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Distress for Rent in Alberta (Residential Tenancies)

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How easy is it for a landlord to have a tenant's personal property seized and sold without any oversight (either judicial or via the Residential Tenancy Dispute Resolution Service)?

Very! (depending on the circumstances).

A Hypothetical Scenario:

The surprise: You (the tenant) answer the door (to the unit you rent) and a bailiff presents you with some paperwork and tells you they are here to levy "distress for rent", because you have not paid your rent. They continue to explain they are going to look around your apartment and take your personal property to satisfy the rent you owe to the landlord as well as their costs.

Your response: While you've never heard of distress for rent, and wonder if this is even legal, the bailiff seems legitimate. You try and offer to pay the rent now, the bailiff calls the civil enforcement agency and tells you they will only accept cash, certified cheque, bank draft, or money order. Unfortunately, none of those options are available to you right now.

You ask, "shouldn't the landlord have to give me an opportunity to pay the rent before sending a bailiff? Shouldn't there be advance notice?" The response is devastating, as these aren't required for distress for rent.

The outcome: The bailiff leaves with your most valuable personal property, including electronics, jewelry, your rare stamp collection, and a few designer clothes you have. All you are left with is some paperwork saying you have 15 days to object.

It all happened so quickly, and then you remember you have a friend who is a lawyer. You give them a call, the first thing your friend says is "just refuse the bailiff entry". You didn't even know that was an option.

Where Does Distress for Rent Come From?

Distress for rent is an ancient English self-help common law remedy. In its current form in Alberta, when a tenant has not paid their rent, distress for rent allows a landlord to hire a civil enforcement agency to seize and sell a tenant's property.

Distress for rent has existed in some form or another for over 1,000 years and has its origins in English common law pre-dating written legislation. When Alberta received the laws of England, this included reception of the remedy of distress for rent (for more information about received law in Alberta, refer to: [Untangling Received Law in Alberta](#)).

While various procedural aspects of distress for rent are governed by the [Civil Enforcement Act, RSA 2000, c C-15](#) (*Civil Enforcement Act*), the majority of the remedy is comprised of ancient common law principles and old English statutes that remain unchanged since 1870.

This means distress for rent is a legal remedy that continues to exist in Alberta, but unfortunately does not (for the most part) appear in the statutes of Alberta.

Distress for Rent in Residential Tenancies in Alberta

Distress for rent, as a legal remedy, pre-dates the modern distinctions between different types of tenancies. This means distress for rent applies to all types of tenancies in Alberta, including commercial tenancies, and residential tenancies.

There is no reference of distress for rent in the [Residential Tenancies Act, SA 2004, c R-17.1](#), nor is there any mention of it in most residential tenancies agreements. Distress for rent continues to exist, even though most tenants are unlikely to know it is a remedy available to their landlord to collect unpaid rent.

Alberta is the only common law jurisdiction in Canada that allows distress for rent as a self-help remedy in residential tenancies. Everywhere else in Canada, distress for rent as a self-help remedy in residential tenancies has been abolished (in most provinces it has been abolished for more than 50 years).

How Does it Work?

Simply put, in its current form in Alberta (and in context of residential tenancies):

- The remedy of distress for rent is only available when the tenant has not paid the rent on time;
- As soon as the day after the rent is unpaid, the landlord can levy distress for rent by hiring and directing a civil enforcement agency to seize the tenant's personal property that is found on the rental premises;
- The civil enforcement agency retains a bailiff to attend at the rental premises to seize the tenant's personal property;
 - Note: if the tenant refuses the bailiff entry, no entry is allowed unless a Court Order is obtained.
- Once the bailiff has seized the personal property, they must hold the property for at least 15 days, during which time the tenant can object to the seizure (which prevents the sale of the seized property unless permitted by Court);
- If the tenant does not object (or the Court finds no valid objections were raised), then the bailiff can sell the tenant's personal property; and

- The money from the property sold will be used to pay the bailiff and civil enforcement agency costs and only then will any proceeds of the sale be applied against the unpaid rent owed to the landlord.

It should be noted that the remedy of distress is overly complicated and is based on a convoluted set of principles and requirements found in English common law, received English Statutes, and the *Civil Enforcement Act*. As such, it is significantly more complicated than described above in the simplified description, containing multiple exceptions and nuances.

ALRI's Residential Tenancies: Distress for Rent, Final Report 122

The first phase of the Alberta Law Reform Institute's (ALRI) [Residential Tenancies Act project](#), has been issue identification, which to date has resulted in two published issue papers ([Residential Tenancies Act: General Issues, Issue Paper 6](#) {Issue Paper 6}; and [Residential Tenancies Act, Issue Paper 7](#)).

[Residential Tenancies: Distress for Rent, Final Report](#) 122 is the first final report resulting from these Issue Papers, and considers Issue 8 and Issue 9, found in Issue Paper 6 (at 52-55):

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?

In the report, the ALRI provides a comprehensive outline of distress for rent, considers the history of law reform related to distress for rent, considers the purpose of distress for rent and whether that purpose is being met, and considers the options for reform.

Ultimately, the report recommends that distress for rent is abolished in residential tenancies for the following reasons:

- Distress for rent is primarily made up of ancient common law principles and old English statutes;
- Bailiffs rarely seize and sell enough property to recover the value of the unpaid rent;
- Landlords can be liable for any errors made when the remedy is used (and the complexity of the law makes it hard to do correctly);
- There are more modern, effective, and less risky remedies available to landlords to collect unpaid rent; and
- Distress for rent can be uniquely socially and economically devastating to tenants.

We encourage you to read our [full report](#).

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