the *Residential Tenancies Act* without the same concerns that these amount to a form of coercion. While the intensity of the threat might be less

²⁰⁰ As found in *Residential Tenancies Act*, Part 3.

severe, it does not seem unreasonable to require judicial or RTDRS oversight in this type of dispute.

[169] Further, as the remedy of distress is rarely used, we anticipate there would not be any negative impact on judicial or administrative resources resulting from the abolition of distress for rent in residential tenancies.

[170] Additionally, while abolishing distress for rent in residential tenancies could potentially also impact distress for mortgage,²⁰¹ we note that there are very limited exceptions where distress for mortgage could apply to a residential mortgage, and previously ALRI has recommended that exceptions allowing for valid attornment clauses should exclude residential mortgages.²⁰²

b. Hypothetical consequences

[171] It has been suggested that abolishing distress for rent would make landlords more careful, that landlords would conduct more extensive background checks on tenants making it harder for vulnerable tenants to find housing,²⁰³ and that landlords would create retaliatory schemes, such as creating lists of disreputable tenants.²⁰⁴

[172] However, these are issues separate and apart from distress for rent and whether it should be abolished. Firstly, landlords can already require background checks, and it could be suggested that enhanced due diligence of landlords in tenant selection is a positive development. Secondly, the availability of housing for vulnerable tenants is a much larger policy issue, of which the impact of distress for rent is likely minimal. Thirdly, landlords may already be sharing tenant information, and there are other measures to address inappropriate disclosures.²⁰⁵

²⁰¹ If an attornment clause in a residential mortgage was found to give rise to a residential tenancy.

²⁰² *Mortgage Remedies in Alberta* (ALRI), note 13 at 233.

²⁰³ *Background Paper 1975*, note 126; *Landlord and Tenant Distress for Rent* (England and Wales), note 145 at 25.

²⁰⁴ Landlord and Tenant Advisory Board of the City of Edmonton, “Initial Submission of the Landlord and Tenant Advisory Board of the City of Edmonton to the Institute of Law Research and Reform of the Province of Alberta Regarding Landlord and Tenant Legislation” (December, 1974) at 23 [unpublished, archived at Edmonton, University of Alberta Archives (accession UAA-1996-048, box 81, item 828, file 37, part 5 “Correspondence, con’t” (1975), filed by date: April 16, 1975 (the date of corresponding letter)].

²⁰⁵ The Edmonton Journal reported in 2022 that Edmonton landlords were running a ‘do not rent’ list through social media, indicating the associated privacy issues with the list. (Lauren Boothby, “Edmonton landlords run ‘do not rent’ list with hundreds of tenants in private Facebook group”, *Edmonton Journal* (21 June 2022), online: <edmontonjournal.com/news/local-news/edmonton-landlords-run-do-not-rent-list-with-hundreds-of-tenants-in-private-facebook-group>).

c. Potential impact on legislation

[173] This section reviews the potential impact abolishing distress for rent in residential tenancies would have on existing legislation.

i. Residential Tenancies Act

[174] Section 31 of the *Residential Tenancies Act* legislates the options and process available to a landlord when a tenant abandons their goods on the residential premises.

[175] Distress for rent is separate and apart from abandoned goods as contemplated in the *Residential Tenancies Act*. Distress for rent only applies when the tenancy continues. Whereas, the theoretical underpinning of abandoned goods is that the tenant first abandons the premises and that the personal property left behind is therefore also abandoned.²⁰⁶

[176] Therefore, the recommendation to abolish distress for rent will not impact the existing legislative provisions in the *Residential Tenancies Act* that address abandoned goods.

ii. Civil Enforcement Act

[177] The *Civil Enforcement Act* and *Civil Enforcement Regulation* generally apply equally to distress for rent in any context (ie, in residential tenancies, commercial tenancies, mobile home site tenancies, etc.). These requirements will continue to apply to distress for rent in non-residential tenancies and will not be impacted by the abolition of distress for rent in residential tenancies.

[178] One exception to this is section 104(d)(i) of the *Civil Enforcement Act* which specifies the exceptions for residential tenancies. Upon abolition of distress for rent in residential tenancies, this provision would no longer be required.

iii. Law of Property Act

[179] Section 49(5) of the *Law of Property Act* provides a receiver can “distrain for rent in arrears in the same manner and with the same right of recovery as a

²⁰⁶ *Survey of Landlord and Tenant Law* (New Brunswick) at 97. This is reflected in the wording of *Residential Tenancies Act*, s 31(1)(a)–(b), which indicate the goods are abandoned after the premises has been abandoned.

landlord”.²⁰⁷ Presumably, by abolishing the right of distress for rent for residential tenancies, section 49(5) would also become inapplicable to residential tenancies as section 49(5) only extends the existing rights of a landlord to a receiver.²⁰⁸

[180] Section 37(b) of the *Law of Property Act* indicates that a mortgagor may “sue or distrain for the recovery of the rents or profits”.²⁰⁹ Similar to section 49(5), section 37(b) only extended the existing right of distress for rent.²¹⁰ Therefore, presumably, section 37(b) would equally not apply to residential tenancies if distress for rent is abolished for residential tenancies.

[181] As such, we do not expect these provisions would interfere with the abolition of distress for rent in residential tenancies.

²⁰⁷ *Law of Property Act*, note 61. Note, the context in this section is a court appointed receiver in relation to the collection of rents or profits to enforce/protect rights under a mortgage or agreement of sale of land after the commencement of an action, per the *Law of Property Act*, s 49(1).

²⁰⁸ Ie, with no right of distress for rent for residential tenancies, when this section extends “the same right as a landlord” to the receiver, there is no right to extend. This is consistent with the approach taken in *Unit Liner*, note 27, where in the context of s 21 of the *Judicature Act*, RSA 1980 c J-1 (currently s 20 of the *Judicature Act*, RSA 2000 c J-2) the court stated “The Judicature Act provisions cannot be read as extending to a remedy which is critically based upon some right that has not been assigned” (para 6).

²⁰⁹ *Law of Property Act*, note 61, s 37(b). The history of this section 37 can be traced back to *An Ordinance respecting the administration of civil justice* (ONWT 1886, No 2, s 7(4)) which was based on the 1881 Ontario *Judicature Act*, SO 1881, 44 Vict, c 5, s 17(5), where the reference to distress for rent was added, but otherwise was itself based on an earlier statute from the UK (*Supreme Court of Judicature Act* (UK), 1873, 36 & 37 Vict, c 66, s 25(5)), which allowed a mortgagor who parted with the reversionary interest in the property to sue for possession or rent (Williams et al., ch 5 at 5-3, s 5:1:1). Historically, in the common law (and in the Northwest Territories until 1886) the way a mortgage operated was the title of the property was transferred from the borrower (mortgagor) to the lender (the mortgagee): Anna Lund, “Uncertainty over the Scope of Borrower Protections in Mortgage Enforcement Proceedings in Alberta: The Problems and Potential Solutions” (2023) 60:4 Alta L Rev 905 at 908 [Lund]. However, considering in the Northwest Territories since 1886, and then in Alberta since 1905, a mortgage is an encumbrance on title (Lund, note 208) it is unclear whether section 37 ever had (or continues to have) any remaining relevant purpose in the Northwest Territories/Alberta under the current system where a mortgage is an encumbrance, as presumably there is not situation where the landlord who is also a mortgagor loses their reversionary interest in the property. Although, note a similar provision remains in force in the United Kingdom, British Columbia, Manitoba, New Brunswick, Nova Scotia, the Northwest Territories, and the Yukon (statutes as listed in Williams et al., ch 5 at 5-3, s 5:1:1).

²¹⁰ In England, it was found that *Supreme Court of Judicature Act* (1873) did not confer any new rights, rather it allowed the mortgagor to retain their prior rights they would have otherwise lost (Williams et al., ch 5 at 5-3, s 5:1:1). Presumably the same interpretation applies to section 37(b) of the *Law of Property Act*, note 61 (as indicated by CED 4th (online), *Landlord and Tenant* (West), “Assignment and Subletting: Assignment of Reversion” (VIII. B.) at § 132, which states “the mortgagor **retains** the right to sue for possession” [emphasis added]).

iv. *Landlord's Rights on Bankruptcy Act and Companies Act*

[182] The *Landlord's Right on Bankruptcy Act* provides that a landlord loses the right to distress for rent when a receiving order or assignment is made.²¹¹

[183] Similarly, the *Companies Act* voids any distress (presumably distress for rent) after the commencement of a winding-up order.²¹²

[184] These provisions will continue to apply to distress for rent in non-residential tenancies, and will not impact or be impacted by the abolition of distress for rent in residential tenancies.

v. *Water, Gas and Electric Companies Act*

[185] This act creates exemptions, specifying that property relating to utilities found on a premises (for example connecting pipes, wires, etc.) cannot be seized, including via distress for rent.²¹³

[186] This provision will continue to apply to distress for rent in non-residential tenancies, and will not impact or be impacted by the abolition of distress for rent in residential tenancies.

vi. *Statutory distress unaffected*

[187] Statutory distress found in Alberta legislation will be unaffected by the abolition of distress for rent in residential tenancies.²¹⁴

vii. *Federal legislation unaffected*

[188] Abolition of distress for rent in residential tenancies does not impact the related federal legislation. Specifically:

²¹¹ *Landlord's Rights on Bankruptcy Act*, RSA 2000, c L-5, s 2(a). Interestingly, it seems this act, and its content, arose after aspects of federal legislation that abolished distress for rent from the date of a receiving order or authorized assignment (between 1919 and 1923, the *Bankruptcy Act*, 1919, c 36) were found to be ultra vires (Williams et al., ch 8 at 8-19 to 8-20, s 8:9:1).

²¹² *Companies Act*, RSA 2000, c C-21, s 220(c). See also *Credit Union Act*, RSA 2000, c C-32, s 197(1)(c); *Loan and Trust Corporations Act*, RSA 2000, c L-20, s 241(1)(d).

²¹³ *Water, Gas and Electric Companies Act*, RSA 2000, c W-4, s 21.

²¹⁴ See for example: *Workers' Compensation Act*, RSA 2000, c W-15, s 135; *Special Areas Act*, RSA 2000, c S-16, s 8(4)(b); *Municipal Government Act*, RSA 2000, c M-26, s 439; *The Lloydminster Charter*, Alta Reg 212/2012, ss 365(2), 366; *Public Lands Act*, RSA 2000, c P-40, s 45; *Legal Profession Act*, RSA 2000, c L-8, s 94(1)(b).

- The sections of the *Criminal Code* considered in this report²¹⁵ relate to criminal offences that could arise depending on the conduct of a tenant in response to distress for rent.
- The relevant sections of the *Bankruptcy and Insolvency Act* relating to distress for rent are unaffected as:
 - Section 73(4) requires that seized property (including via distress for rent) is provided to the trustee.
 - Section 136(1)(f) creates a statutory priority for landlords, independent of the common law remedy of distress for rent and therefore would continue to apply.

[189] These provisions will continue to apply to distress for rent in non-residential tenancies, and will not impact or be impacted by the abolition of distress for rent in residential tenancies.

d. Experiences of other common law jurisdictions that have abolished distress for rent in residential tenancies

[190] In 1968, the Ontario Law Reform Commission stated “[j]urisdictions that have legislated distress [for rent in residential tenancies] out of existence do not appear to have suffered by it”.²¹⁶

[191] Nearly 60 years later, there is still no evidence of any harms arising from abolishing distress for rent in residential tenancies. The only change is that many more common law jurisdictions have since abolished distress for rent in residential tenancies without issue.

3. RECOMMENDATIONS

[192] For the reasons outlined throughout this report, we have concluded that distress for rent should be abolished for residential tenancies in Alberta.

RECOMMENDATION 1

Distress for rent should be abolished for residential tenancies in Alberta.

²¹⁵ *Criminal Code*, note 73, ss 129, 324, 334.

²¹⁶ *Landlord and Tenant Law Applicable to Residential Tenancies* (Ontario) at 18.

a. Timing of the abolition

[193] In terms of when the recommended abolition of distress for rent should take effect, different Canadian common law jurisdictions have:

- Only abolished distress for rent for new and renewing residential tenancies after the date the legislative change takes effect;²¹⁷
- Abolished distress for rent for all residential tenancies (both current and future tenancies) as of the date the legislative change takes effect;²¹⁸ or
- Made the timing unclear.²¹⁹

[194] Considering the infrequent use of distress for rent in Alberta, and to keep the legislative change simple and clear:

RECOMMENDATION 2

The abolition of distress for rent in residential tenancies should apply to all residential tenancies as soon as the legislative changes are made.

b. How to abolish distress for rent in residential tenancies

[195] Distress for rent was initially founded in the common law, was later modified and extended by statute, and can be further modified by contract. Therefore, to effectively abolish distress for rent in residential tenancies requires attention is given to each of the common law, statutory, and contractual elements.²²⁰

²¹⁷ For example, as seen in British Columbia (*Landlord and Tenant (Amendment) Act*, SBC 1970, c 18, s 39(2)), Ontario (*An Act to amend The Landlord and Tenant Act*, SO 1968-1969, c 58, s 85(2) noting that in Ontario distress for rent was abolished for periodic tenancies for any rent accruing after the section came into force, see *Survey of Landlord and Tenant Law* (New Brunswick) at 94-95). , Prince Edward Island (*An Act to Amend the Landlord and Tenant Act*, SPEI 1972, c 25, s 98(2)), and the Yukon (*An Ordinance to Amend the Landlord and Tenant Ordinance*, OYT 1972, c 20, s 65(2)).

²¹⁸ For example, as seen in Saskatchewan (*An Act respecting Residential Tenancies*, SS 1973, c 83, s 10(3)), Manitoba (*An Act to amend the Landlord and Tenant Act*, SM 1970, c 106, s 88), New Brunswick (*Survey of Landlord and Tenant Law* (New Brunswick) at 99), and the Northwest Territories (*Residential Tenancies Act*, SNWT 1987, c 28, s 5(3)).

²¹⁹ For example, as seen in New Brunswick (*Residential Tenancies Act*, SNB 1975, c R-10.2), Nova Scotia (*Residential Tenancies Act*, SNS 1970, c 13), and Newfoundland and Labrador (*Residential Tenancies Act*, SNL 2000, c R-14.1).

²²⁰ *Survey of Landlord and Tenant Law* (New Brunswick) at 95.

[196] In abolishing distress for rent, care needs to be taken to ensure that contractual distress cannot be used to circumvent the abolition.²²¹ Further, any restrictions on distress for rent or contractual distress should not interfere with or otherwise impact: the treatment of goods abandoned on the premises,²²² other forms of distress that are unrelated to the landlord and tenant relationship,²²³ or other related processes.²²⁴

[197] Additionally, to simplify the law, and ensure no unintended consequences, the abolition should make clear any potentially applicable received legislation to distress for rent no longer applies to residential tenancies. However, care needs to be taken to ensure potentially relevant portions of received legislation that do not relate to distress for rent continue to apply.²²⁵

[198] We include a sample draft provision below as an example of how to address the common law, statutory, and contractual elements of distress for rent. One potential location for such a provision would be in the *Residential Tenancy Act*:

Distress for rent is abolished

(1) A landlord must not:

- (a) seize any personal property of the tenant, or
- (b) prevent or interfere with the tenant's access to the tenant's personal property.

²²¹ Noting that in addition to modifying distress for rent, contracts can create an unrelated right of distress between parties to a contract, for example to recover interest on money lent (Bell at 251-252). The concern is that even if distress for rent is abolished, a landlord could include a contractual distress provision in the residential tenancy agreement that would contractually allow them to seize and sell a tenant's property. For example, as seen in the non-residential setting in *Schickerowski*, note 59; and *Jovalco*, note 59.

²²² Distress for rent would not apply to abandoned goods, as abandoning the premises and leaving the goods (i.e., there would be no tenancy in effect). In Alberta, abandoned goods are addressed by *Residential Tenancies Act*, s 31.

²²³ Those being the forms of distress listed in the *Civil Enforcement Act*, s 1(1)(m)(ii)-(vi).

²²⁴ For example, writ proceedings as defined in the *Civil Enforcement Act*, s 1(1)(uu).

²²⁵ For example, *Statute of Marlborough* (England), 1267, 52 Hen 3 [*Statute of Marlborough* 1267] c 23 relates to both compelling bailiffs to render account (in the context of distress for rent, see footnote 388), and also establishes that a leaseholder is liable for waste during the term of the lease (see footnote 228). Additionally, note that while section 4 of the *Landlord and Tenant Act*, 1709, note 28 (allowing an action for debt against a tenant for life in arrears of rent, see footnote 471), section 3 of the *Landlord and Tenant Act* (UK), 1851, 14 & 125 Vict, c25 (relating to fixtures in agricultural tenancies, see footnote 520), part of *Administration of Justice Act*, note 27 (that addresses accounting in the case of co-ownership, see footnote 450), *Apportionment Act* (UK) 4 & 5 Will 4, c 22 (relating to rental arrears in life estates, see footnote 504), and *The Civil Procedure Act* (UK), 1833, 3 & 4 Will 4, c 42 (in relation to maintaining actions in tort of the deceased, limitation periods, and pre-judgment interest, see footnote 499) are potentially still in effect Alberta, as these do not impact residential tenancies these provisions do not need to be retained.

(2) Subsection (1) does not apply:

- (a) if the tenant's property has been abandoned within the meaning of section 31 of this Act;
- (b) to any "writ proceedings" as defined in the *Civil Enforcement Act*; or
- (c) to distress, as defined in section 1(1)(m)(ii)-(vi) of the *Civil Enforcement Act*, that is separate and apart from the landlord and tenant relationship.

(3) Any contractual provision between a landlord and a tenant that:

- (a) creates a contractual right of distress in a residential tenancy agreement;
- (b) creates a security interest granted by the tenant that secures unpaid rent; or
- (c) otherwise allows a landlord to seize or interfere with a tenant's personal property for breach of a tenant's covenant or obligation arising from the residential tenancy;

is not enforceable.

(4) Subsections (1), (2), and (3) apply to all residential tenancies as of the date this section comes into force.

(5) Notwithstanding subsection (4), distress for rent proceedings that were previously initiated can continue if the personal property was seized prior to this section coming in to force.

(6) The common law remedy of distress for rent is abolished for residential tenancies.

(7) Any English legislation received into Alberta that created, modified, or otherwise effected distress for rent no longer apply to residential tenancies in Alberta.

(8) Notwithstanding subsection (7), the portion in chapter 23 of the *Statute of Marlborough* (England), 1267 (52 Hen 3, c 23) relating to the tort of waste is unaffected by subsection (7).

Explanatory notes

[199] Subsections (1) and (2) are based on the provisions found in the British Columbia legislation that abolish distress for rent.²²⁶ Subsection (1)(a) provides the plain language prohibition of distress for rent in any form, and subsection

²²⁶ See Appendix A.

(1)(b), while broader than distress for rent, clarifies that interference with the personal property short of seizure is also prohibited.

[200] Subsection (2) provides exceptions to the general prohibition, where:

- (2)(a) provides an exception to allow the sections of the *Residential Tenancies Act* that address the abandonment of goods to remain unchanged and unaffected by the abolition of distress for rent;
- (2)(b) provides an exception to ensure the process for collecting from any money judgment is unaffected (regardless of whether the money judgment arises from the landlord tenant relationship between the parties); and
- (2)(c) contemplates and provides exceptions to allow for other forms of distress (as defined in the *Civil Enforcement Act* (excluding distress for rent) that could in theory arise between a landlord and tenant, but only when they arise outside of the landlord and tenant relationship. In these situations, a seizure should still be allowed. This includes, leases of personal property (per s 1(1)(m)(ii) of the CEA), distress under the *Personal Property Security Act* (PPSA) (per s 1(1)(m)(iii) of the CEA), a order of the Court (per s 1(1)(m)(iv) of the CEA), statutory distress (per s 1(1)(m)(v) of the CEA), or any other right under a law in force in Alberta (per s 1(1)(m)(vi) of the CEA).

[201] Subsection (3) provides clarification that the prohibitions found in subsection 1(a) and 1(b) cannot be contracted out of:

- (3)(a): through contractual distress;
- (3)(b) through a security interest granted by the tenant for unpaid rent (noting this is intended to prevent the PPSA being used to circumvent the prohibition of subsection (1)(a)); or
- (3)(c): through any other contractual agreement that attempts to allow distress for breach of a tenant's covenant or obligation arising from the residential tenancy (this is intentionally broad to prevent any other contractual circumvention of subsection (1)(a)).

[202] Any provision that falls within subsection (3)(a), (b), or (c) is not enforceable.

[203] Subsections (4) and (5) are transitional. Subsection (4) clarifies that distress for rent is prohibited in all residential tenancies as soon as the section comes in to

effect. Subsection (5) provides an exception for distress for rent proceedings that are already in process where the tenant's property has already been seized at the date the provisions come into effect, allowing these proceedings to continue until those proceedings are completed.

[204] Subsection (6) and (7) provide clarification that to make clear that the common law of distress for rent is abolished for residential tenancies (subsection (6)) and any received legislation that previously impacted distress for rent in residential tenancies no longer applies (subsection (7)). These subsections are technical, but nonetheless important to ensure all other aspects of distress for rent no longer apply to residential tenancies. For example, to ensure third party property cannot be seized,²²⁷ and to ensure it is clear that any residual received legislation is not applicable.

[205] Subsection (8) is required as while the first part of chapter 23 of the *Statute of Marlborough* relates to distress for rent, the second part relates to the tort of waste. Without the exception in subsection (8), subsection (7) would render both paragraphs inapplicable. With subsection (8), the second paragraph relating to the tort of waste remains intentionally unaffected by subsection (7).²²⁸

c. Consequential amendments

[206] As already discussed, ALRI's research suggests that section 37(b) and section 49(5) of the *Law of Property Act* extend the right of distress for rent in certain situations (as opposed to creating a new right) and therefore abolishing distress for rent in residential tenancies would mean there is no right to extend, making both these sections inapplicable to residential tenancies.²²⁹

[207] However, for clarity it would be advisable to amend section 37(b) and section 49(5) of the *Law of Property Act* to make it clear that these sections do not apply to residential tenancies.

²²⁷ Noting that the common law allowed seizure of any property, this was significantly limited by legislation, but still possible in narrow circumstances, as discussed in this report.

²²⁸ While the tort of waste in the context of residential tenancies is beyond the scope of this report, it appears the tort remains available (*Casale v Astoria Asset Management Ltd.*, 2023 ABCJ 138 at paras 47-54; *Millan v Hulsman*, 1990 CanLII 5873 (ABKB) at paras 13-14; *Prior v Hanna*, 1987 CanLII 3196 (ABKB) at para 14.

²²⁹ See paragraphs [179] to [181] of this report.

D. Distress for rent in other settings

[208] While the scope of this report is limited to distress for rent in residential tenancies, a number of issues discussed in this report apply to all contexts where distress for rent could be used, such as commercial, agricultural tenancies, or mobile home site tenancies.

[209] We caution that the conclusions and recommendations of this report should not be extended to distress for rent in other contexts as distress for rent is unique in residential tenancies “where greater legal safeguards are required to offset the imbalances in bargaining power”.²³⁰

1. DISTRESS FOR RENT IN MOBILE HOME SITE TENANCIES

[210] Distress for rent in mobile home site tenancies is comparable to distress for rent in residential tenancies, with the addition that the mobile home itself can potentially be subject to distress for rent.

[211] Considering ALRI’s recommendation to abolish distress for rent in residential tenancies is due in part to the potential devastating harms that can arise for the tenant, the reform or abolition of the remedy in mobile home site tenancies seems to be a good candidate for further review and potential reform.

2. DISTRESS FOR RENT IN COMMERCIAL TENANCIES

[212] While the impact on the tenant of distress for rent is vastly different for a residential tenancy as compared to a commercial tenancy, a number of issues with distress for rent identified in this report equally apply to commercial tenancies.

[213] In our research for distress for rent in the context of residential tenancies, we make the following general observations:

- The majority of recent case law in Alberta relates to distress for rent in commercial tenancies;

²³⁰ *Distress for Rent in Commercial Tenancies* (Manitoba) at 2.

- The primary benefit of distress for rent in commercial tenancies is the priority given to a landlord over creditors and other interests;²³¹ and
- The ambiguity in the priority of a landlord's right of distress against other interests is frequently at issue within the relevant case law, suggesting the commercial context adds significant complexity to the area of law.

[214] Finally, we note that while distress for rent in commercial tenancies is beyond the scope of this report, the Uniform Law Conference of Canada recommended codifying distress for rent for commercial tenancies in the Uniform Commercial Tenancies Act, 2019.²³²

²³¹ *Distress for Rent in Commercial Tenancies* (Manitoba) at 28-29, to such an extent that the report states "Without that priority scheme, distress [for rent in commercial tenancies] is largely useless as a remedy and would be abolished in all but name."

²³² *Uniform Commercial Tenancies Act*, note 149; see also the recent Law Commission of Saskatchewan report: *Implementation of the Uniform Commercial Tenancies Act: Tentative Proposals*, Saskatchewan, note 150.

Appendix A: Distress for Rent in Residential Tenancies Across Canada's Common Law Jurisdictions

Jurisdiction	Distress for rent (residential tenancies)	Legislation
British Columbia	Abolished in 1970 ²³³	<i>Residential Tenancy Act</i> , SBC 2002, c 78 26 (3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not (a) seize any personal property of the tenant, or (b) prevent or interfere with the tenant's access to the tenant's personal property. (4) Subsection (3) (a) does not apply if (a) the landlord has a court order authorizing the action, or (b) the tenant has abandoned the rental unit and the landlord complies with the regulations.
Saskatchewan	Abolished in 1973 ²³⁴	<i>Residential Tenancies Act</i> , SS 2006, c R-22.0001 ²³⁵ 12(1) A landlord must not: (a) seize any personal property of the tenant; or (b) prevent or interfere with the tenant's access to the tenant's personal property. (2) Clause (1)(a) does not apply if: (a) the landlord has a court order authorizing the action; (b) the landlord has an order respecting the tenant issued pursuant to section 85; or

²³³ *Landlord and Tenant (Amendment) Act*, SBC 1970, c 18, s 39 (see also *Report on Landlord and Tenant Relationships* (British Columbia), note 142 at 165). While it is possible to seize a tenant's property with a court order, distress for rent as a self-help remedy has effectively been abolished).

²³⁴ *An Act respecting Residential Tenancies*, SS 1973, c 83, s 10 (see also *Proposal Relating to Distress for Rent* (Saskatchewan), note 35 at 1).

²³⁵ The prior versions provided specific wording abolishing distress for rent:

Remedy of distress abolished

13(1) No landlord shall distrain for rent payable under a tenancy agreement on the goods and chattels of any person.

(2) No person authorized by any Act or other law or any agreement to recover rent payable for, or the rental value of, land shall distrain on the goods and chattels of a tenant of residential premises for the rent payable for, or the rental value of, the residential premises occupied or formerly occupied by the tenant.

(3) Subsections (1) and (2) apply whether or not the default in respect of which the remedy of distress that might have been taken but for this section occurred prior to the coming into force of this Act.

Residential Tenancies Act, RSS 1978 c R-22, s 13 (and prior to that in *An Act respecting Residential Tenancies*, SS 1973, c 83, s 10). The impact of the change in was considered in *Rozon v Re/Max Guardian Commercial Real Estate Services Inc.*, 2011 SKQB 57 at para 8.

		(c) the landlord acts in accordance with subsections 85(4) to (6). [section 85 relates to the removal and disposition of abandoned goods]
Manitoba	Abolished in 1970 ²³⁶	<i>The Residential Tenancies Act</i> , CCSM c R119 ²³⁷ 192(1) A landlord shall not distrain for default in the payment of rent or of any money due as a result of a decision or order made under this Act
Ontario	Abolished 1968-1969 ²³⁸	<i>Residential Tenancies Act</i> , 2006, SO 2006, c 17 40 No landlord shall, without legal process, seize a tenant's property for default in the payment of rent or for the breach of any other obligation of the tenant
New Brunswick	Abolished in 1975 ²³⁹	<i>Residential Tenancies Act</i> , SNB 1975, c R-10.2 14 The remedy of distress is abolished and no landlord shall distrain for default in payment of rent whether a right of distress has heretofore existed by statute, the common law or contract.
Nova Scotia	Not applicable since 1970 ²⁴⁰	<i>Residential Tenancies Act</i> , RSNS 1989, c 401 ²⁴¹ 4 When the relation of landlord and tenant exists in respect of residential premises by virtue of this Act or otherwise, (a) the <i>Overholding Tenants Act</i> ; and (b) the <i>Tenancies and Distress for Rent Act</i> , do not apply to the landlord or to the tenant or in respect of the residential premises or any goods or chattels on the residential premises.
Prince Edward Island	Abolished 1972 ²⁴²	<i>Residential Tenancy Act</i> , RSPEI 1988, c R-13-11 103 The remedy of distress is abolished, and no landlord may distrain for default in the payment of rent
Newfoundland and Labrador	Abolished in 2000 ²⁴³	<i>Residential Tenancies Act</i> , 2018, SNL 2018, c R-14.2

²³⁶ *An Act to amend the Landlord and Tenant Act*, SM 1970, c 106, s 88.

²³⁷ The wording more clearly abolished distress in earlier legislation

Distress abolished.

No landlord shall distrain for default in payment of rent whether a right of distress has heretofore existed by statute, the common law or contract.

The Landlord and Tenant Act, RSM 1987, c L70, s 85 (and prior to that in *An Act to amend the Landlord and Tenant Act*, SM 1970, c 106, s 88).

²³⁸ *An Act to amend The Landlord and Tenant Act*, SO 1968-1969, c 58, s 85.

²³⁹ *Residential Tenancies Act*, SNB 1975, c R-10.2, s 14.

²⁴⁰ *Residential Tenancies Act*, SNS 1970, c 13, s 4.

²⁴¹ It has been noted that the legislation could be worded more clearly to ensure common law and contractual distress for rent are inapplicable (*Survey of Landlord and Tenant Law* (New Brunswick) at 96).

²⁴² *An Act to Amend the Landlord and Tenant Act*, SPEI 1972, c 25, s 98.

²⁴³ *Residential Tenancies Act*, SNL 2000, c R-14.1, s 29.

		33. A landlord shall not take a tenant's personal property to compensate for a contravention of an obligation by the tenant, including a failure to pay rent.
Yukon	Abolished in 1972 ²⁴⁴	<i>Residential Tenancies Act, SY 2025, c 7</i> 30 Rules about payment and non-payment of rent – landlords (2) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not (a) seize any personal property of the tenant; or (b) prevent or interfere with the tenant's access to the tenant's personal property. (3) Paragraph (2)(a) does not apply if (a) the landlord has a court order authorizing the action; or (b) the landlord has an order of the director respecting abandoned property under section 82
Northwest Territories	Abolished in 1987 ²⁴⁵	<i>Residential Tenancies Act, RSNWT 1988, c R-5</i> 3. (1) No landlord shall distrain for rent payable under a tenancy agreement on the goods and chattels of any person (2) No person authorized by any Act or other law or agreement to recover rent payable for rental premises shall distrain on the goods and chattels of a tenant of rental premises.
Nunavut	Abolished in 1987 ²⁴⁵	<i>Residential Tenancies Act, RSNWT (Nu) 1988, c R-5</i> Remedy of distress 3. (1) No landlord shall distrain for rent payable under a tenancy agreement on the goods and chattels of any person. <i>Idem</i> (2) No person authorized by any Act or other law or agreement to recover rent payable for rental premises shall distrain on the goods and chattels of a tenant of rental premises. Time of default (3) Subsections (1) and (2) apply whether or not the default in respect of which the remedy of distress that might have been taken, but for this section, occurred before February 6, 1988.

²⁴⁴ *An Ordinance to Amend the Landlord and Tenant Ordinance, OYT 1972, c 20, s 65.* Note: while it is possible to seize a tenant's property with a court order, distress for rent as a self-help remedy has effectively been abolished.

²⁴⁵ *Residential Tenancies Act, SNWT 1987, c 28, s 5.*

Appendix B: Common Law and Legislative History of Distress for Rent

A. Summary

[215] Distress for rent arose in early English common law, in a primarily feudal and agricultural society.²⁴⁶ When a feudal obligation was not performed, the remedy allowed a landlord to seize property found on the land and impound it until the obligation was performed. By the end of the 14th century, the remedy applied more broadly to rent services (ie, including unpaid rent).²⁴⁷

[216] The statutory development of distress for rent in England generally enlarged the scope of the remedy,²⁴⁸ most notably in 1689 by adding the power to sell the property that had been seized and impounded.

[217] The English laws of 1870, including the remedy of distress for rent, were received into the Northwest Territories. The Northwest Territories modified the remedy in 1898, limiting the property that could be seized to the tenant's property (with some notable exceptions).

[218] Upon its founding in 1905, many of the laws of the Northwest Territories continued to be in effect in Alberta, including the remedy of distress for rent. At that time, the law of distress for rent included elements of the English common law, English statutory developments that were in force in 1870, and the applicable Ordinances of the Northwest Territories.

[219] Since 1905, Alberta legislation has made the following substantive changes to distress for rent:

- The prohibition of landlords seizing property introduced in 1914 (instead requiring seizure by a Sheriff or bailiff);
- The introduction of the notice of objection process in 1929; and
- The introduction of property exempt from distress for rent in 1935.

²⁴⁶ *Survey of Landlord and Tenant Law* (New Brunswick) at 93.

²⁴⁷ Wonnacott at 117.

²⁴⁸ *Survey of Landlord and Tenant Law* (New Brunswick) at 92.

B. Received Law in Alberta

[220] As noted, the applicable laws of England in 1870, including the remedy of distress for rent, were received into the Northwest Territories and carried forward to Alberta in 1905.²⁴⁹

1. ISSUES WITH RECEIVED LAW

[The] wholesale reception of English law into a new country is a useful shortcut in the early years, but may prove to be a great bother in the end.²⁵⁰

[T]he doctrine of reception is an archaism, often a source of inconvenience and even confusion. It is often difficult to determine precisely what part of English statute law adopted before 1870 remains in force in the province, or to determine how it should be applied to contemporary legal matters.²⁵¹

[221] A significant portion of the law related to distress for rent in Alberta is received law that has remained relatively unchanged since 1870.

[222] The issues with received legislation in Alberta include:

- There is generally a lack of awareness of the potentially applicable English legislation;²⁵²
- It takes significant time and effort to:²⁵³
 - Determine if the legislation was in effect in England in 1870;
 - Find a copy of the original English legislation and amendments up until 1870;

²⁴⁹ For more information around the reception of English law into Alberta refer to: J.E. Côté, “The Introduction of English Law into Alberta” (1964) 3:2 *Alta L Rev* 262 [Côté 1964]; J.E. Côté, “The Reception of English Law” (1977) 15:1 *Alta L Rev* 29 [Côté 1977]; Institute of Law Research and Reform (Alberta), *English Statutes in Force in Alberta*, Paper (1975), online: <alri.ualberta.ca/1975/01/english-statutes-enforced-in-alberta/>.

²⁵⁰ Côté 1977, note 249 at 37.

²⁵¹ Law Reform Commission of Saskatchewan, *Report of Disposal of English Statute Law in Saskatchewan* (2006) at 3, online: <lawreformcommission.sk.ca/Engstatfinal0616.pdf> [perma.cc/YDK5-MFWZ] [*Report on Disposal of English Statute Law in Saskatchewan*]. Noting this is in reference to the Province of Saskatchewan, which has the same date of reception as Alberta.

²⁵² Noting that there are exceptions that are relatively well know. For example, the *Statute of Frauds* (England), 1677, 29 Car 2, c 3 and the *Fraudulent Conveyances Act* (England), 1571, 13 Eliz c 5.

²⁵³ For example, refer to the research methodology used in this report in Appendix C.

- Investigate if the English legislation has been either explicitly or implicitly rendered inapplicable or determined inapplicable in Alberta;
- It is often difficult to understand the meaning and effect of received legislation (especially the older legislation, which is written in archaic language and operated in a very different legal context); and
- Much of the law in effect in 1870 England is no longer in force in England, and likely has little relevance to contemporary Albertan society.

[223] However, wholesale discontinuance of all received legislation is ill advisable as it appears principles of law based on English legislation are still in effect, even if the received legislation is generally unknown.²⁵⁴

2. APPROACH TAKEN IN THIS REPORT

[224] The topic of received English legislation has previously been addressed as a project in itself,²⁵⁵ or is dealt with as part of a specific reform topic.²⁵⁶

[225] Part of the difficulty in treating received English legislation as a topic in itself is the scope of potentially applicable legislation, the number of legal areas impacted, and disparate location of relevant reference resources for research.²⁵⁷

[226] In this report we consider the received English legislation that could potentially apply to distress for rent. This allows a narrower and manageable scope that builds upon existing research undertaken for the project. It is hoped future ALRI projects will also consider and recommend reform related to potentially applicable received English legislation.

²⁵⁴ For example, the basics of real property law from England, including: *Quia Emptores* (England), 1289, 18 Ed 1, c 1 (Alan M. Sinclair & Marget E. McCallum, *An Introduction to Real Property Law*, 6th ed (Markham, Ontario: LexisNexis Canada, 2012) at 9). This was considered to be in force in Saskatchewan: (*Report of Disposal of English Statute Law in Saskatchewan*, note 251 at 7, 24).

²⁵⁵ For example see: Law Reform Commission of Saskatchewan, *The Status of English Statute Law in Saskatchewan* (1990), online <lawreformcommission.sk.ca/English_Statute_Law_Saskatchewan.pdf> [perma.cc/EEN4-EF5U] [*The Status of English Statute Law in Saskatchewan*] and *Report on Disposal of English Statute Law in Saskatchewan*, note 251; *English Statutes in Force in Alberta*, note 249.

²⁵⁶ For example, see Institute of Law Research and Reform (Alberta), *Statute of Frauds and Related Legislation*, Final Report 44 (1985), online <alri.ualberta.ca/1985/06/statute-of-frauds-and-related-legislation-2/>.

²⁵⁷ The Law Reform Commission of Saskatchewan indicates there are around 15,000 potentially applicable statutes (those passed between 1225 and 1870) (*The Status of English Statute Law in Saskatchewan*, note 255 at 7).

[227] While it might seem counterintuitive to review received English legislation for distress for rent in residential tenancies in a report that recommends its abolition, this research remains valuable in the event the recommendation is not followed and for future reform projects relating to the remedy in other types of tenancies.

C. The Received Law of Distress for Rent

1. EARLY COMMON LAW

[228] The following sections summarise the broader common law remedy of distress, the specific remedy of distress for rent, and subsequent substantive changes made to distress for rent through English legislation and case law (prior to being received in Alberta in 1870).

a. Distress

[229] The origins of distress are unknown, but it has formed part of English law since the time of Anglo-Saxon laws.²⁵⁸

[230] The word distress is derived from the Latin *distringere*, which means to put into a strait²⁵⁹ or pound.²⁶⁰ The purpose of distress was to bring pressure on the owner of the seized goods to obtain from them what is due (for example a pledge), with the property being returned once this has been achieved.²⁶¹

[231] Distress could be used in a number of contexts, including: to require an appearance in court, for rent, for debt, for damage feasant, and for miscellaneous administrative causes.²⁶²

[232] The earliest legal records indicate that distress (including distress for rent) was only available after an appearance before the relevant court.²⁶³ Distress also

²⁵⁸ Enever, note 111 at 1.

²⁵⁹ The archaic meaning of strait: "narrow, limited; confined or confining." Katherine Barber, ed, *Canadian Oxford Dictionary*, 2nd ed (Toronto, ON: Oxford University Press Canada, 2004) sub verbo "strait".

²⁶⁰ The meaning given is that in the context of the legal remedy; see Enever, note 111 at 3; *Black's Law Dictionary*, note 15, sub verbo "distress" and "distringere."

²⁶¹ Enever, note 111 at 3-4.

²⁶² Enever, note 111 at 68-78.

²⁶³ First as a general prohibition against self-help remedies, citing Ine King of the West Saxons in 688, and then specifically in relation to distress in the reign of King Cnut (Enever, note 111 at 22-23, 78).

operated as a post-judgment self help remedy to bring pressure on the other party to comply with a judgment.²⁶⁴

[233] However, by the end of the 13th century distress was a truly extra-judicial remedy as there was no longer a requirement to obtain court approval prior to levying distress.²⁶⁵

b. Distress for rent

[234] Distress for rent is a specific type of distress. The remedy of distress for rent arises from feudal obligations between a lord and their vassal (ie, as a remedy to enforce services due as rent), although as early as the 14th century it also applied to contractual leases.²⁶⁶

[235] The remedy allowed a landlord to seize and hold goods until the debt for rental arrears was paid.²⁶⁷ Once the debt was paid, the landlord had to return the property, in the same condition as when it was taken.²⁶⁸

[236] The common law implies a right of distress for rent when there is a landlord and tenant relationship.²⁶⁹ The general features of the early common law of distress for rent included a number of limitations, including:²⁷⁰

- Limits on levying distress for rent, the remedy:
 - Had no right to enter a premises to levy distress for rent;²⁷¹

²⁶⁴ Enever, note 111 at 78-79.

²⁶⁵ Potentially, this was a result in a change in seeking judicial leave from the hundred or shire courts, to a landlord being able to seek judicial leave from the lord's own court, such a change would likely make leave of the court a forgone conclusion ultimately resulting in the disregarding of the requirement (Enever, note 111 at 80-81).

²⁶⁶ Wonnacott at 117.

²⁶⁷ Wonnacott at 117.

²⁶⁸ Wonnacott at 117.

²⁶⁹ Bell at 253-266.

²⁷⁰ Wonnacott at 117-118, 122-123; Enever, note 111 at 85-97; Bell at 266-316; Williams et al., ch 8.

²⁷¹ There was no right to break in to enter the premises, for example, breaking into a premises to enter it would be unlawful, whereas entering through an unlocked door would be lawful (Williams et al., ch 8 at 8-59 to 8-60, s 8:20). Under the common law entry had to be via ordinary and natural means. Although in practice this led to a set of "esoteric and bizarre" rules for example a landlord could not use their key to the premises to gain entry, break a lock or gate, or open a closed but unlocked window. They could, however, scale a wall, and enter through a window that was partially open (*Distress for Rent in Commercial Tenancies* (Manitoba), note 13 at 14). Further note that historically it appears the Court would not assist the landlord when a tenant used lawful means to avoid distress, including when the tenant "secur[ed] the demised premises against entry" (*Distress for Rent Working Paper* (England and Wales) at 66). Note: later case law makes clear that the common law requires entry on to the premises for a seizure to have occurred:

Continued

- Was only available to the landowner²⁷² (for example the right could not be assigned, and was not available to executors/administrators²⁷³);
 - Could not be executed during the night, or on a Sunday;
 - Was only available on the rented premises;²⁷⁴
 - Could not be made if the tenant tendered the rent, or after the termination of the tenancy;
- Limits on what could be seized:
 - The landlord could only seize property that could be returned in the same condition, property that could not be seized included:
 - Things in use at the time of seizure;
 - Goods of a perishable nature;
 - Items attached to the premises (fixtures);
 - Loose money;
 - Goods already in the custody of the law; and
 - Property belonging to the Crown;
 - Priorities on the type of property being seized, to reduced the impact upon the tenant,²⁷⁵ such as seizure of:
 - Property of the tenant before that of the subtenant;²⁷⁶
 - Movables before immovable;
 - Property outside before inside;

Disenhouse & Kobi, note 91 at 22-23, citing *Dodd v J.W. Vail*, 1913 CanLII 95 (SC en banc). Presumably, this has always been considered as essential.

²⁷² Seizin was a necessary requirement: Enever, note 111 at 74, 77.

²⁷³ Bell at 281, 287.

²⁷⁴ The later statutory prohibition found in the *Statute of Marlborough* 1267, note 225, was likely a confirmation of the common law (Enever, note 111 at 96).

²⁷⁵ Enever, note 111 at 92.

²⁷⁶ Enever, note 111 at 89.

- Non-agricultural animals before agricultural animals; and
 - Tools of a tenant's trade should only be taken in absence of other goods of sufficient value.
- Limits on impounded property:
 - The landlord could not use, work, or deal with property (except as a matter of necessity);
 - The impounded property could not be sold, it could only be held until rent was paid;²⁷⁷
 - Seized property was removed and impounded, ie, it could not be left with the tenant.²⁷⁸

[237] As compared with later developments, the early common law of distress for rent differed significantly as the landlord could seize and impound the property,²⁷⁹ and seize any property on the premises, regardless of who owned the property²⁸⁰ (noting the above listed exceptions).

2. ENGLISH LAW (PRE-1870)

[238] As early as 1266, English legislation began revising, amending, and modifying the law of distress for rent.

[239] The most substantive and relevant English statutory changes to distress for rent that occurred before 1870, and were still in effect in England in 1870 include:²⁸¹

- In 1267, the *Statute of Marlborough* limited the seizure to property found on the premises being rented and made excessive distress unlawful;

²⁷⁷ Bell at 332.

²⁷⁸ Enever, note 111 at 5; Bell at 326.

²⁷⁹ Although it could also be carried out by a servant or bailiff: Enever, note 111 at 86.

²⁸⁰ Bell at 289. This was based on the notion that the land itself was the debtor (Enever, note 111 at 87-88, 91-92). Except when already in the custody of the law (Wonnacott at 123). Note, the owner of property seized could bring an action against the tenant, but not the landlord (Wonnacott at 123).

²⁸¹ Respectively: *Statute of Marlborough* 1267, note 225; *Distress Act* (England) 1554, 1 & 2 Ph & Mar, c 12; *Distress for Rent Act*, 1689, note 103; *Landlord and Tenant Act*, 1709, note 28; *Distress for Rent Act*, 1737, note 79.

- In 1554, the *Distress Act* allowed landlords to recover the cost of impounding property from the tenant;
- In 1689, the *Distress for Rent Act* added a power of sale;
- In 1709, the *Landlord and Tenant Act* in certain circumstances provided landlords with priority over other creditors, allowed the landlord to follow property taken off the premises, and extended distress for rent for six months after termination of the lease when the tenancy continues; and
- In 1737, the *Distress for Rent Act* in certain circumstances increased the timeframe a landlord could follow property of the premises, allowed property to be impounded on the premises, and prevented a landlord from becoming a trespasser *ab initio*.

[240] Additional legislative changes in England over the centuries:

- Extended who could levy distress (for example executors/administrators);
- Modified and limited property that could be seized; and
- Modified various penalties related to improper levying of distress for rent and improper responses from a tenant.

[241] Refer to Appendix C for more details and information.

D. History of Distress for Rent in Alberta

1. RECEIVED LEGISLATION

[242] For most English legislation that was in effect in England at the date of reception, there is uncertainty as to its applicability in Alberta unless either:

- A statute, or sections of a statute, explicitly states it has no effect or does not apply;²⁸² or

²⁸² This type of provision could potentially be found in Federal legislation (for matters that fall within the federal scope of powers), Albertan legislation, or even Northwest Territories legislation that was passed before the creation of Alberta. Note, received legislation is not repealed in Alberta, by the Alberta legislature. Presumably this is because only the authority that passed the legislation (ie, the UK parliament) has the authority to repeal it, although at the same time repeal by the UK parliament does not render the received legislation ineffectual in the former colony that received it.

- It has been judicially considered and its applicability determined.

[243] In practice, whether English statutes are received in Alberta is most commonly determined by the courts, who consider whether the law is “applicable” in Alberta.²⁸³ The Courts in Alberta have determined the following received legislation relating to distress for rent is applicable in Alberta:²⁸⁴

- *Distress for Rent Act*, 1689 establishes both the power of sale and the statutory torts of rescous and pound-breach;²⁸⁵
- *Landlord and Tenant Act*, 1709:²⁸⁶
 - Extends distress for rent for up to six months after the end of a tenancy when the tenant remains in possession (for example, in cases of over holding tenants);²⁸⁷ and
 - Provides a landlord priority for up to one year's rental arrears when goods have already been seized by an execution creditor;²⁸⁸
- *Distress for Rent Act*, 1737 allows a landlord to:²⁸⁹
 - Follow property (for up to 30 days) that is fraudulently or clandestinely removed from the rental premises to prevent the

²⁸³ Where applicability is based on the social and economic conditions of Alberta at a given point in time. See Côté 1964, note 249 at 265-274 for a more detailed discussion on this topic.

²⁸⁴ Note: This list is based on readily available written decisions from the Alberta Courts. It is possible this list is not comprehensive as there might other relevant decisions found in pre-Alberta Northwest Territories case law, early Alberta case law, persuasive case law from other Canadian jurisdictions, or unwritten decisions. Further, the Court often considers specific sections of the received legislation rather than the statute as a whole.

²⁸⁵ *Distress for Rent Act*, 1689, note 103; Ziff, note 10 at 307; *Westchester*, note 95.

²⁸⁶ *Landlord and Tenant Act*, 1709, note 28..

²⁸⁷ *Brown*, note 21 at paras 15-16; *Bullwinkle's General Stores*, note 30 at para 4. Anomalously, in *North West Geomatics Ltd. v Telford Services Group, Inc.*, 2011 ABQB 421 at para 58, this legislation was not considered and this appears to have impacted the outcome.

²⁸⁸ *Circa 1880 Imports Ltd. v Antique Photo Parlour Ltd.*, 1983 CanLII 1090 (ABKB) [*Circa 1880*]; *Dunlop & Buckwold* at 727-728. In both *Hinton Realty Ltd. v Dunn*, 1985 CanLII 1155 (ABKB) and *Bank of Nova Scotia v Neufeld*, 1985 CanLII 1234 (ABKB) [*Neufeld*], the court followed the principles of *Circa 1880*, but distinguished the facts and found that the statutory priority found in legislation did not extend to distress levied on a chattel mortgage.

²⁸⁹ *Distress for Rent Act* 1737, note 79. Note section 18 of the *Distress for Rent Act* 1737 is not in effect for tenancies (see *Law of Property Act*, note 61, s 66(2)).

landlord levying distress for rent,²⁹⁰ and provides a cause of action against those who “assist” the tenant;²⁹¹ and

- Impound property on the premises.²⁹²

[244] The Courts have yet to determine the applicability in Alberta of the remaining English Statutes that modified the common law of distress for rent and were in force in England in 1870.

2. LEGISLATION FROM THE NORTHWEST TERRITORIES AND ALBERTA

[245] The Ordinances of the Northwest Territories modified distress for rent by initially fixing the costs associated with distress via a schedule of costs and later limiting distress for rent to apply only to the tenant’s property (noting there are exceptions)²⁹³ and these remained in force in Alberta until they were included in the revised statutes of Alberta in 1922 as *The Distress Act*.²⁹⁴

[246] Then, during the economic recession in the early 20th century, Alberta introduced *The Extra-Judicial Seizures Act* which required all seizures, including distress for rent, to be undertaken by a sheriff or bailiff. Initially a court order was required prior to the removal or sale of any goods seized, however, this was later replaced by the notice of objection process which continues in Alberta to the present.²⁹⁵

[247] In 1932, the *Judicature Act* was amended to give judicial discretion to stay any recovery of debt and order repayment plans in installments, including distress for rent.²⁹⁶ In 1933 *The Extra-Judicial Seizures Act* was repealed and

²⁹⁰ Most recently considered in *GDS & Associates Systems*, note 59, this case includes discussion on the requirements the landlord must establish; see also *Tona Holdings*, note 79.

²⁹¹ *Jim Pattison Developments Ltd. v Fudex International Inc.*, 1996 CanLII 10533 (ABKB) at paras 44, 47 [Pattison].

²⁹² *First City Shopping Centre*, note 62 at para 42.

²⁹³ *An Ordinance to Regulate the Costs of Distress for Rent and Extra-Judicial Seizure*, ONWT 1884, No. 8, and later *An Ordinance Respecting Distress for Rent and Extra-judicial Seizure*, CONWT 1898, c 34.

²⁹⁴ See *An Ordinance Respecting Distress for Rent and Extra-Judicial Seizure c 34* in, *The ordinances of the North-west Territories, being an office consolidation of such of the Ordinances of the North-west Territories in force on August 21st, 1905, as the same appear in the Consolidation of 1898 and the Amendments thereto, together with the Public General Ordinances enacted by the Legislature of the North-West Territories after the year 1898, as have not been replaced by the Statutes of the Legislature of the Province of Alberta, together with the amendments made thereto by the said Legislature up to and including 1915* (Edmonton: Government Printer, 1915) at 237-239; see also *The Distress Act*, RSA 1922, c 97.

²⁹⁵ Enforcement Remedies at 785; *The Extra-Judicial Seizures Act*, SA 1914, c 4, ss 1, 4; *An Act to amend the Extra-Judicial Seizures Act*, SA 1929, c 20.

²⁹⁶ Enforcement Remedies at 786,818, citing *Royal Trust*, note 182; *Judicature Act*, SA 1932 c 22 s 2.

replaced by *The Seizures Act*, which streamlined the notice of objection procedure.²⁹⁷

[248] The next notable development was in 1935, when exemptions to property that could be seized by distress for rent were introduced.²⁹⁸ In the 1942 revised statutes of Alberta *The Distress Act* was repealed, with portions of the former act being moved to *The Seizures Act* and *The Exemptions Act* respectively.²⁹⁹

[249] The legislation remained mostly intact and unchanged until the *Seizures Act* and *Exemptions Act* were repealed and replaced with the *Civil Enforcement Act* in 1996 as part of the radical reshaping of debtor-creditor law in Alberta.³⁰⁰

[250] The current legislative scheme found in the *Civil Enforcement Act*, as it relates to distress for rent, is discussed in the section below.

E. Legislation Relating to Distress for Rent in Alberta

1. CIVIL ENFORCEMENT ACT

[251] The *Civil Enforcement Act*, provides a broad and comprehensive approach to unsecured creditor remedies in Alberta, and includes procedural requirements that apply to distress for rent.³⁰¹

[252] However, only certain portions of the act apply to distress for rent. The following parts of the *Civil Enforcement Act* apply to distress for rent:

- Sections 1(1) - 1(4), and Part 11 (Distributions), Part 13 (regulations and rules of court) and Part 14 (Transitional) apply generally to the Act, and therefore include distress for rent;³⁰²

²⁹⁷ Enforcement Remedies at 785; *The Seizures Act*, SA 1933, c 16.

²⁹⁸ *The Distress Act Amendment Act*, 1935, SA 1935, c 12.

²⁹⁹ "Schedule III: History and Disposal of Acts" in the *Revised Statutes of Alberta*, 1942 at 4431; *The Seizures Act*, RSA 1942, c 143; *The Exemptions Act*, RSA 1942, c 123.

³⁰⁰ Enforcement Remedies at 788; *Civil Enforcement Act*, SA 1994, c C-10.5.

³⁰¹ Dunlop & Buckwold at 1-6. Interestingly, Dunlop & Buckwold suggest that the inclusion of distress for rent and distress by mortgage in the *Civil Enforcement Act* was not originally contemplated in the comprehensive scheme considered, which might explain the manner in which portions and sections of the act apply to distress for rent.

³⁰² These sections essentially apply due to distress for rent being a civil enforcement proceeding, and by virtue of the *Civil Enforcement Act*, s 104 directly legislating distress for rent.

- Part 1 (General) and Part 2 (Civil Enforcement Agencies and Bailiffs) apply as distress for rent falls within the definition of a civil enforcement proceeding;³⁰³
- Section 12 of the *Civil Enforcement Act* applies specifically for distress for rent, and:
 - Indicates the following sections apply to distress for rent as if the seizures were made pursuant to writ proceedings. These sections are:³⁰⁴
 - s 34(2): relates to priorities of a writ;³⁰⁵
 - s 45: establishes when property is seized;
 - s 46: relates to the objection process;
 - s 47(1): relates to the termination of the seizure;
 - s 48: relates to the sale of the seized property; and
 - s 47(2) and (3): relate to notice of proceedings, which are modified by s 104(a.1);
- Establishes whose property a landlord can seize (s 104(b)-(c)); and
- Establishes the tangible personal property exempt from seizure (s 104(d)),³⁰⁶ indicating which sections of Part 10 apply to distress for rent.³⁰⁷

³⁰³ Per the *Civil Enforcement Act*, s 1(1)(g), “civil enforcement proceedings” includes distress proceedings. Per the *Civil Enforcement Act*, s 1(1)(m)(i), distress includes “a right of a landlord to distrain for unpaid rent.”

³⁰⁴ *Civil Enforcement Act*, s 104(a)-(a.1). The suggested consequence of this is that the landlord stands in the position of the instruction creditor, while the tenant stands in the position of the enforcement debtor (Dunlop & Buckwold at 772).

³⁰⁵ The relative priority of landlord’s right of distress for rent against various other interests is far from certain; see extensive discussion in Dunlop & Buckwold at 775-804.

³⁰⁶ The remedy of distress for rent “is understood to be a remedy against tangible personal property”, therefore the exemptions in the *Civil Enforcement Act* limit the tangible personal property that can be seized (Dunlop & Buckwold at 776).

³⁰⁷ The *Civil Enforcement Act*, s 104(d)(i) lists which parts of the section 88 exemptions apply to distress for rent, those being sections 88 (a) food for 12 months, (b) clothing (up to \$4,000 per the *Civil Enforcement Regulation*, s 38(2)(a)), (c) household furnishing and appliances, falling within the narrow list found in the *Civil Enforcement Regulation*, s 38(1) and up to a value of \$1,000 (*Civil Enforcement Regulation*, s 38(2)(b)), (e) required medical and dental aids, and (h) personal property used to earn income up to \$10,000 (*Civil Enforcement Regulation*, s 38(2)(c)).

[253] The remainder of the *Civil Enforcement Act* does not apply to distress for rent.³⁰⁸

2. JUDICATURE ACT

[254] The 1932 amendment to the *Judicature Act*, providing judicial discretion to stay any recovery of debt and order repayment plans in installments remains in effect in Alberta and applies to orders made following a distress for rent.³⁰⁹

F. Legal Actions

1. LANDLORD REMEDIES

a. Rescous and pound-breach

[255] When distress for rent proceedings had been legally and correctly levied, and a tenant then attempted to recover their property, historically a tenant could be found liable, in both civil law and criminal law, via:³¹⁰

- Rescous (or rescue): the wrongful interference with property that was lawfully seized by the landlord via distress for rent; and
- Pound-breach: the wrongful interference with property that was in the custody of the law.

³⁰⁸ Generally, the following sections of the *Civil Enforcement Act* do not apply (except as specifically indicated applicable to distress for rent in the *Civil Enforcement Act*, Part 12): Part 3 applies to claimants, defined as those who could obtain a money judgment (s 16(a)-(b)), where a money judgment is a judgment requiring a person pay money that arises from a court order (or equivalent) (s 1(1)(ff), (z)); Part 4 applies to judgment creditors, defined as those who have a money judgment (s 1(1)(aa)); Part 5 applies to seizure for writ proceedings (s 43); Part 6 applies to Special Seizure Mechanisms and presumably does not appear to apply to distress for rent; Part 7 applies to enforcing a writ against land (s 67); Part 8 applies to garnishment; Part 9 applies to appointing receivers to property of enforcement debtors (s 85(1)), noting that enforcement debtors are those whom a writ is in force against (s 1(1)(r)), and therefore does not include distress for rent; and Part 10 is exempt property for enforcement debtors.

³⁰⁹ *Judicature Act*, note 182, s 17(1); Enforcement Remedies at 818, citing *Royal Trust*, note 182.

³¹⁰ *Distress for Rent Working Paper* (England and Wales) at 66-67, 70, 110, 112; *Landlord and Tenant Distress for Rent* (England and Wales), note 145 at 8; Williams et al., ch 8 at 8-92, s 8:28:2; Enever, note 111, 107, 247; Seumas Woods, "Obstruction, Pound Breach and Rescue" in Harvey M. Haber, ed, *Distress a Commercial Landlord's Remedy* (Aurora, ON: Canada Law Book, 2001) at 126-129 [Seumas Woods].

i. Criminal law

[256] While the common law criminal offences of rescous and pound-breach are no longer applicable in Alberta³¹¹ any self-help attempt of a tenant to recover property taken via distress for rent may be committing a criminal offence, per section 129(a) or (c) of the *Criminal Code*.³¹²

[257] For the purposes of s 129 in the context of distress for rent, the key element of the offence would likely be wilful obstruction by the tenant, noting that wilful could mean both intentional conduct and “something which is done without lawful excuse”.³¹³

ii. Civil law (torts)

[258] Due to the rather unique circumstances surrounding distress for rent, the traditional torts that address wrongful interference with property (such as trespass to chattel, detinue, and conversion) are not available to the landlord.³¹⁴

[259] The *Distress for Rent Act, 1689* created a civil cause of action against any pound-breach or rescous allowing for triple damages and costs to be recovered.³¹⁵ That is, the 1689 act created the statutory torts of rescous and pound-breach.³¹⁶

³¹¹ Per the *Criminal Code*, note 73, s 9(a), no person can be convicted of common law offences (this therefore includes the common law offences of both rescous and pound-breach). Additionally, any received legislation relating to the criminal offence either rescous or pound-breach would also inapplicable per the *Criminal Code*, note 73, s 9(b).

³¹² Seumas Woods, note 310 at 124, noting that s 129(a) could apply as the definition of a peace officer found in s 2 includes a bailiff.

³¹³ Edward Greenspan, QC et al, *Martin's Annual Criminal Code, 2025 Edition* (Toronto: Thomson Reuters, 2025) at CC 129:1, Cross-References, citing *Rice v Connolly* [1966] 2 QB 414 CA, (1966) JELR 91786 (QB)

³¹⁴ The tenant retains ownership of any property taken in distress for rent proceedings, up until the property is sold, and the landlord merely has lawful authority to seize property and impound it in the custody of the law. I.e., the landlord does not have the necessary possession of the property: see Williams et al., ch 8 at 8-92, s 8:28:2; see also *Distress for Rent Working Paper* (England and Wales) at 109.

³¹⁵ Enever, note 111 at 246. Note, Enever suggests the ability to recover triple damages and costs was repealed and replaced by *Limitations of Actions and Costs* (UK) 1842, 5 &6 Vivt c 97 s 1&2 (Enever, note 111 at 246), although on its face this act only impacts costs (unless damages are broadly caught under “or any other than the usual costs between Party and Party, which seems unlikely)

³¹⁶ *Distress for Rent Working Paper* (England and Wales) at 67.

[260] In *Westchester Equities v. Thorne Riddell Inc.*, the Court found that the *Distress for Rent Act, 1689* is received legislation within Alberta, establishing the torts of rescous and pound breach continue to form part of the law of Alberta.³¹⁷

[261] The elements of the torts appear to require the plaintiff prove:³¹⁸

- They are the landlord;
- Rent was in arrears;
- The legality of distress;
- The defendant knew of the seizure and/or impounding; and
- Presumably, that the property was unlawfully taken by the defendant.

[262] However, in practice, apart from the case of *Westchester* in 1988, there is minimal evidence that these torts are used in Alberta.

[263] Presumably, since the development of the tort of negligence, a landlord could now also bring an action in negligence against a tenant for the wrongful interference of property, if all the requirements of negligence could be established.

2. TENANT REMEDIES

[264] This section considers the numerous potentially applicable remedies available to a tenant when distress for rent is incorrectly levied.³¹⁹

[265] The difference between illegal, irregular, and excessive distress are considered first, as the available remedies can depend upon whether the distress for rent is illegal, irregular, or excessive.

³¹⁷ *Westchester*, note 95, the court found that the received legislation *Distress for Rent Act, 1689*, note 103 was still in force in Alberta (this case focuses on pound breach, however considering the 1689 act equally applies to rescous and pound-breach presumably if it is in force and effect for one it is in force and effect for both).

³¹⁸ See Bell at 353-354; Williams et al., ch 8 at 8-93, s 8:28:2; *Westchester*, note 95. Noting that rescous and pound-breach were historically absolute liability torts (*Distress for Rent Working Paper (England and Wales)* at 112). However, in Alberta the Courts have found that for pound-breach there is no liability without knowledge of the impounding (*Westchester*, note 95 at paras 14-15). Presumably, this would equally apply to rescous.

³¹⁹ While this report focuses on the remedies available for a tenant, these remedies might also be available to other potentially wronged parties if the requirements for the torts are met (for example, if third party property is taken in distress for rent proceedings).

a. **Illegal, irregular, and excessive distress for rent**

[266] Under the common law, **any** unlawful act (except refusing rent), rendered the landlord a trespasser *ab initio* and the distress for rent as void.³²⁰ Once the power of sale was added in 1689, this meant any unlawful act would result in the landlord not being able to pass ownership to a buyer of the property.³²¹

[267] The *Distress for Rent Act 1737*, introduced the distinction between illegal and irregular distress for rent.³²² The distinction is not always clear and has been described in the following terms:

- Illegal acts are those that breach the fundamental principles of the landlord's right of distress, whereas irregular are those relating to the incorrect form;³²³ and
- "An illegal distress occurs where the landlord was never entitled to [distress for rent] or there was some irregularity at the outset" whereas "[a]n irregular distress is one which begins lawfully but goes astray after entry because of things like a faulty or an improper appraisal".³²⁴

[268] Situations where distress for rent have been found to be illegal include:³²⁵

- When there is no right to distress for rent, such as when:
 - There was no tenancy (including when the property is seized after the tenant is no longer in possession);
 - There were no rental arrears;
 - The property seized was not on the rented property; or
 - The property was seized more than six months after the end of the term; and
- When there is a right of distress for rent, but a wrongful act was committed at the beginning, such as when:

³²⁰ Wonnacott at 119.

³²¹ *Distress for Rent Working Paper* (England and Wales) at 71.

³²² Wonnacott at 125.

³²³ Kenneth D. Kraft, "Distress and Insolvency" in Harvey M. Haber, ed, *Distress A Commercial Landlord's Remedy* (Aurora, ON: Canada Law Book, 2001) at 69.

³²⁴ *Distress for Rent in Commercial Tenancies* (Manitoba) at 17.

³²⁵ Williams et al., ch 8 at 8-106 to 8-110.1, s 8:34:3; Bell at 340-341; Wonnacott at 124-125.

- There was an unlawful entry;
- The property was seized in a prohibited period; or
- Exempt property was seized.

[269] Situations where distress for rent have been found to be irregular include when a wrongful act was committed during the distress for rent process, such as: failing to give notice, failing to conduct an appraisal, selling goods prematurely or after rental arrears and costs were received.³²⁶

[270] Excessive distress for rent is when more property than is reasonably necessary to satisfy the rental arrears is seized.³²⁷

[271] In practice, distinction between illegal, irregular, and excessive distress for rent is unclear, illogical,³²⁸ and potentially not followed.³²⁹

b. Interlocutory applications

i. Injunctions

[272] While injunctions are available, the courts are reluctant to provide injunctive relief in cases of distress for rent, as this would remove the landlord's priority (against other interests).³³⁰

[273] In Alberta, a tenant's ability to seek an injunction is limited by the *Civil Enforcement Act* to situations when an injunction is necessary to ensure compliance with the Act and to protect property subject to civil enforcement proceedings.³³¹

³²⁶ Bell at 341; Wonnacott at 124-125.

³²⁷ Wonnacott at 124-125. Excessive distress arises much earlier, in the *Statute of Marlborough*, 1267, note 225, and is sometimes considered a form of irregular distress.

³²⁸ *Distress for Rent Working Paper* (England and Wales) at 72.

³²⁹ As discussed in paragraph [88] and n 125, in *GDS & Associates Systems*, note 59 and *Grisdale*, note 125, the courts have found that a seizure is unlawful if the requirements found in the *Civil Enforcement Act* are not followed.

³³⁰ *Whyte Avenue Landscaping v 406362 Alberta Ltd*, 2022 ABQB 266 at paras 36, 42 [*Whyte Avenue Landscaping*], citing Harvey M. Haber, ed, *Tenant's Rights and Remedies in a Commercial Lease – A Practical Guide*, 2nd ed (Toronto: Canada Law Book, 2014) at 303-307. Similarly, when distress for rent was an available remedy in England and Wales injunctions were available (Wonnacott at 124) with courts reluctant to grant them (*Landlord and Tenant Distress for Rent* (England and Wales), note 145 at 55).

³³¹ *Whyte Avenue Landscaping*, note 330 where the tenant brought an application for an injunction releasing assets seized by a landlord, the court found such an injunction would liberate property (as opposed to protect it).

ii. Stay of enforcement

[274] The temporary suspension of an enforcement (that is, a stay of enforcement), including for distress for rent proceedings, are available in Alberta.³³²

[275] A tenant could potentially bring a court application seeking a stay of enforcement relying upon:³³³

- Section 17 of the *Judicature Act*, RSA 2000, c J-2;
- Rule 1.4(2)(h) of the *Alberta Rules of Court*, Alta Reg 124/2010; or
- Section 5(2)(d) of the *Civil Enforcement Act*.

iii. Replevin

[276] Replevin is an interim tortious remedy that allows an applicant to recover personal property pending an action to determine rightful possession.³³⁴ The conditions and requirements are found in the *Alberta Rules of Court*.³³⁵

[277] In the context of distress for rent, replevin is an action to prove the illegality of the distress for rent, and is not available for irregular or excessive distress for rent.³³⁶

[278] Historically, replevin was an entitlement to have goods returned upon giving their pledge to satisfy the demand or to bring an action to challenge the right to distress for rent.³³⁷

[279] Contemporarily, in Alberta it is an application to the courts to recover the property which requires the tenant provide an undertaking to: proceed with an action to recover the property; return the property if ordered; and pay damages,

³³² For example, the courts in Alberta have found a stay can be ordered to prevent the sale of goods taken by a landlord via distress for rent when a tenant alleges set off for a breach of the leases covenants; *Proprietary Industries Inc. v Workum*, 2006 ABCA 225 at para 13, citing *Royal Trust*, note 182.

³³³ Refer to *Dunlop & Buckwold* at 91-98 for a more detailed discussion on the topic.

³³⁴ Lewis Klar, *Tort Law*, 5th ed (Toronto, ON: Carswell, 2012) at 109 [Klar]. The word “replevy” means the redelivery of goods (*R v Kurbis*, 1920 CanLII 272 (SKKB) at para 3). Note: while replevin is a tortious action, due to its interim nature it has been considered with other interlocutory applications (for example it is classified in *Manitoba Agricultural Credit Corp v Heaman*, 1990 CanLII 8007 (MBCA) at para 26 [Heaman]).

³³⁵ Klar, note 334 at 109; *Alberta Rules of Court*, Alta Reg 124/2010, rr 6.48-6.53.

³³⁶ *Distress for Rent Working Paper* (England and Wales) at 25.

³³⁷ Enever, note 111 at 98. Further, at common law, replevin was primarily used in distress for rent disputes (*Heaman*, note 334 at para 13 citing John G. Fleming, *The Law of Torts*, 4th ed (Australia: The Law Book Co. Ltd., 1971) at 72).

costs and expenses if the action is ultimately unsuccessful.³³⁸ To be successful, a replevin application must “establish substantial grounds” that the property was wrongfully taken, the value and description of the property, and ownership of the property.³³⁹

[280] Replevin is not available against a landlord when the bailiff seizes property off the premises without the landlord’s knowledge,³⁴⁰ nor is it available for parties that did not have prior possession.³⁴¹

c. Torts

[281] The torts of conversion, trespass to chattel, and detinue satisfy very similar objectives and the difference between them can be subtle, although conversion appears to be the most commonly used.³⁴² For example, in *Pelley v Streeper*, a tenant brought an action for wrongful seizure against the landlord which the court dealt with as a conversion.³⁴³

[282] The commonality of the potentially applicable torts is all of them to some extent allege some form of wrongful interference with the tenant’s property.

[283] The relevant and applicable tort depends on the specific circumstances of the distress for rent being challenged by the tenant. These include the type of property “wronged” (real or personal), the intention of the landlord,³⁴⁴ the type of alleged wrongful conduct (illegal, irregular, or excessive), the extent and harms of the wrongful interference, and the remedy sought.

i. *Trespass to land*

[284] Trespass is the direct wrongful intentional or negligent interference with a person’s legal possession of land.³⁴⁵

³³⁸ *Alberta Rules of Court*, note 335, r 6.49(2).

³³⁹ *Alberta Rules of Court*, note 335, r 6.49(3). The threshold for establishing substantial grounds was historically low, although could now require “showing a high degree of likelihood” (*Spartan Delta Corp v Orphan Well Association*, 2024 ABKB 555 at para 8).

³⁴⁰ Bell at 276.

³⁴¹ For example, a creditor; see *Heaman*, note 334 at paras 11, 27-28.

³⁴² Klar, note 334 at 100.

³⁴³ *Pelley*, note 47. See also *M & S Equity*, note 84 at para 26.

³⁴⁴ In the sense that the action that resulted in the wrongful act was intentional, not that the action was intended to be wrongful (see discussion in Klar, note 334 at 91, 101-104, 110-111).

³⁴⁵ Klar, note 334 at 110-111.

[285] The entry on to a rental premises for distress for rent has been described as a lawful trespass.³⁴⁶ As such, trespass is only a potentially applicable remedy when the distress for rent is illegal.³⁴⁷

[286] While there is no requirement for the plaintiff to prove actual damages arising from the wrongful interference, damages can be awarded both punitively and for injurious consequences that flow from the wrongful interference.³⁴⁸

ii. Trespass ab initio (historically applicable)

[287] Trespass *ab initio*, is trespass where the person lawfully entered onto the property and then “abused the right by a positive wrongful act”.³⁴⁹

[288] In the context of distress for rent, this would be a wrongful act that occurs during an otherwise legal distress for rent proceeding (ie, irregular or excessive distress for rent). When a landlord was a trespasser *ab initio*, the tenant could recover the full value of the goods.³⁵⁰

[289] However, the *Distress for Rent Act, 1737* abolished trespass *ab initio* for distress for rent.³⁵¹

iii. Trespass to chattel

[290] The tort of trespass to chattel is very similar to trespass to land, the main difference being it applies to the wrongful interference with personal property.

[291] That is, trespass to chattel is the direct wrongful intentional or negligent interference with a person’s legal possession of personal property.³⁵²

³⁴⁶ Disenhouse & Kobi, note 92 at 18. Noting that upon the plaintiff proving the direct interference of possession, the onus falls on the defendant to disprove it was wrongful (Klar, note 334 at 110), for example as part of legally and correctly levying the distress for rent.

³⁴⁷ Posen, note 124 at 134. While Posen appears to be primarily focused on trespass to chattel, the same principles logically apply to trespass to land.

³⁴⁸ Klar, note 334 at 110, 120-1125.

³⁴⁹ *Fuoco Estate v British Columbia*, 2001 BCCA 325 at para 10.

³⁵⁰ Wonnacott at 125.

³⁵¹ Wonnacott at 119-120, 124; Enever, note 111 at 243. Note, while s 19 of the *Distress for Rent Act, 1737*, note 79 has not been judicially considered in Alberta, other sections of the act have been found to be in effect in Alberta, therefore it is presumable that s 19 is also in effect. Without trespass *ab initio*, this limits the potential damages available to the tenant to only recover their actual losses, and taking into account the rental arrears (Wonnacott, at 125; see also Williams et al., ch 8 at 8-103, s 8:33).

³⁵² Klar, note 334 at 90-95.

[292] As with trespass to land, there is no requirement to prove actual damages arising from the wrongful interference,³⁵³ it is not available for irregular or excessive distress for rent,³⁵⁴ and presumably damages are equally recoverable punitively and for injurious consequences.³⁵⁵

iv. Conversion

[293] The tort of conversion is very similar to trespass to chattel, as “[c]onversion is a positive and intentional act of interference with a person’s legal possession or right to the immediate possession of goods”.³⁵⁶

[294] The primary difference is that conversion requires an interference with possession that is *substantial interference* (in terms of extent, duration, expense and harm done) where the only fair solution is to force the defendant to buy the property at fair market value.³⁵⁷

[295] For example, if a landlord uses the seized and impounded goods, this could give rise to a claim of conversion.³⁵⁸

[296] In addition to the fair market value of the property, consequential and punitive damages can be awarded.³⁵⁹ Perhaps counterintuitively, the “converted” property at issue can also be returned, potentially with nominal damages, and potentially the courts could order the plaintiff to accept the return of the goods.³⁶⁰

³⁵³ Klar, note 334 at 90.

³⁵⁴ Posen, note 124 at 134.

³⁵⁵ In relation to trespass to chattel, Klar’s discussion focuses on the uncertainty over whether damages are available when interference is short of dispossession (Klar, note 334 at 94). However, punitive damages are available in any tort action (Klar, note 334 at 21), and principally the injurious consequences should be no different between trespass to land and trespass to chattel.

³⁵⁶ Klar, note 334 at 99, noting also that conversion was historically known as “Trover” and legal ownership is not necessary as long as there is a right of possession (Klar, note 334 at 100).

³⁵⁷ I.e., that it “warrants a forced sale.” Klar, note 334 at 105-106.

³⁵⁸ Disenhouse & Kobi, note 91 at 31.

³⁵⁹ Klar, note 334 at 107.

³⁶⁰ Klar, note 334 at 107.

v. Detinue

[297] Similar to trespass to chattel and conversion, the tort of detinue is concerned with the wrongful detention of goods that interferes with the right of immediate possession. The key differences for detinue are:³⁶¹

- There is no “substantial interference” nor “intentionality” requirement; and
- There is a requirement that the goods were demanded to be returned, and this demand was refused.

[298] Detinue allows either the recovery of the specific goods, damages, or both.³⁶² Damages can include damages for the detention of property, the assessed value of the property if not returned, consequential damages, and punitive damages.³⁶³

vi. Negligence

[299] As indicated above, trespass to land or trespass to chattel can be intentional or negligent. Even so, the specific torts available for property damage have largely been eclipsed by actions for negligence.³⁶⁴

[300] A tenant could bring a claim in negligence if they can establish that the required elements of negligence arose out of the distress for rent that was levied.

d. Statutory remedies

i. Wrongful and excessive distress

[301] The term wrongful distress is often used as an umbrella term for illegal, irregular, and excessive distress.³⁶⁵

³⁶¹ Klar, note 334 at 95-98; *Pelley*, note 47 at para 24, citing *Sprung Instant Structures Ltd v Royal Bank of Canada*, 2008 ABQB 30 at para 14.

³⁶² Klar, note 334 at 98-99.

³⁶³ Klar, note 334 at 98-99, 121. Noting that the plaintiff can apply for return of the property or the value of the property, with the court considering the appropriate remedy for the circumstance (see discussion in Klar, note 334 at 99).

³⁶⁴ Klar, note 334 at 90.

³⁶⁵ For example, see *Posen*, note 124; *Bell* at 340.

[302] Historically, it appears that wrongful distress and excessive distress were statutory causes of action arising from the *Statute of Marlborough* 1276:³⁶⁶

- Wrongful distress allowed a tenant to bring the action of wrongful distress when the distress was unlawful, through either an unjust seizure and/or an unjust detention distress of property;³⁶⁷ and
- The excessive distress provisions in the act are believed to have given rise to the cause of action that provided a remedy for a person that suffered an excessive distress.³⁶⁸

e. Equity

[303] Similarly to negligence, if a tenant can establish the requirements to bring an unjust enrichment claim against a landlord who illegally levied distress for rent, presumably this remedy could apply.³⁶⁹

f. Related case law

[304] Outside of distress for rent, there are a number of cases in Alberta where a landlord unlawfully seizes, sells, or otherwise disposes of tenant property. For example, when a landlord incorrectly relies on the *Residential Tenancies Act* to dispose of abandoned property when neither the property nor the tenancy were found to have been abandoned by the tenant.

[305] For example, in *Pena v Phipps* the wrong was considered trespass to chattel, in *Krause v Bonin* the wrong was determined to be a breach of the lease, detinue and conversion, whereas in *Wilderdijk-Streutker v Zhao*, the court found the landlord “unlawfully destroyed, damage and disposed of personal property”.³⁷⁰

³⁶⁶ *Statute of Marlborough* 1267, note 225.

³⁶⁷ Enever, note 111 at 113, 155, 123-124.

³⁶⁸ Enever, note 111 at 248. Enever notes that the prior legislation *Statute of The Exchequer*, provisions *De Districione Scaccarii* had required distress be reasonable, but failed to provide a remedy (Enever, note 111 at 248).

³⁶⁹ See for example, *Baywest properties Ltd. v Stratheden properties Ltd.*, 1992 CanLII 731 (BC CA). Note: for the purpose of organizing potentially available actions in this report, unjust enrichment is considered an equitable action, notwithstanding this is not universally agreed upon.

³⁷⁰ *Pena v Phipps*, 2014 ABPC 106; *Krause v Bonin*, 2011 ABPC 171 at para 20, although the damages were assessed in alignment with trespass to chattel principles (see para 21); *Wilderdijk-Streutker v Zhao*, 2017 ABPC 24 at para 77. See also for example the RTDRS decisions: *19008905 (Re)*, 2021 ABRTDRS 7; *23001275 (Re)*, 2023 ABRTDRS 16.

Appendix C: Distress for Rent Received Legislation

[306] This appendix is a list of English legislation that has been identified as relating to distress for rent that was in effect (or partially in effect) in England in 1870. For each piece of legislation ALRI has indicated the state of applicability in 1870, considered the potential applicability in contemporary Alberta, and compared this with the contemporary applicability in England.

1. METHODOLOGY

[307] Legislation considered in this appendix arises from:

- English legislation referenced in secondary sources reviewed as part of the research for this report; and
- English legislation found in the Index of *Chronological Table of and Index to The Statutes to the End of the Session of 1869* identified as relating to the topic of Distress.³⁷¹

[308] Once the potentially applicable legislation was identified, research consisted of:

- Reviewing partial repeals indicated on the *1869 Statutes List* (reviewed repealing legislation, where possible, to determine impact on distress for rent at the time the law as received into Alberta);
- Finding the source legislation;³⁷² and
- Conducting searches to references to received legislation in Alberta legislation and case law.³⁷³

[309] **Limitations of the research:** while we have conducted this research as diligently as possible with the available time and resources:

³⁷¹ United Kingdom, Royal Commission for Consolidating the Statute Law (Statute Law Committee), *Chronological Table of and Index to The Statutes to the End of the Session of 1869* (London: George Edward Eyre And William Spottiswoode, 1870) at 390 online: <archive.org/details/chronologicaltab00stat> [1869 Statutes List].

³⁷² For this research, the publicly available resource *The Statutes Project* was of immeasurable assistance in sourcing old English, British and UK legislation (online: <statutes.org.uk/site/the-statutes/>).

³⁷³ Note: often there are multiple citations used for a singular piece of legislation, especially for the older legislation (eg, short title, full title, popular names, statute of the realm citation, Ruffhead citation, etc.). The searches conducted were limited to key term searches of electronically available sources.

- It is possible that this list does not include all English legislation potentially relevant to distress for rent, or relevant and applicable case law or legislation in Alberta.
- For the most part, this research only considers legislation that expressly states the received legislation has no effect or does not apply (ie, this research does not generally consider what, if any, effect can be implied from Alberta legislation to render received legislation implicitly no longer in effect or applicable in Alberta).
- Especially for the older legislation, the context and language of legislation referenced varies significantly from contemporary society, ALRI has primarily relied on secondary sources for the interpretation and impact of the legislation considered in this list (with citations provided in the footnotes).

[310] As Alberta only received the laws of England,³⁷⁴ any statutes related to other portions of the United Kingdom³⁷⁵ or those related exclusively to British Colonies at the time³⁷⁶ are not considered in this appendix.

³⁷⁴ “[...] the laws of England relating to civil and criminal matters are the same as existed on the fifteenth day of July [1870]” (Côté 1964, note 249 at 264-265, citing *North-West Territories Act*, RSC 1886, c 50, s 11).

³⁷⁵ For example, *Ejectment and Distress (Ireland) Act*, 1846, 9 & 10 Vic c 111 (*1869 Statute List*, note 371 at 267 and “Distress” Ireland at 582) and *Conveyance of Offenders (Ireland) Act*, 1819, 59 Geo 3, c 92 (*1869 Statute List*, note 371 at 206 and “Distress” Ireland at 582) were not considered as they were the law of Ireland not England in 1869.

³⁷⁶ These are found in *1869 Statute List*, note 371 at 619-629 and are those that relate “exclusively to the Colonies” (see Preface at viii), with the potentially relevant entry of “Canada” at 620 on its face having no matters relating to distress.

2. SUMMARY OF STATUTES RELATED TO DISTRESS FOR RENT

Short Title	Year	Citation	Topics and summary of key sections relevant to distress for rent ³⁷⁷	Status in 1869 ³⁷⁸	Applicable in Alberta ³⁷⁹	Applicable in the UK
<i>Les Estatuz Del Eschekere (Statute of The Exchequer), provisions De Districione Scaccarii</i> ³⁸⁰	1266	51 Hen 3 stat 4	s1 allows distrainee to feed their impounded animals without charge Partially repealed: s2 relates to property taken for the King's debt s 4 Limits distress on oxen and sheep ³⁸¹ (when other property available) s 5 seizures must be reasonable	In force (excepting portions of s 2, 3, and 6 ³⁸²)	Potentially in effect ³⁸³	No known outstanding effect ³⁸⁴
<i>Statute of Marlborough</i> ³⁸⁵	1267	52 Hen 3, c 1,	Penalties ³⁸⁶ for unlawful distress (fine and damages)	In force ³⁸⁷	Potentially in effect ³⁸⁸	No known outstanding effect ³⁸⁹
		52 Hen 3, c 2	Distraining any person to come to a court unlawfully ³⁸⁶			Repealed in 1948 ³⁹⁰
		52 Hen 3, c 3	Penalties ³⁸⁶ ; resisting process ³⁹¹			Repealed in 1881 ³⁹²
		52 Hen 3, c 4	Limits distance property seized via distress for rent can be moved to within the same county and made excessive distress unlawful ³⁹³ ; Thought to give rise to action to sue for excessive distress ³⁹⁴			No information found
		52 Hen 3, c 9	Penalties ³⁸⁶ ; suit of court ³⁹⁵			Repealed in 1881 ³⁹²
		52 Hen 3, c15	Limited seizing of goods to only be allowed on the premises rented ³⁹⁶			No information found
		52 Hen 3, c 21	Replevin and redelivery of beasts wrongfully taken ³⁹⁷			Repealed in 1881 ³⁹²
		52 Hen 3, c 23	Compelling bailiffs, &. to render account ³⁹⁸			Repealed in part in 1881 ³⁹²

³⁷⁷ Note: where there is certainty in the status of the legislation (repeal, the act being in effect, or no longer in effect in Alberta), this information is bolded and indicated in this column for ease of reference, with the relevant citations being found the "Applicable in Alberta" column.

³⁷⁸ This column provides the status of the specific sections of legislation reference based on information found in the *1869 Statutes List*, note 371. Partial repeals that do not impact distress for rent are also noted in the footnotes.

³⁷⁹ Note: the research focuses on legislative references to, or judicial consideration of, the relevant sections of the received legislation. Cases that merely consider old legislation in its historic context are not referenced or cited in this research.

Short Title	Year	Citation	Topics and summary of key sections relevant to distress for rent ³⁷⁷	Status in 1869 ³⁷⁸	Applicable in Alberta ³⁷⁹	Applicable in the UK
<i>Statute of Westminster I</i> ³⁹⁹	1275	3 Ed 1, c16	Limits distance cattle seized in distress for rent can be moved to within the same county ⁴⁰⁰ and distress must be reasonable ³⁸⁶	In force	Potentially in effect ³⁸³	No known outstanding effect ⁴⁰¹
<i>Statute of Westminster II</i> ⁴⁰²	1285	13 Ed 1 c 2	Replevin: removal of, lord's distress, to a higher court by writ of recordari ⁴⁰³	In force	Potentially in effect ⁴⁰⁴	No known outstanding effect ⁴⁰⁵
		13 Ed 1, c 37	None but by bailiffs known and sworn ³⁸⁶			
<i>Magna Carta</i> ⁴⁰⁶	1297	25 Ed 1, c 8	Distress for crown debt ⁴⁰⁷	In force ⁴⁰⁸	Potentially in effect ⁴⁰⁹	Unclear ⁴¹⁰
		25 Ed 1, c 10	Cannot take more than is due ³⁸⁶			
<i>Articuli super Cartas (Articles upon the Charters)</i> ⁴¹¹	1300	28 Ed 1, c 12	Distress for crown debt ⁴¹² , limiting distress on animals (when other property available), and indicates distress should not be excessive.	In force	Potentially in effect ³⁸³	Repealed in 1953 ⁴¹³
<i>Articuli Cleri (Articles for the Clergy)</i> ⁴¹⁴	1315	9 Edw 2, stat 1, c 9	Limiting where distress can occur ³⁸⁶ and clergy ⁴¹⁵	In force	Potentially in effect ³⁸³	Repealed 1969 ⁴¹⁶
<i>Avowries Act</i> ⁴¹⁷	1529	21 Hen 8, c 19	In pleadings brought by tenant for replevin, removed requirement for landlord to prove ownership and allows distress for rent without naming of tenant ⁴¹⁸ s 3 Extends damages available to all avowries (including rent). ⁴¹⁹	In force	Potentially in effect ³⁸³	Repealed in 1883 ⁴²⁰
<i>Grantees of Reversions Act</i> ⁴²¹	1540	32 Hen 8, c. 34	Not if effect: Extends covenants that run with the land, to also run with the reversionary interest when transferred ⁴²²	In force	Does not apply the rights of a landlord or tenant ⁴²³	Repealed in 1925 ⁴²⁴
<i>Cestui que Vie Act</i> ⁴²⁵	1540	32 Hen 8 c. 37	s 1: Executors and administrators granted right to distrain for arrears incurred during deceased landlords lifetime ⁴²⁶ s 3: extends right of distress to a husband who is entitled to the estate of their wife after their wife's death, for arrears that arose during her life ⁴²⁷ s 4: allows distress for rent: (i) when landlord is entitled to rent for the life of another person, and (ii) the other person is dead (iii) for the rental arrears that arose before their death ⁴²⁸	In force	Potentially in effect ⁴²⁹	Repealed in 1969 ⁴¹⁶
<i>Distress Act</i> ⁴³⁰	1554	1 & 2 Ph & Mar, c 12	s1: Limits distance cattle seized in distress for rent can be moved to within the same county ⁴³¹ s 2: Allows the expense of impounding to be charge to the tenant ⁴³²	In force ⁴³³	Potentially in effect ⁴³⁴	Repealed in 1969 ⁴¹⁶

Short Title	Year	Citation	Topics and summary of key sections relevant to distress for rent ³⁷⁷	Status in 1869 ³⁷⁸	Applicable in Alberta ³⁷⁹	Applicable in the UK
<i>Distresses and Avowries for Rents Act</i> ⁴³⁵	1665	17 Cha 2, c 7	s 4: allows re-entry of the premises for a second distress for the same arrears if insufficient property seized the first time ⁴³⁶	In force	Potentially in effect ⁴³⁷	Repealed in 1881 ³⁹²
<i>Distress for Rent Act</i> ⁴³⁸	1689	2 Will & Mar, c 5	s 1 (Ruffhead s 1 and 2): allows the sale of distressed goods ⁴³⁹ five days after seizing, although requires tenant is provided with a notice of the distress before the sale and that the landlord sells for the best price available ⁴⁴⁰ s 2 (Ruffhead s 3): Allowed landlords to seize crops already cut by impounding them on the premises ⁴⁴¹ In effect: s 3 (Ruffhead s 4): created statutory tort of pound-breach and rescous and triple damages for any pound breach or rescue of impounded goods. ⁴⁴² s 4 (Ruffhead s 5): right to double value of the goods sold if the distress for rent was illegal because no rent was owing ⁴⁴³	In force	Section 3(r 4) confirmed in effect in Alberta ⁴⁴⁴ Sections 1(r 1&2), 2(r3), 3 (r4) potentially still in effect ⁴⁴⁵	Repealed in 2007 ⁴⁴⁶
<i>Administration of Justice Act</i> ⁴⁴⁷	1705	4 & 5 Anne c. 3	s9: allows distress for rent for assignee of the rent and/or assignee of the reversion (tenant to received notice of the assignment) ⁴⁴⁸	In force ⁴⁴⁹	Likely in force ⁴⁵⁰	Repealed in 1965 ⁴⁵¹
<i>Diplomatic Privileges Act</i> ⁴⁵²	1708	7 Anne c 12	s 3: protects ambassador's from distress for rent	In effect ⁴⁵³	Potentially a federal matter ⁴⁵⁴	Repealed in 1964 ⁴⁵⁵
<i>Commissions of Sewers Act</i> ⁴⁵⁶	1708	7 Anne c 33	Sewer Commissioners: Sale of distress liable to rates ⁴⁵⁷	In force	Potentially in effect ⁴⁵⁸	Repealed in 1930 ⁴⁵⁹
<i>Landlord and Tenant Act</i> ⁴⁶⁰	1709	8 Anne, c. 18 ⁴⁶¹	In effect: s1: "a landlord has first call on assets that could have been seized in distress proceedings, for up to a year's past due rent" ⁴⁶² Repealed: s2: allows the landlord five days to follow and seize property taken on the rental premises that was fraudulently or clandestinely removed to prevent distress for rent⁴⁶³ s 4 allows action for the rent against a tenant for life ⁴⁶⁴ Repealed: s 5: allows for the sale of seized property⁴⁶⁴ In effect: s 6-7: Extends the time for distress by six months after termination of the lease (except in the case of forfeiture), where the landlord retains	Partially repealed ⁴⁶⁷	Sections 2, 3, and 5 repealed before reception ⁴⁶⁸ Sections 1, and 6-7 confirmed in effect in Alberta ⁴⁶⁹ Sections 1 ⁴⁷⁰ and 4 ⁴⁷¹ potentially in effect	No known outstanding effect ⁴⁷²

Short Title	Year	Citation	Topics and summary of key sections relevant to distress for rent ³⁷⁷	Status in 1869 ³⁷⁸	Applicable in Alberta ³⁷⁹	Applicable in the UK
			reversion and the tenants remains possession ⁴⁶⁵ (ie, distress for rent extended to over holding tenants ⁴⁶⁶)			
<i>Landlord and Tenant Act</i> ⁴⁷³	1730	4 Geo 2, c. 28	Entire Act not in effect: s 1 provides double damages for over holding tenants ⁴⁷⁴ s 5: Extended distress for rent to rents seck ⁴⁷⁵	In force ⁴⁷⁶	Does not apply to tenancies ⁴⁷⁷	No known outstanding effect ⁴⁷⁸
<i>Distress for Rent Act</i> ⁴⁷⁹	1737	11 Geo. 2, c 19	s 1: allows the landlord 30 days to follow and seize property taken off the rental premises that was fraudulently or clandestinely removed to prevent distress for rent ⁴⁸⁰ , entry into other premises can be forced if swear an oath before a justice of the peace ⁴⁸¹ s 2: exception for goods sold for value in good faith before the seizure ⁴⁸² s 3-4: Imposed a penalty of double the value of the goods if the tenant had removed goods to avoid distress s 7: allows forcible entry to recover s 1 goods ⁴⁸³ , although if a dwelling house an oath must be made before a justice of the peace ⁴⁸⁴ s 8-9: Allowed landlords to seize ripe crops and fruit and allows landlords to seize grazing cattle feeding on any common land ⁴⁸⁵ s 10: Granted landlords ability to impound on the premises, rather than take goods away, and allows person to enter the premises to view/appraise/purchase the goods ⁴⁸⁶ s 16: allows for re-entry when tenant deserts ⁴⁸⁷ s 18: allows a landlord to collect double amount of rent when there is an over holding tenant s 19: Reverses the rule that any unlawful act done in the course of the distress made it void, and not considered a trespasser <i>ab initio</i> ⁴⁸⁸	In Force ⁴⁸⁹	Section 18 does not apply to tenancies ⁴⁹⁰ Section 1 and 3 confirmed in effect in Alberta ⁴⁹¹ Sections 2, 3-4, 7-10, 16, 17, and 19 potentially in effect ⁴⁷⁰	No known outstanding effect ⁴⁹²
<i>Distress (Costs) Act</i> ⁴⁹³	1817	57 Geo 3, c 93	Appears to relate to procedural matters, primarily in relation to a scheduled of costs ³⁸⁶	In force	Unlikely to be in effect ⁴⁹⁴	Repealed in 1995 ⁴⁹⁵
<i>The Civil Procedure Act</i> ⁴⁹⁶	1833	3 & 4 Will. 4 c. 42	s 37-38: allows executors or administrators distress for rent that was due to the deceased landlord during their lifetime ⁴⁹⁷	In force ⁴⁹⁸	Potentially in effect ⁴⁹⁹	Repealed in 1965 ⁵⁰⁰

Short Title	Year	Citation	Topics and summary of key sections relevant to distress for rent ³⁷⁷	Status in 1869 ³⁷⁸	Applicable in Alberta ³⁷⁹	Applicable in the UK
<i>Apportionment Act</i> ⁵⁰¹	1834	4 & 5 Will 4, c 22	Provides apportionment of rents on death of life tenants, etc. and brings these rents under the <i>Distress for Rent Act, 1737</i> ⁵⁰²	In force ⁵⁰³	Potentially in effect ⁵⁰⁴	No information found
<i>Hosiery Act</i> ⁵⁰⁵	1843	6 & 7 Vic c 40	s 18: provided protections against distress to goods and equipment in cloth manufacturing industry ⁵⁰⁶	In force	Potentially in effect ⁵⁰⁷	Repealed in 1993 ⁵⁰⁸
<i>Waterworks Clauses Act</i> ⁵⁰⁹	1847	10 & 11 Vic c 17	s 44: provided protections against distress to goods and equipment property of water companies ⁵¹⁰	In force	Unlikely in effect ⁵¹¹	Repealed in 1945 ⁵¹²
<i>Cruelty to Animals Act</i> ⁵¹³	1849	12 & 13 Vic c 92	s 5: the person impounding any animals is responsible for feeding and watering them ⁵¹⁴	In force	Potentially federal matter, and unlikely in effect ⁵¹⁵	Repealed in 1911 ⁵¹⁶
<i>Landlord and Tenant Act</i> ⁵¹⁷	1851	14 & 15 Vict, c 25	Generally, this act relates to crops and agricultural tenancies, with: s 2: growing crops seized and sold under execution are liable for accruing rent ⁵¹⁸	In force ⁵¹⁹	Potentially in effect ⁵²⁰	Repealed in 2007 ⁵²¹

3. SUMMARY OF ACTS RELATED TO OTHER FORMS OF DISTRESS

[311] This table includes information on received legislation that was identified in early research as applicable to distress, but upon review was determined to not impact distress for rent. As such, this table provides a summary of the legislation, to indicate why it is not relevant to distress for rent. Finding this received legislation is outside of the scope of this report, no further research was conducted in terms of status of the legislation in 1869, present day Alberta, or the UK.

Short Title	Year	Citation	Topics and summary of key sections relevant to distress
<i>Crown Debt Act</i> ⁵²²	1541	33 Hen 8 c 39	Relating to priority of crown in collecting debts ⁵²³ (the legislation cited indicates the prerogative remains notwithstanding the cited received legislation)
<i>Poor Relief Act</i> ⁵²⁴	1743	17 Geo 2, c 38	“Plaintiff in action against overseer for distress to recover only special damages”, where s 7 appears to create a statutory right of distress ⁵²⁵
<i>Distress Under Justices’ Warrants Act</i> ⁵²⁶	1754	27 Geo 2, c 20	Distress under justices’ warrants ⁵²⁷
<i>Parliamentary Privilege Act</i> ⁵²⁸	1770	10 Geo 3, c 50	Allows actions to be brought, and enforcing by distress, against peers and members of house of commons (except imprisonment or debt) ⁵²⁹
<i>Oaths Act</i> ⁵³⁰	1775	15 Geo 3, c 39	Empowers justice of the peace to administer oaths for the purpose of levying penalties or making distresses ⁵³¹
<i>Poor Relief Act</i> ⁵³²	1814	54 Geo 3 c 170	Rates: Distress for, out of district where made ⁵³³
<i>Distress (Costs) Act</i> ⁵³⁴	1827	7 & 8 Geo 4, c 17	Appears to extend the prior 1817 Act to other forms of distress
<i>Summary Jurisdiction Act</i> ⁵³⁵	1848	11 & 12 Vic c 43	s 22: relates to powers of a justice of the peace when they issue a warrant of distress but there is insufficient property to seize ³⁸⁶
<i>Distress for Rates Act</i> ⁵³⁶	1849	12 & 13 Vic c 14	Rates: distress and imprisonment in default ⁵³⁷ (relating to statutory distress for relief of the poor and highways)
<i>Stipendiary Magistrates Act</i> ⁵³⁸	1858	21 & 22 Vic, c 73	s5, extends <i>Summary Jurisdiction Act</i> , 1848 s22 powers to a Stipendiary Magistrate
<i>Crown Suites, &c Act</i> ⁵³⁹	1865	28 & 29 Vic, c 104	ss 8, 86 abolishes the writ of distringas against a corporation (i.e. distress to compel a court appearance) replaced with a “Form of Indorsement on English Information”

³⁸⁰ This legislation appears as the provisions “Districcoes de Sc’cio” in *Les Estatuz Del Eschekere (Statute of The Exchequer)* (England), which is part of “Statutes of Uncertain Date” in *The statutes of the realm* (UK) volume 1 (reprinted London Dawsons of Pall Mall, 1963) at 197b [*The statutes of the realm* vol 1] available online as part of the digitalized “Statutes of the realm” collection from Pennsylvania State University hosted by the HathiTrust [HathiTrust Statutes of the realm]: <<https://hdl.handle.net/2027/pst.000017915496>>.

Note: in Ruffhead, this is cited as *The Statute De Diftrictione Scaccarii* (51 Hen III, Stat 4) and dated at 1266 (see *1869 Statutes List*, note 371 at 3-4, 18, and 399) as part of the *Ruffhead Statutes at Large from Magna Charta to the End of the Last Parliament*, 1761 (UK), volume 1 (London: Basket, 1763) at 24, available online on the Internet Archive: <<https://archive.org/details/statutesatlargef01grea>> [cited to Ruffhead].

³⁸¹ Wonnacott, at 118; Bell, at 297.

³⁸² Refer to *1869 Statutes List*, note 371 at 18 (referenced as “Les Estatuz del Eschekere [...] provicions Distr’ sc’cii cc. 13 & 14” as well as “51 Hen 3. St 4.” per footnote 7), indicating “Distress: Pound” partially repealed by *Statutes of Law Revision 1863* (UK), 26 & 27 Vic c 125 [*Statutes of Law Revision, 1863*] available online at National Archives of HM Government (United Kingdom), “The Statute Law Revision Act 1863”: <https://www.legislation.gov.uk/ukpga/Vict/26-27/125/pdfs/ukpga_18630125_en.pdf> [perma.cc/NM54-354Q].

³⁸³ No evidence found of modification by legislation, or judicial consideration of, the applicability of this legislation in Alberta.

³⁸⁴ National Archives of HM Government (United Kingdom), “Statutes of the Exchequer 1322” online: <<https://www.legislation.gov.uk/aep/Edw2tempincert/15/0/contents>> [perma.cc/U328-RGQF].

³⁸⁵ Found in *The statutes of the realm* vol 1, note 380 at 19-24.

³⁸⁶ *1869 Statute List*, note 371 “Distress” at 390.

³⁸⁷ *1869 Statute List*, note 371 at 11 (note, while all the chapters listed in this table that relate to distress were in effect, other chapters of this act were repealed or repealed in part at the time).

³⁸⁸ While no evidence was found of modification by legislation there is limited judicial consideration unrelated to distress: chapter 23 is likely generally still in effect as it was considered in *Prior v Hanna*, note 228 at para 14 although in the context of waste, not the portion of c 23 that addresses account; also considered in effect in Saskatchewan (again in application to waste *Report of Disposal of English Statute Law in Saskatchewan 2006*, note 251 at 21).

³⁸⁹ National Archives of HM Government (United Kingdom), “Statute of Marlborough 1267 [Distress]” online: <<https://www.legislation.gov.uk/aep/Hen3cc1415/52/1/contents>> [perma.cc/HZ6Q-33GH].

³⁹⁰ *Statute Law Revision Act 1948* (UK), 11 & 12 Geo 6, c 62.

³⁹¹ *1869 Statute List*, note 371 under “Execution” at 401; *1869 Statute List*, note 371 at 11.

³⁹² *Statute Law Revision and Civil Procedure Act 1881* (UK), 44 & 45 Vic c 59.

³⁹³ Wonnacott, at 118; Bell, at 324; Williams et al., ch 8 at 8-84.1, s8:24:1, and 8-89, s 8:27; *1869 Statute List*, note 371 “Distress” at 390.

³⁹⁴ Enever, note 111 at 248, Williams et al., ch 8 at 8-87, s 8:24.

³⁹⁵ *1869 Statute List*, note 371 at 11.

³⁹⁶ Wonnacott, at 118, Bell, at 273-274, *1869 Statutes List*, note 371 “Distress” at 390.

³⁹⁷ *1869 Statute List*, note 371 “Distress” at 390, “Liberty” at 438, and “Replevin” at 494.

³⁹⁸ *1869 Statute List*, note 371 at 11 and “Account” at 329.

³⁹⁹ *The statutes of the realm* vol 1, note 380 at 31.

⁴⁰⁰ Bell, at 327-328, Williams et al., ch 8 at 8-89, s 8:27.

⁴⁰¹ National Archives of HM Government (United Kingdom), “Statute of Westminster, The First (1275)” online: <<https://www.legislation.gov.uk/aep/Edw1/3/5/contents>> [perma.cc/8QBS-HSV9].

⁴⁰² Found in *The statutes of the realm*, vol 1, note 380 at 71, 89.

⁴⁰³ *1869 Statute List*, note 371 at 494.

⁴⁰⁴ While no evidence found modification by legislation nor judicially consideration, presumably any received legislation addressing procedural matters relating to distress for rent would be implicitly rendered inapplicable by the *Civil Enforcement Act*.

⁴⁰⁵ National Archives of HM Government (United Kingdom), “The Statute of Westminster the Second (De Donis Conditionalibus) 1285” available online <<https://www.legislation.gov.uk/aep/Edw1/13/1/contents>> [perma.cc/R44D-ZKGD].

⁴⁰⁶ Found in *The statutes of the realm* vol 1, note 380 at 115.

⁴⁰⁷ *1869 Statute List*, note 371 at 384.

⁴⁰⁸ c 8 and c 10 were still in force, other portions of this Act were partially repealed by *Statutes of Law Revision*, 1863, note 382 (1869 *Statute List*, note 371 at 15-16).

⁴⁰⁹ Chapter 29 of this legislation was considered received and potentially in effect in Saskatchewan in their English legislation reform project, however the remainder of the *Magna Carta* (1297) is of “little modern relevance” (see *The Status of English Statute Law in Saskatchewan*, note 255 at 269-270. Note, the 1297 version should not be confused with the *Magna Carta* from 1215, which is understood to be “generally irrelevant” (*Meads v Meads*, 2012 ABQB 571 at 327) and “is a historical document with no remaining legal force in Canada” (*AVI v MHVB*, 2020 ABQB 489 at para 19).

⁴¹⁰ The national archived indicates there is no know outstanding effect of this legislation (National Archives of HM Government (United Kingdom), “Magna Carta (1297)” online <<https://www.legislation.gov.uk/aep/Edw1cc1929/25/9/contents>> [perma.cc/V6BC-T5C9]), however, case law suggests sections 1, 9, and 29 continue to have legal relevance (see *AVI v MHVB*, 2020 ABQB 489 at para 85, see also for example *Mueen-Uddin v Secretary of State for the Home Departments* [2024] UKSC 21 at para 36).

⁴¹¹ Found in *The statutes of the realm* vol 1, note 380 at 139.

⁴¹² 1869 *Statute List*, note 371 at 384.

⁴¹³ *Statute Law Revision Act 1953* (UK), 2 Eliz 2, c 5.

⁴¹⁴ *The statutes of the realm* vol 1, note 380 at 172.

⁴¹⁵ 1869 *Statute list*, note 371 at 17 and “Clergy” at 363.

⁴¹⁶ *Statute Law (Repeals) Act 1969* (UK), c 52.

⁴¹⁷ Found in *The statutes of the realm* (UK) volume 3 (reprinted London Dawsons of Pall Mall, 1963) at 303-304 [*The statutes of the realm* vol 3] available online in Hathitrust Statutes of the realm <<https://hdl.handle.net/2027/pst.000017915533>>.

⁴¹⁸ Wonnacott, at 119; Alberta Law Reform Institute, “Research – statutes listed with questions” (undated, approx. 1968 to 1978) [unpublished, archived at Edmonton, University of Alberta Archives (accession UAA-1996-048, box 17, item 176, file 11, part 8) [*ALRI unpublished papers*] at listed item number 19.

⁴¹⁹ *Wells v Chapman*, 1 NBR 361, 1833 CanLii 2 (NB SC).

⁴²⁰ Repealed by section 4 of the *Statute Law Revision Act 1883* (UK), 46 & 47 Vic c 49, available online at National Archives of HM Government (United Kingdom), “Statute Law Revision Act 1883” <https://www.legislation.gov.uk/ukpga/Vict/46-47/49/pdfs/ukpga_18830049_en.pdf> [perma.cc/A9HF-TJNJ], which repeals the enactments listed in Part II of the *Civil Procedure Acts Repeal Act 1879* (UK), 42 & 43 Vic c 59, available online at National Archives of HM Government (United Kingdom), “Civil Procedure Acts Repeal Act 1879”: <https://www.legislation.gov.uk/ukpga/Vict/42-43/59/pdfs/ukpga_18790059_en.pdf> [perma.cc/B5QD-8BH5], noting that part II includes 21 Hen 8 c 19.

⁴²¹ Found in *The statutes of the realm* vol 3, note 417 at 788-789.

⁴²² Kenneth Esten Williams et al, *Williams and Rhodes Canadian Law of Landlord and Tenant*, vol 2, 6th ed (Toronto: Carswell, 1988) (loose-leaf updated 2011, release 4) ch 15 at 15-65 to 15-66, s 15:6:2.

⁴²³ *Law of Property Act*, note 61, s 65(2).

⁴²⁴ Repealed in *Law of Property Act 1925* (UK), 15 & 16 Geo 5, c 20.

⁴²⁵ Found in *The statutes of the realm* vol 3, note 417 at 791.

⁴²⁶ Wonnacott, at 119; Williams et al., ch 8 at 8-6, s 8:1:13.

⁴²⁷ Bell, at 265-266.

⁴²⁸ Bell, at 265-266; Williams et al., ch 8 at 8-6, s 8:1:13.

⁴²⁹ No evidence found of modification by legislation or judicial consideration of the applicability of this legislation in Alberta. Note, it has been suggested that this legislation was received in British Columbia (Law Reform Commission of British Columbia, *Report on The Commercial Tenancy Act*, LRC 108 (1989) at 81-82, online: <https://www.bcli.org/sites/default/files/LRC108-Commercial_Tenancy_Act.pdf> [perma.cc/42VZ-SALT]. See also Law Reform Commission of Saskatchewan, *Consolidation of Certain Rules and Statutory Provisions in the Administration of Estates Act* (2005) discussion paper at 17 [*Administration of Estates* (Saskatchewan)], online: <<https://lawreformcommission.sk.ca/AdministrationofEstates.pdf>> [perma.cc/ZB6J-BWJC], which implies this legislation was superseded by the *Civil Procedures Act of 1833* (refer to the entry for the *Civil Procedures Act 1833* for more information).

⁴³⁰ Found in *The statutes of the realm* (UK) volume 4 (reprinted London Dawsons of Pall Mall, 1963) at 258 available online in HathiTrust Statutes of the realm: <<https://hdl.handle.net/2027/pst.000017915519>>.

⁴³¹ Bell, at 328; Williams et al., ch 8 at 8-89, s 8:27.

⁴³² Enever, note 111 at 98.

⁴³³ Other portions of this Act were partially repealed by *Statutes of Law Revision*, 1863, note 382 (The 1869 Statute List, note 371 at 52).

⁴³⁴ While, no evidence found of modification by legislation or judicial consideration of, the applicability of this legislation in Alberta, potentially s 2 would be implicitly rendered inapplicable by the *Civil Enforcement Act*.

⁴³⁵ Found in *The statutes of the realm* (UK) volume 5 (reprinted London Dawsons of Pall Mall, 1963) at 579 available online in HathiTrust Statutes of the realm: <<https://hdl.handle.net/2027/pst.000017915564>>.

⁴³⁶ Enever, note 111 at 195. Noting that it is unclear if this is limited to, or inclusive of, situations where the landlord is successful in defending a replevin action on the basis of a valid distress for rent. (Enever note 111 at 243).

⁴³⁷ While, no evidence found of modification by legislation, or judicial consideration of, the applicability of this legislation in Alberta, ALRI research notes from the 1970's suggest this legislation "appears to have been held in force in Ontario in 1888 before thereafter being repealed". Presumably by repeal, meaning found to no longer be in effect/applicable in Ontario, however unfortunately no citation was provided (*ALRI unpublished papers*, note 418 at listed item number 104)..

⁴³⁸ Found in *The statutes of the realm* (UK) volume 6 (reprinted London Dawsons of Pall Mall, 1963) at 169 available online in HathiTrust Statutes of the realm: <<https://hdl.handle.net/2027/pst.000017915557>>. Note, in the Ruffhead, *Statutes at large*, the sections numbers differ from those found in *The statutes of the realm*, the sections numbers shown in this table are cited in the format of: *The statutes of the realm* (Ruffhead *Statutes at large*).

⁴³⁹ Ziff note 10 at 307-308.

⁴⁴⁰ Bell, at 330, 332; Williams et al., ch 8 at 8-88, s 8:25; *Distress for Rent Working Paper* (England and Wales), at 60, 62.

⁴⁴¹ Wonnacott, at 119; Bell, note 15 at 292 and 328; Williams et al., ch 8 at 8-69, s 8:22:4.

⁴⁴² Wonnacott, at 119, 124; *Distress for Rent Working Paper* (England and Wales), at 67.

⁴⁴³ Wonnacott, at 125.

⁴⁴⁴ *Westchester*, note 95 at paras 8-9. Note, *Westchester* cites the legislation to the Ruffhead section numbers.

⁴⁴⁵ While no evidence was found of the judicial consideration of these sections, presumably, s 1 is considered in effect as this remains the foundation for the power of sale (while there is a similar and equally without judicial consideration section providing the power of sale is found in the *Landlord and Tenant Act*, 1709 (8 Anne c 18) at s 5, the *Landlord and Tenant Act* 1709 provisions appears to have been repealed before reception into Alberta, refer to footnote 468). Further note, that s 3 and 4 were interpreted to provide triple and double costs were also available, however double and triple costs generally were repealed by section 2 of *Limitation of Actions and Costs Act* 1842 (UK), 5 & 6 Vic, c 97 (Enever, note 111 at 246).

⁴⁴⁶ National Archives of HM Government (United Kingdom), "Distress for Rent Act 1689 (repealed)" available online: <<https://www.legislation.gov.uk/aep/WillandMar/2/5/contents>> [perma.cc/327P-KSKV], repealed by *Tribunals, Courts and Enforcement Act* 2007 (UK), c 15, schedule 23, part 4 [*Tribunals, Courts and Enforcement Act* 2007].

⁴⁴⁷ Found in *The statutes of the realm* (UK) volume 8 (reprinted London Dawsons of Pall Mall, 1963) at 458-461 [*The statutes of the realm* vol 8] available online in HathiTrust Statutes of the realm <<https://hdl.handle.net/2027/pst.000033905846>>.

⁴⁴⁸ Bell, at 281-282.

⁴⁴⁹ The 1869 *Statute List* note 371 at 75 indicates partially repealed in part by: "6 Geo 4 c 50 s 62; 7 Will 4 & 1 Vict c 26 s2; 6 & 7 Vict c 73 s1; 28 & 29 Vict c 112 s 1; Stat law Rev Acts 1867". However, none of those repeal section 9 of the Act.

⁴⁵⁰ While not definitively determined, the case law implies this legislation is in effect in Alberta in relation to accounting in the case of joint tenants or tenants in common (ie, co-ownership of the freehold estate), see primarily *Grinde v Grinde*, 1977 CanLii 575 (AB KB) at paras 16-18; see also *IFP Technologies (Canada) v Encana Midstream and Marketing*, 2014 ABQB 470 at para 396 and the *Report on Disposal of English Statute Law in Saskatchewan*, note 251 at 25. However, the section related to accounting for joint

tenants and tenants in common does not apply to residential tenancies as the landlord and tenant relationship is created by contract, and “[t]here is no contractual or landlord and tenant relationship between persons holding land as joint tenants or as tenants in common”, unless they create such a relationship which “extinguishes the jointure while it exists” (Williams et al, ch 1 at 1-1, 1-2, 1-24, ss 1:1, 1:1:1, 1:3:8.

⁴⁵¹ *Administration of Justice Act 1965* (UK), c 2.

⁴⁵² Found in *The statutes of the realm* (UK) volume 9 (reprinted London Dawsons of Pall Mall, 1963) at 81-82 [*The statutes of the realm* vol 9] available online in HathiTrust Statutes of the realm <<https://hdl.handle.net/2027/pst.000033905853>>.

⁴⁵³ Other portions of this Act were repealed by *Statute Law Revision Act 1867* (UK), 30 & 31 Vict c 59 [*Statute Law Revision Act 1867*] (*The 1869 Statute List*, note 371 at 78).

⁴⁵⁴ Note: considering the context of this act, and that diplomacy is a federal power in Canada (see Canada Department of External Affairs, *Federalism and international relations* (Ottawa: Roger Duhmael, Queen’s Printer and Controller of Stationery, 1968) Chapter 2, sections A II at 13-16 and section C at 18-21 available online: <https://publications.gc.ca/collections/collection_2019/amc-gac/E2-63-1968-eng.pdf>. Assuming received legislation that falls within a federal head of power would be dealt with in a similar fashion to the federal criminal law powers, this would require a federal act to render the *Diplomatic Privileges Act* to be inapplicable (see Alan W Mewett, “The Criminal Law 1867-1967” (1967) 45:4 Can Bar Rev 726 at 727 (and in particular footnote 12, citing *R v Halifax Electrical Tramway Co* (1898) 1 CCC 424, 1898 CarswellNS 21).

⁴⁵⁵ *Diplomatic Privileges Act 1964* (UK), c 81.

⁴⁵⁶ *The statutes of the realm* vol 9, note 452 at 141-142.

⁴⁵⁷ *1869 Statute List*, note 371 at 502. The act appears to create a statutory right of distress.

⁴⁵⁸ While, no evidence was found of modification by legislation, or judicial consideration of, the applicability of this legislation in Alberta, it is unclear if the *Municipal Government Act*, RSA 2000, c M-26 [MGA] would have any impact (ie, the MGA includes provisions for levying a sewer tax (s 382(1)(b)) as a special tax, which allows recovery via “any other Act” (s 411(1)(b). Whereas the statutory distress available in Division 9 of the MGA appears inapplicable to special taxes).

⁴⁵⁹ *Land Drainage Act 1930* (UK), 20 & 21 Geo 5, c 44.

⁴⁶⁰ *The statutes of the realm* vol 9, note 452 at 247-248.

⁴⁶¹ Often also referenced as 8 Anne c 14, which is the Ruffhead citation (Williams et al., ch 8 at 8-112, s 8:35:1).

⁴⁶² Alberta Law Reform Institute, *Enforcement of Money Judgments*, Volume 1, Final Report 61 (1991) at 356, online: <<https://www.alri.ualberta.ca/1991/03/enforcement-of-money-judgements-volume-1-final-report-61/>> ; Regehr & Takach, note 30 at 63.

⁴⁶³ Wonnacott, at 119, citing *Dibble v Bowater* (1853) 2 E & B 564; *ALRI unpublished papers*, note 418 at listed item number 143.

⁴⁶⁴ *ALRI unpublished papers*, note 418 at listed item number 143.

⁴⁶⁵ *Bullwinkle's General Stores*, note 30 at para 4, citing *Ogilvie Flour Mills Co. v Becker*, 1931 CanLII 315 (AB CA) and quoting *Swenson v McIlmoyle*, 1930 CanLII 295 (AB CA) at 365; Wonnacott, at 119; Bell, at 268.

⁴⁶⁶ Williams et al., ch 8 at 8-2, s 8:1:2.

⁴⁶⁷ *The 1869 Statute List*, note 371 at 78 indicates partially repealed by Stat Law Revs Act, 1867. Sections 2, 3, and 5 are repealed in *Statute Law Revision Act 1867*, note 453. Also note, *The 1869 Statute list*, note 371 at 78 categorises the content of this act as “Distress: Fieri facias: Landlord and tenant”.

⁴⁶⁸ Sections repealed: 2-3, 5 (*Statute Law Revision Act 1867*, note 453 at 282)

⁴⁶⁹ *Brown*, note 21 at paras 15-16; *Bullwinkle's General Stores*, note 30 at para 4; *Circa 1880* note 288 at para 4; *Neufeld* note 288 at 11.

⁴⁷⁰ In relation to these sections, no evidence found of modification by legislation, or judicial consideration of, the applicability in Alberta.

⁴⁷¹ While, no evidence was found of modification by legislation or judicial consideration of the applicability of this legislation in Alberta, the *Report on Disposal of English Statute Law in Saskatchewan* note 251 at 21, indicated s 4 (an action for debt against tenants for life for arrears of rent) was in effect in Saskatchewan. In terms of s 4, while it is unclear the extent to which the *Residential Tenancies Act* applies to life estates, this section most has no effect on the *Residential Tenancies Act*. Ie, if the *Residential Tenancies Act* did apply to life estates, then the landlord could bring an action against non-payment of rent through the remedies available in Part 3 of the *Residential Tenancies Act*.

⁴⁷² National Archives of HM Government (United Kingdom), “Landlord and Tenant Act 1709” available online: <<https://www.legislation.gov.uk/apgb/Ann/8/18/contents>> [perma.cc/F6GN-38MR].

⁴⁷³ Found in Danby Pickering’s *The Statutes at Large Volume 16: from the second year to the 9th Year of King George II* (London: University of Cambridge, 1765) at 252-256 available online as part of the digitalized collection “Statutes at large” from the University of Michigan hosted by the HathiTrust [HathiTrust Statutes at Large]: <<https://hdl.handle.net/2027/mdp.39015035134082>>.

⁴⁷⁴ *ALRI unpublished papers*, note 418 at listed item number 159.

⁴⁷⁵ Wonnacott, at 119, Bell, at 282.

⁴⁷⁶ The *1869 Statute List*, note 371 at 89 indicates partially repealed by Stat Law Revs Act, 1867. Sections repealed: s 2-4 (*Statute Law Revision Act*, 1867, note 453).

⁴⁷⁷ *Law of Property Act*, note 61 s 66(2). See also *Unit Liner*, note 27 at paras 4-5. Note: *Drabble v Alberta (Registrar, North Alberta Land Registration District)*, 26 Alta LR (3d) 410, 1995 CanLII 9013 (AB KB) at paras 33-35 [*Drabble* cited to Canlii] considers whether there was a period of time the *Landlord and Tenant Act*, 1730 was revived for certain non-residential tenancies. Notwithstanding the current *Law of Property Act*, appears clear that the 1730 act does not apply to tenancies; *Drabble* appears to inadvertently indicate the *Landlord and Tenant Act*, RSA 1980 c L-6 was repealed and replaced by the *Residential Tenancies Act* in 1980 (instead this occurred in 1991, by virtue of the *Landlord and Tenant Amendment Act*, SA 1991 c 18 [the 1991 Act]), which would likely impact the discussion (as the 1991 Act removes the relevant section 54 of the 1980 *Landlord and Tenant Act* and correspondingly adds this to the *Law of Property Act* (per section 44 and 49 of the 1991 Act)).

⁴⁷⁸ National Archives of HM Government (United Kingdom), “Landlord and Tenant Act 1730” available online: <<https://www.legislation.gov.uk/apgb/Geo2/4/28/contents>> [perma.cc/7FZK-WZ74].

⁴⁷⁹ Found in Danby Pickering’s *The Statutes at Large Volume 17: from the Ninth to the 15th Year of King George II* (London: University of Cambridge, 1765) at 183-192 available online in HathiTrust Statutes at Large: <<https://hdl.handle.net/2027/mdp.39015035134090>>.

⁴⁸⁰ *Kaye v Royal Bank*, 1990 CanLII 5565 at para 2; *Tona Holdings* note 79; Bell, at 277.

⁴⁸¹ *Distress for Rent Working Paper* (England and Wales), at 66.

⁴⁸² Bell, at 277.

⁴⁸³ Bell, at 278.

⁴⁸⁴ Bell, at 278 and 322.

⁴⁸⁵ Bell, at 275, 293-5, 329; Williams et al., ch 8 at 8-69 to 8-70, s 8:22:4; *Distress for Rent Working Paper* (England and Wales), at 37.

⁴⁸⁶ Bell, at 326; Williams et al., ch 8 at 8-90, s 8:27.

⁴⁸⁷ *ALRI unpublished papers*, note 418 at listed item number 166.

⁴⁸⁸ Wonnacott, at 119-120, 125; note if the landlord was trespasser *ab initio*, the tenant could recover the full value of the goods, however, s 19 means they can only recover the value of the goods, taking into account the rental arrears (Wonnacott, at 125. See also Williams et al., ch 8 at 8-103, s 8:33 for further discussion on damages).

⁴⁸⁹ Other portions of this Act were repealed by *Statute Law Revision Act 1867*, note 453 (The *1869 Statute list* note 371 at 93).

⁴⁹⁰ *Law of Property Act*, note 61 s 66(2).

⁴⁹¹ *GDS & Associates Systems*, note 59 at 22-23; *Pattison* note 291 at paras 44, 47.

⁴⁹² National Archives of HM Government (United Kingdom) “Distress for Rent Act 1737” available online: <<https://www.legislation.gov.uk/apgb/Geo2/11/19/contents>> [perma.cc/CX2L-UMH3].

⁴⁹³ Found in *The Statutes of the United Kingdom of Great Britain and Ireland: 57 George III 1817* (London: His Majesty’s Statute and Law Printers, 1817) at 296-298 available online in HathiTrust Statutes at Large (volume 56): <<https://hdl.handle.net/2027/mdp.39015065181995>>.

⁴⁹⁴ While, no evidence was found of modification by legislation, or judicial consideration of the applicability of, this legislation in Alberta, presumably this would have been implicitly rendered inapplicable Alberta through the North-West Territories Ordinances with a schedule of costs (refer to Appendix D).

⁴⁹⁵ *Statute Law (Repeals) Act 1995*, c 44.

⁴⁹⁶ Found in *A Collection of the Public General Statutes: Passed in the Third and Fourth Year of the Reign of His Majesty King William the Fourth 1833* (London: Eyre and Spootiswoode, 1833) at 345-356 available online in HathiTrust Statutes at Large (volume 76): <<https://hdl.handle.net/2027/mdp.39015068109399>>.

⁴⁹⁷ Bell, at 287.

⁴⁹⁸ Other portions of this Act were repealed by s6 of the *County Courts Act 1867* (UK), 30 & 31 Vic c 142 (*The 1869 Statute list*, note 371 at 238).

⁴⁹⁹ While, no evidence was found of modification by legislation, or judicial consideration of, the applicability of this legislation in Alberta, the Law Reform Commission of Saskatchewan report *Administration of Estates* (Saskatchewan), note 429, provides analysis that indicates that once Saskatchewan legislation vested real property in personal representatives, this received legislation was redundant (at 17-18). Additionally, *The Status of English Statute Law in Saskatchewan*, note 255 indicates that this Act more broadly extended the ability of personal representatives to maintain/defend actions to include real property (at 161), as well as legislated limitation periods and pre-judgement interest (at 215), all of which are likely implicitly rendered inapplicable by the relevant Alberta legislation (ie, the *Survival of Actions Act*, RSA 2000, c S-27, the *Limitations Act*, RSA 2000, c L-12, and the *Judgment Interest Act*, RSA 2000, c J-1 respectively).

⁵⁰⁰ *Administration of Justice Act 1965* (UK), c 2.

⁵⁰¹ Found in *A Collection of the Public General Statutes: Passed in the Fourth and Fifth Year of the Reign of His Majesty King William the Fourth 1834* (London: Eyre and Spootiswoode, 1834) at 122-124 available online in HathiTrust Statutes at Large (volume 77): <<https://hdl.handle.net/2027/mdp.39015068109407>>.

⁵⁰² *ALRI unpublished papers*, note 418 at listed item number 291.

⁵⁰³ Other portions of this Act were repealed in Ireland by *Landlord and Tenant Amendment (Ireland) Act*, 1860, 23 & 24 Vic c 154 (*The 1869 Statute list*, note 371 at 238).

⁵⁰⁴ While, no evidence was found of modification by legislation, or judicial consideration of the applicability of, this legislation in Alberta, the *Report on Disposal of English Statute Law in Saskatchewan*, note 251 at 21 and 29, considered this legislation still in force in Saskatchewan. While this legislation is potentially still technically in effect in Alberta, in practice it is essentially moot. This Act remedies a very specific issue that only arises when rent is due in arrears and the ownership of the rental property involves a life estate (see Wonnacott, at 110-111 for more details), whereas in contemporary residential tenancies in Alberta, rent is generally payable in advance, rendering this legislation irrelevant.

⁵⁰⁵ Found in *The Statutes of the United Kingdom of Great Britain and Ireland: 6 & 7 Victoria 1843* (London: Her Majesty's Printer, 1843) at 215-230 available online as part of the digitalized collection "The Statutes of the United Kingdom of Great Britain and Ireland" from the University of Michigan hosted by the HathiTrust (volume 83): <<https://hdl.handle.net/2027/mdp.35112103297729>>.

⁵⁰⁶ Wonnacott, at 120; *1869 Statute List*, note 371 at 416.

⁵⁰⁷ While, no evidence was found of modification by legislation, or judicial consideration of, the applicability of this legislation in Alberta, it is unclear if later statutory exemptions would make exceptions found in received legislation inapplicable (see footnote 83).

⁵⁰⁸ *Statute Law (Repeals) Act 1993* (UK), c 50.

⁵⁰⁹ Found in *A Collection of the Public General Statutes: Passed in the Tenth and Eleventh Year of the reign of Her Majesty Queen Victoria 1847* (London: Eyre and Spootiswoode, 1847) at 215-241 available online in HathiTrust Statutes at Large (volume 90): <<https://hdl.handle.net/2027/mdp.39015068109324>>.

⁵¹⁰ Wonnacott, at 120.

⁵¹¹ While, no evidence was found of modification by legislation or judicial consideration of the applicability of this legislation in Alberta, a similar protection from distress appears in the *Water, Gas and Electric Companies Act*, RSA 2000, c W-4 at section 21, potentially making s 44 of the received *Waterworks Clauses Act* implicitly inapplicable.

⁵¹² *Water Act 1945* (UK), 8 & 9 Geo 6, c 42.

⁵¹³ Found in *A Collection of the Public General Statutes: Passed in the Twelfth and Thirteenth Year of the reign of Her Majesty Queen Victoria 1849* (London: Eyre and Spootiswoode, 1849) at 592-602 available online in HathiTrust Statutes at Large (volume 92): <<https://hdl.handle.net/2027/mdp.39015068109167>>.

⁵¹⁴ Bell, at 327.

⁵¹⁵ While, no evidence was found of modification by legislation, or judicial consideration of the applicability of, this legislation in Alberta, in *Reece v Edmonton (City)*, 2011 ABCA 238 at para 56 (and related footnote 27 of the case) indicates that animal cruelty falls within the federal head of power. In which case, it is likely the offences found in *Cruelty to Animals Act* (including s 5) have been explicitly rendered inapplicable by s 9 of the *Criminal Code*, RSC 1985, c C-46, and the legislative scheme itself implicitly rendered inapplicable by s 445.1 of the *Criminal Code*.

⁵¹⁶ *Protection of Animals Act 1911* (UK), 1 & 2 geo 5, c 27.

⁵¹⁷ Found in *A Collection of the Public General Statutes: Passed in the Fourteenth and Fifteenth Year of the reign of Her Majesty Queen Victoria 1851* (London: Eyre and Spootiswoode, 1851) at 170-172 available online in HathiTrust Statutes at Large (volume 94): <<https://hdl.handle.net/2027/mdp.39015068109340>>.

⁵¹⁸ *ALRI unpublished papers*, note 418 at listed item number 369.

⁵¹⁹ Other portions of this Act were repealed in Ireland by *Landlord and Tenant Amendment (Ireland) Act, 1860*, 23 & 24 Vic c 154 (The 1869 Statute list note 371 at 277).

⁵²⁰ While, no evidence was found of modification by legislation or judicial consideration of the applicability of this legislation in Alberta, the *Report on Disposal of English Statute Law in Saskatchewan* note 251 at 21, indicated s 3 (relating to the ownership of agricultural buildings or machinery built/installed by the tenant for agricultural or trade purposes in agricultural tenancies) was in effect in Saskatchewan (noting that clearly the specifics of s 3 mean this would not be applicable to residential tenancies in Alberta).

⁵²¹ *Tribunals, Courts and Enforcement Act 2007*, note 446.

⁵²² Found in *The statutes of the realm* vol 3, note 417 at 879-892.

⁵²³ Williams et al., ch 8 at 8-5, s 8:1:12.

⁵²⁴ Found in Danby Pickering's *The Statutes at Large Volume 18: from the 15th to the 20th Year of King George II* (London: University of Cambridge, 1765) at 269-274 available online in HathiTrust Statutes at Large: <<https://hdl.handle.net/2027/mdp.39015035134108>>.

⁵²⁵ This act is listed in *1869 Statute List*, note 371 "Distress" at 390. Upon a review of the act itself, it likely is related to s 7, which appears to create a statutory right of distress.

⁵²⁶ Found in Danby Pickering's *The Statutes at Large Volume 21: from the 26th to the 30th Year of King George II* (London: University of Cambridge, 1766) at 213-214 available online in HathiTrust Statutes at Large: <<https://hdl.handle.net/2027/mdp.39015035134124>>.

⁵²⁷ *1869 Statute List*, note 371 at 102.

⁵²⁸ Found in Danby Pickering's *The Statutes at Large Volume 28: Anno octavo Georgii III Regis Being the Seventh Session of the Twelfth Parliament of Great Britain* (London: University of Cambridge) at 358-359 available online in HathiTrust Statutes at Large <<https://hdl.handle.net/2027/mdp.39015036870403>>

⁵²⁹ *1869 Statute List*, note 371 at 464; *ALRI unpublished papers*, note 418 at listed item number 185. Note, the Act itself, section 3 appears to refer to distress by writ as it uses the term "distringas" and references writ proceedings (where distringas relates to a writ ordering a sheriff to seize personal property, see *Black's Law Dictionary*, note 15, *sub verbo* "Distringas").

⁵³⁰ Found in Danby Pickering's *The Statutes at Large Volume 31 part 1: Anno decimo quinto Georgii III Regis Being the First Session of the Fourteenth Parliament of Great Britain* (London: University of Cambridge 1775) at 93 available online <<https://hdl.handle.net/2027/mdp.39015036687716>>.

⁵³¹ *1869 Statute List*, note 371 at 432, 390; *ALRI unpublished papers*, note 418 at listed item number 196.

⁵³² Found in *The Statutes of the United Kingdom of Great Britain and Ireland: 54 George III 1814* (London: His Majesty's Statute and Law Printers, 1814) at 890-893 available online in HathiTrust Statutes at Large (Volume 53 part 2): <<https://hdl.handle.net/2027/mdp.39015065182019>>.

⁵³³ *1869 Statute List*, note 371 at 491.

⁵³⁴ Found in *The Statutes of the United Kingdom of Great Britain and Ireland: 7 & 8 George IV 1827* (London: His Majesty's Statute and Law Printers, 1827) at 130-131 available online in HathiTrust Statutes at Large (volume 66): <<https://hdl.handle.net/2027/mdp.39015065182274>>.

⁵³⁵ Found in *A Collection of the Public General Statutes: Passed in the Eleventh and Twelfth Year of the reign of Her Majesty Queen Victoria 1847-1848* (London: Eyre and Spootiswoode, 1848) at 336-402, available online in Internet Archive: <<https://archive.org/details/acollectionpubl11britgoog/page/391/mode/2up>> at 356-402>.

⁵³⁶ Found in *A Collection of the Public General Statutes: Passed in the Twelfth and Thirteenth Year of the reign of Her Majesty Queen Victoria 1849* (London: Eyre and Spootiswoode, 1849) at 140-147 available online in HathiTrust Statutes at Large (volume 92) [HathiTrust Statutes at Large (volume 92)]: <<https://hdl.handle.net/2027/mdp.39015068109167>>.

⁵³⁷ *1869 Statute List*, note 371 at 492.

⁵³⁸ Found in *A Collection of the Public General Statutes: Passed in the Twenty-first and Twenty Second Years of the reign of Her Majesty Queen Victoria being the second session of the seventeenth parliament of the United Kingdom of Great Britain and Ireland* (London: Eyre and Spootiswoode, 1858) at 236-238, available online:

<<https://archive.org/details/acollectionpubl20britgoog/page/n258/mode/2up>>.

⁵³⁹ National Archives of HM Government (United Kingdom) "The Crown Suits, &c. Act 1865": <https://www.legislation.gov.uk/ukpga/Vict/28-29/104/pdfs/ukpga_18650104_en.pdf>.

Appendix D: Historic Legislation from the Northwest Territories and Alberta Related to Distress for Rent

[312] This appendix is a summary of the historic legislation in the Northwest Territories and Alberta that modified distress for rent. As such, minor amendments are not included.

1. DISTRESS ACT

Act	Citation	Summary of notable developments
<i>An Ordinance to Regulate the Costs of Distress for Rent and Extra-judicial Seizure</i>	O NWT 1884, No. 8	Provides a cost schedule applicable for the costs of levying distress
<i>An Ordinance to Regulate the Costs of Distress for Rent and Extra-judicial Seizure</i>	RO NWT 1888, c 52	
<i>An Ordinance to Exempt Certain Property from Distress for Rent</i>	O NWT 1896, No. 7	Limits whose property a landlord can levy distress against to the tenant, or person otherwise liable for rent (with exceptions)
<i>An Ordinance Respecting Distress for Rent and Extra-judicial Seizure</i>	CO NWT 1898, c34	
<i>The Distress Act</i>	RSA 1922, c 97	
<i>The Distress Act Amendment Act, 1935</i>	SA 1935, c 12	Introduces exemptions for distress for rent
Portions incorporated into the <i>Seizures Act</i> , RSA 1942, c 143		The sections relating to whose property can be seized and exemptions for distress for rent are moved

2. DISTRESS FOR INTERESTS UPON MORTGAGES

Act	Citation	Summary of notable developments
<i>An Ordinance to Respecting Distress for Interest Upon Mortgages</i>	O NWT 1898, No. 16	Limits distress for interest to goods and chattels of the mortgagor only and requires notices
<i>An Ordinance Respecting Distress for Interest Upon Mortgages</i>	RO NWT 1888, c 53	
Incorporated into <i>An Ordinance Respecting Distress for Rent and Extra-judicial Seizure</i> CO NWT 1898, c34		

3. EXEMPTION ACT

Act	Citation	Summary of notable developments
<i>An Ordinance exempting Certain Property from Seizure and Sale Under Execution</i>	O NWT 1879, No. 8	Lists exemptions for personal property of execution debtor from writs of execution
<i>An Ordinance Exempting Certain Property from Seizure and Sale Under Execution</i>	RO NWT 1888, c 45	
<i>An Ordinance to Amend "An Ordinance Exempting Certain Property from Seizure and Sale Under Execution"</i>	O NWT 1898, No. 14	Exemptions extended to dependants upon death of the debtor
<i>Exemption Ordinance</i>	CO NWT 1898, c 27	
<i>The Exemption Act</i>	RSA 1922, c 95	
<i>The Exemption Act, 1941</i>	SA 1941, c 48	Expands exemptions to chattel mortgages Onus on the sheriff to refer to court if there are disputes about exemptions
<i>The Exemption Act</i>	RSA 1942, c 123	Incorporation from <i>Distress Act</i> of the sections relating to whose property can be seized and exemptions for distress for rent
<i>The Exemption Act</i>	RSA 1955, c 104	
<i>The Statutes Amendment Act</i>	SA 1966, c 95, s 3	Requires that goods that appear to be exempt are not seized, provides no liability for seizing what is later determined exempt (when seized in good faith)
<i>The Exemption Act</i>	RSA 1970, c 129	
<i>The Exemption Act</i>	RSA 1980, c E-15	
Repealed by <i>Civil Enforcement Act</i> , SA 1994, c 10.5, s 171		

4. EXTRA-JUDICIAL SEIZURES ACT

Act	Citation	Summary of notable developments
<i>An Act respecting Extra-Judicial and other Seizures</i>	SA 1914, c 4	Requires seizures (including distress for rent) to be carried out by a sheriff Requires court order for the removal of seized goods and for sale after seizure (with exceptions) Allows tenant to make court application, and gives wide discretion to judge Includes schedule of costs
<i>Statute Law Amendment Act</i>	SA 1921, c 5, s 8	Inclusion a notable exception for when distress for rent owed is less than two months
<i>The Extra-Judicial Seizures Act</i>	RSA 1922, c 96	

<i>An Act to amend the Extra-Judicial Seizures Act</i>	SA 1929, c20	Establishes notice of seizure and notice of objection requirements (ie no longer require a prior court order to sell, unless the tenant objects, in which case onus on landlord to bring to court) ⁵⁴⁰
Repealed and replaced by <i>Seizures Act</i> , SA 1933, c 16, s 45		

5. SEIZURES ACT

Act	Citation	Summary of notable developments
<i>Seizures Act</i>	SA 1933, c 16	Incorporates requirements for seizure for distress by sheriff Requires sale by public auction and notice of objection process
<i>Seizures Act</i>	RSA 1942, c 143	Incorporates portions of <i>Distress Act</i> (RSA 1922 c 97 as amended) and other amendments

⁵⁴⁰ Enforcement Remedies, at 785.

<i>An Act to amend The Seizures Act</i>	SA 1952, c 84	Incorporates amendments that require sheriff to provide surplus from sale to other creditors
<i>Seizures Act</i>	RSA 1955, c 307	
<i>An Act to amend The Seizures Act</i>	SA 1964, c84	includes section specific to distress being levied on a mobile home
<i>An Act to amend The Seizures Act</i>	SA 1969, c 99	Incorporates amendments that limit the time distress can be levied
<i>Seizures Act</i>	RSA 1970, c 338	
<i>Seizures Act</i>	RSA 1980 c S-11	
Repealed by <i>Civil Enforcement Act</i> , SA 1994, c 10.5		

6. CIVIL ENFORCEMENT ACT

Act	Citation	Summary of notable developments
<i>Civil Enforcement Act</i>	SA 1994, c 10.5	
<i>Civil Enforcement Act</i>	RSA 2000, c C-15	In force and effect at time of this report

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