

Should Landlords Be Allowed to Seize and Sell a Tenant's Property to Recover Unpaid Rent?

ALBERTA LAW REFORM INSTITUTE





This publication is intended as a brief summary of our recommendations for abolishing distress for rent in Alberta.

The full detailed report can be accessed by scanning the QR code above or at bit.ly/distress4rent



What is Distress for Rent?

Distress for rent is an old English medieval law that allowed a landlord to **seize and hold** personal property of tenants until rent was paid. Since the economy then was mostly agricultural back then, examples of personal property seized were often livestock and harvested crops while property such as looms or anvils could be seized from tradesmen.

Distress for rent is different today. A landlord must work with a civil enforcement agency and bailiff to carry out distress for rent. Once rent is at least one day late, a landlord can **seize and sell** personal property found at the home to recover unpaid rent.



How Does Distress For Rent Work?

There are four parts to levying distress for rent:



1 Entry to the premises



2 Seizing the property



3 Impounding the property



4 Releasing or selling the property

1. Entry to the Premises

The requirements for a proper entry for seizing property are:

- A landlord must use a **civil enforcement agency*** and **bailiff**** to carry out distress for rent,
- It must be 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,
- The bailiff cannot enter if entry has been refused.

***Civil Enforcement Agencies**

A civil enforcement agency in Alberta is a private business authorized by the provincial government to enforce court judgments, collect debts, seize and sell property, and carry out evictions.

****Bailiffs**

Civil enforcement agencies employ bailiffs to collect money that people owe under court judgements or contracts. Bailiffs may also carry out evictions and enforce court orders.

When enforcing a judgement or debt, bailiffs may seize and sell property belonging to the person who owes the money. This may include vehicles, homes, cash, equipment and other valuable items.





2. Seizure of the Property

The law requires that property seized must be:

- Clearly identified,
- Located at the rented premises,
- Belong to the tenant,
- Not exempt property such as food, clothing, appliances, medical/dental aids, property used for work,
- Of a reasonable value to satisfy the outstanding rent, ie. the landlord should not seize more property than is needed to cover the unpaid rent,
- Not subjected to prior seizures for the same outstanding rental period,
- Reported and registered in the Personal Property Registry, the official provincial database that tracks legal claims and security interests (liens) against personal property like vehicles, boats, equipment, and inventory.



3. Impounding the Property

The property must then be impounded, meaning placed under lock and key and in the custody of the law. A landlord cannot sell property without first impounding the property.

Bailiff's working under the direction of the civil enforcement agency either remove the property from the premises to a different location. They can also leave it at the premises but restrict access to the home by the tenant. However, this can cause issues and potentially unlawfully end the lease if the tenant will not be able to access the rented home.



4. Releasing or Selling the Property

If a tenant pays the outstanding rent, the civil enforcement agency releases the property to the tenant and updates the Personal Property Registry.

If rent is not paid and there has been no objection by the tenant, the civil enforcement agency must wait 15 days before selling the property and distributing the proceeds as per the law.

Why Should Alberta Abolish Distress for Rent?

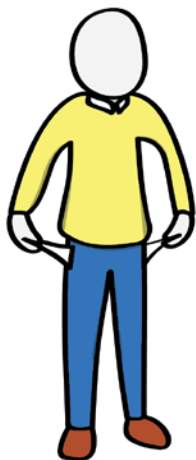
Distress for rent is a harsh remedy

Historically, it was a way for a landlord to recover unpaid rent by allowing a landlord to impound a tenant's property while allowing the tenancy to continue. However, when the power to sell the property was added to the law, the remedy became much more devastating to a tenant while providing little benefit to the landlord.



The value of personal second-hand property is extremely low which often results in landlords rarely making enough money to cover unpaid rent while the costs incurred by the tenant to replace the property remains significantly higher.

In reality, when a landlord carries out distress for rent on a tenant, it often results in the tenant leaving. Tenants who are unable to pay rent are likely to be devastated from losing their property.



The seizure and sale of their property by the landlord effectively destroys the relationship while rarely generating enough proceeds to cover the unpaid rent.

The only effective part of distress for rent is when it is used to threaten a tenant who is able to pay rent but otherwise refuses to do so, a rare occurrence.

Distress For Rent is Ineffective

While appearing like a straightforward solution for landlord to recover unpaid rent, distress for rent is often ineffective because:



A tenant can simply refuse a bailiff entry.



A tenant can serve a notice of objection requiring the matter to go to court.



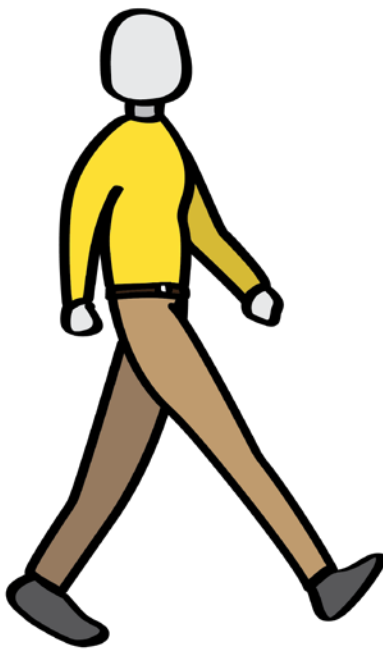
A court can stay enforcement proceedings.

Distress For Rent is Risky for the Landlord

A landlord can be liable for damages if distress for rent is carried out incorrectly.



For example, a landlord can be liable for costs in excess of the the unpaid rent and/or property seized if distress for rent is carried out improperly.



Distress for rent made more sense in medieval England.

However, in present day Alberta, it is much more straightforward and less risky for a landlord to make an application to Alberta's

Residential Tenancy

Dispute Resolution

Service to collect unpaid rent.

What are We Recommending?

We're recommending the Government of Alberta abolish Distress for Rent for residential tenancies because:



- There is no value in reforming a remedy that is ineffective,
- Distress for rent almost never achieves the goal of recovering a significant amount of unpaid rent,
- It eliminates the risks to landlords of levying distress for rent incorrectly,
- It reduces the devastating harms to tenants that can make a bad situation worse,
- It aligns the law with all other common-law provinces in Canada.

Landlords would lose the ability to levy distress for rent, or use the threat of distress for rent, but this should be of little concern as distress for rent just doesn't work well and landlords have more effective, adequate and fair remedies available to them.

**See our full report at
bit.ly/distress4rent**

