

# RENT DISTRESS ACT

## CHAPTER 403

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#### **SCHEDULE**

#### **Definition**

- 1 In this Act, “**penalty**” includes
  - (a) all sums due for taxes or rates,
  - (b) all sums ordered to be paid by a justice, and
  - (c) all other sums that are collected summarily by distress or seizure and sale of goods.

#### **Property exempt from distress**

- 2 (1) The following personal property is not liable to seizure by distress for rent or penalty:
  - (a) the beds, bedding and bedsteads, including cradles and carriages in ordinary use by the debtor and the debtor’s family;
  - (b) the necessary and ordinary wearing apparel of the debtor and the debtor’s family;

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- (c) one cooking stove with pipe and furnishings, one other heating stove with pipe, one set of cooking utensils, one lamp, one table, one washstand with furnishings, 6 towels, one clock, one broom, 2 pails, one axe, one saw, one shovel, one washtub, one washboard, 3 smoothing irons, one sewing machine and attachments in domestic use;
  - (d) for the debtor and for each member of the debtor's family, one chair, one plate, one cup and saucer, one knife, one fork, one spoon;
  - (e) all necessary fuel, meat, fish, flour and vegetables for the ordinary consumption of the debtor and the debtor's family for 30 days;
  - (f) tools and implements of or personal property ordinarily used in the debtor's trade or occupation, to the value of \$200.
- (2) The debtor may select from the tools, implements or personal property referred to in subsection (1) (f) the things that are exempted from seizure under that paragraph.

**Property of others is exempt****3** (1) In this section:

**"collateral"** means personal property in which a security interest has been taken;

**"perfected"** has the same meaning as in the *Personal Property Security Act*;

**"proceeds"** has the same meaning as in the *Personal Property Security Act*;

**"purchase money security interest"** means

- (a) a security interest taken in collateral to the extent that it secures payment of all or part of its purchase price and the credit charges for the purchase, and
- (b) a security interest taken in collateral by a person who gives value for the purpose of enabling the tenant to acquire rights in the collateral, to the extent that the value is applied to acquire the rights, and value includes interest charges,

but does not include

- (c) an interest of a lessor under a transaction of sale by and lease back to the seller;

**"security interest"** means an interest in personal property that secures payment or performance of an obligation;

**"tenant"** includes, subject to section 4, a subtenant, the assign of the tenant or any person in actual occupation of the premises under or with the assent of the tenant during the currency of the lease, or while the rent is due or in arrears, whether or not he or she has attorned to or become the tenant of the landlord.

- (2) A landlord must not distrain for rent the personal property of a person except that of the tenant or person who is liable for the rent, although that property is found on the premises.

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- (3) Subsection (2) does not apply
- (a) in favour of a person claiming title under an execution against the tenant,
  - (b) in favour of a person whose title is derived by purchase, gift, transfer or assignment from the tenant, whether absolute or in trust,
  - (c) if personal property has been exchanged between tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord, or
  - (d) if the property is claimed by the wife, husband, daughter, son, daughter in law or son in law of the tenant, or by any other relative of the tenant, if the other relative lives on the premises as a member of the tenant's family, or by a person whose title is derived by purchase, gift, transfer or assignment from a relative to whom the restriction does not apply.
- (4) A landlord's distress has priority over a security interest in the goods of the tenant other than a purchase money security interest in goods or proceeds of those goods that is perfected at the date of distress.
- (5) This section does not exempt from distress personal property in a store or shop managed or controlled by an agent or employee of the owner of the personal property if
- (a) the clerk or agent is also the tenant and in default, and
  - (b) the rent is due in respect of the premises rented if the personal property would have been liable to seizure but for this section.
- (6) A landlord is not liable for the distress of personal property to which the restriction in subsection (2) applies, unless
- (a) the owner of the property makes a statutory declaration containing an inventory of the property and alleging that it is his or her property and that the person who is liable for the rent has no right or interest in the property,
  - (b) the owner serves the declaration on the landlord or the bailiff or person employed by the landlord or the bailiff to levy the distress before the distress is levied or before the property has been appraised and sold, and
  - (c) the landlord distrains or proceeds with the distress after the service of the declaration.

**Lodger may protect his property from distress**

- 4 (1) If a superior landlord levies, or authorizes to be levied, distress on personal property of a boarder or lodger for arrears of rent due to the superior landlord by his or her immediate tenant, the boarder or lodger may serve the superior landlord, or the bailiff or other person employed by him or her to levy the distress, with an affidavit, made by the boarder or lodger, setting out the following:
- (a) that the immediate tenant has no right or beneficial interest in the property distrained or threatened to be distrained;
  - (b) that the property is in the lawful possession of the boarder or lodger;

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- (c) that nothing is due by way of rent or otherwise from the boarder or lodger, or the amount, if any, due from the boarder or lodger to the immediate tenant.
- (2) The boarder or lodger may pay to the superior landlord, or to the bailiff or other person employed by him or her, the amount, if any, due or as much as is sufficient to discharge the claim of the superior landlord.
- (3) To the affidavit must be annexed a correct inventory, signed by the boarder or lodger, of the property referred to in the affidavit.

**Lodger may commence action for recovery of property**

- 5 If, after being served with the affidavit and inventory, and after the boarder or lodger has paid or tendered to the superior landlord, bailiff, or other person employed by him or her the amount, if any, which by section 4 the boarder or lodger is authorized to pay, the superior landlord, bailiff or other person levies or proceeds with distress on the property of the boarder or lodger,
- (a) the superior landlord, bailiff or other person is deemed guilty of illegal distress,
  - (b) the boarder or lodger may commence an action for recovery of the property in any court of competent jurisdiction, and
  - (c) the superior landlord is also liable to an action for damages at the suit of the boarder or lodger.

**Lodger may pay rent to superior landlord**

- 6 Payment made by a boarder or lodger under section 4 is deemed a valid payment on account of the amount due from him or her to the immediate tenant mentioned in section 4.

**Property distrained may be appraised and sold**

- 7 (1) This section applies if
- (a) personal property has been distrained for rent due, and
  - (b) the tenant or owner of the property distrained does not, within 5 days after distress is taken and notice of it is left at the dwelling house or other place on the premises charged with the rent distrained for, commence an action for recovery of the property and serve notice of the action on the person distraining.
- (2) After distress, notice and the expiration of the 5 days, the person distraining must have the distrained property appraised by 2 appraisers, who must be sworn before a justice or commissioner for taking affidavits.
- (3) After appraisal the person distraining may sell the property distrained.

(4) The person distraining must

- (a) apply the sale proceeds to satisfy the rent in arrears, the charges of distress, appraisal and sale, and
- (b) pay the surplus, if any, to the sheriff for the owner's use.

**Corn, hay and grain may be seized, detained and sold**

- 8 A person having rent due may seize corn, grain or hay on any part of the land charged with the rent, and must detain it in the nature of a distress in the place where it is found, until it is recovered by the owner or sold under section 7.

**Triple damages for pound breach**

- 9 On pound breach or rescue of personal property distrained for rent, the person aggrieved is entitled to recover triple damages and costs of action against the offender, or against the owner of the property distrained, if the property later comes into his or her possession.

**Double damage and costs against wrongful distress**

- 10 If distress and sale is made for rent alleged to be due, and no rent is due to the person distraining, or to the person in whose name or right the distress is taken, then the owner of the property distrained and sold, or his or her personal representatives, may, by proceeding against the person distraining, or the personal representatives, recover double the value of the property distrained and sold, together with full costs of the proceedings.

**Landlord may distrain and sell property fraudulently carried off the premises**

- 11 If a tenant or lessee of land, the rent of which is due, fraudulently or clandestinely takes from the premises his or her personal property, to prevent the landlord or lessor from distraining it for arrears of rent, the landlord or lessor, or any person lawfully empowered by the landlord or lessor for that purpose, within 30 days after the taking of the property, may seize that property, wherever found, as distress for the arrears of rent, and dispose of the property as if the property had been distrained by the lessor or landlord on the premises for the arrears of rent.

**Exception in case of genuine sale for valuable consideration**

- 12 A person entitled to arrears of rent must not take or seize property as distress for the arrears if the property was sold before seizure is made, in good faith and for valuable consideration, to a person not privy to the fraud.

**Penalty for fraudulently conveying away or concealing property**

- 13 (1) A tenant or lessee who fraudulently removes and conveys away his or her personal property and every person who wilfully and knowingly aids the tenant or lessee in doing so, or in concealing it, must pay to the landlord or lessor double the value of the property carried off or concealed.

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- (2) The penalty under subsection (1) may be recovered by action in a court of competent jurisdiction.

**If property is not worth more than \$250, landlord may complain to justices**

- 14** (1) If the personal property fraudulently carried off or concealed is not worth more than \$250, the landlord, his or her bailiff, employee or agent on the landlord's behalf, may exhibit a complaint in writing against the offender before 2 or more justices who
- (a) reside near the place where the property was removed, or near the place where it was found, and
  - (b) are not interested in the land from which the property was removed.
- (2) On a complaint under subsection (1) the justices may
- (a) summon the parties concerned,
  - (b) examine the facts and all proper witnesses on oath or affirmation,
  - (c) in a summary way determine whether the person is guilty of the offence with which he or she is charged, and
  - (d) inquire into the value of the property in question.
- (3) On proof of the offence, the justices must order the offender to pay double the value of the property to the landlord, at a time the justices appoint.
- (4) In case of default of payment of the amount to be paid,
- (a) it may be levied by distress and sale of the personal property of the offender, and
  - (b) for want of distress the offender must be imprisoned for 6 months, unless the money is paid.

**Landlord may break open house to seize property fraudulently secured in it**

- 15** (1) If personal property fraudulently or clandestinely conveyed or carried away by a tenant or lessee, or other person acting for or aiding him or her, is put or found in a building or place, and is locked up or secured to prevent the property from being taken or seized as distress for arrears of rent, the landlord or the landlord's employee, bailiff or other person may take and seize as distress for rent that property, after calling to his or her assistance the peace officer of the district or place where it is suspected to be concealed.
- (2) The peace officer is required to aid and assist, but in the case of a dwelling house, an oath must be sworn before a justice showing reasonable grounds to suspect that the property is inside it.
- (3) The entry and seizure must be in the daytime and those persons may take and seize property for the arrears of rent as might have been done if the property had been found in an open field or place.

**Landlord may distress stock or crops and give notice**

- 16 (1) A lessor or landlord, or his or her bailiff or agent, may as distress for arrears of rent
- (a) take and seize,
    - (i) any cattle or stock of the tenant feeding or pasturing on any common appendant or appurtenant or belonging to any part of the leased premises, and
    - (ii) all sorts of corn, grass, hops, roots, fruits, pulse or other product growing on any part of the leased estates,
  - (b) cut, gather, make, cure, carry and lay up, when ripe, in the barns or other proper place on the leased premises and afterwards appraise the same, and if there is no barn or proper place on the leased premises, then at any other barn or place that the lessor or landlord hires or procures for that purpose, and as near as may be to the premises, and
  - (c) appraise or dispose of the same toward satisfaction of the rent for which the distress is taken, and of the charges of the distress, appraisal and sale, in the same manner as other property may be seized, distrained and disposed of.
- (2) Notice of the place where the property distrained is deposited must, within one week after depositing it, be given to the lessee or tenant, or left at his or her last residence.
- (3) If, after distress for arrears of rent taken for the products mentioned, and before they are ripe, cut, cured or gathered, the tenant or lessee or his or her personal representatives, pays to the lessor or landlord, or to his or her agent, the rent in arrears, together with the costs and charges of distress, or makes lawful tender of the arrears and costs, the distress must cease and the products mentioned and distrained must be delivered to the lessee or tenant, or the personal representative.

**Property may be secured and sold on the premises**

- 17 (1) A person lawfully taking distress for arrears in rent may
- (a) impound or otherwise secure the distress so made on that part of the premises chargeable with the rent as is convenient, and
  - (b) appraise and dispose of it on the premises in the manner a person distraining for rent may do off the premises.
- (2) A person has free access to any part of the premises where distress for rent is impounded and secured, in order to view, appraise, buy and remove property that is the subject of distress.
- (3) If a pound breach or rescue is made of the property distrained and impounded or secured, the person aggrieved has the same remedy for pound breach or rescue given by section 9.

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**Liability for excessive distress**

- 18 If property is distrained for rent justly due, the person taking the distress is not liable to any action for excessive distress because more property is distrained than is reasonably necessary to satisfy the rent due with the expenses, if within 3 days after the taking of the distress the person abandons the excess and holds under the distress no more property than is reasonably necessary to satisfy the rent due with the expenses.

**Distress not unlawful because of subsequent irregularity**

- 19 If distress is made for rent or taxes due or for a penalty legally imposed, and any irregularity or unlawful act is afterwards done by the party distraining, or by his or her agent, the distress is not unlawful, nor is the party making it a trespasser, but the party aggrieved by the unlawful act or irregularity may recover in any court of competent jurisdiction satisfaction for the special damage he or she sustains, together with his or her costs of suit.

**Tenants not to recover by action after tender of amends**

- 20 A tenant or lessee or other person is not entitled to recover under section 19 in an action for an unlawful act or irregularity if tender of amends is made by the party distraining, or by his or her agent, before the action brought.

**Fees according to Schedule**

- 21 (1) A person is not entitled to fees, charges or expenses for levying distress, or for doing any act or thing in relation to it, other than those specified in and authorized in the Schedule.
- (2) If the rent or penalty exceeds \$100, the fees, charges and expenses specified in Scale 1 of the Schedule must be allowed.
- (3) If the rent or penalty does not exceed \$100, the fees, charges and expenses specified in Scale 2 of the Schedule must be allowed.
- (4) If there is any dispute over the fees, charges and expenses between the parties the fees, charges and expenses must be reviewed by the registrar of the Supreme Court, and the registrar may make an order the registrar thinks fit for the costs of the review.

**Persons levying distress to give copy of charges to party distrained**

- 22 A person who makes and levies distress must give a copy of the demand, and of all the costs and charges of the distress, signed by him or her, to the person on whose property the distress is levied.



## SCHEDULE

### SCALE 1 – FOR DISTRESS IF THE AMOUNT OF RENT OR PENALTY EXCEEDS \$100

For levying distress —

3% on the first \$300 or less.

2 1/2% on the excess of over \$300 up to and including \$1 000.

And 1% on the excess over \$1 000.

For person in possession, \$6 per day.

For advertisements, the sum actually and necessarily paid.

For commission to the auctioneer on sale by auction —

7 1/2% on the sum realized, not exceeding \$500.

5% on the next \$1 000 or part.

4% on the next \$1 000 or part.

And 3% on any sum exceeding \$2 500.

Reasonable fees, charges and expenses, subject to section 21 (4), if distress is withdrawn or if no sale takes place, and for negotiations leading to the withdrawal.

For appraisal, whether by one appraiser or more, 2¢ on the dollar on the value as appraised.

Travelling expenses actually and necessarily incurred in levying distress, not exceeding 15.6¢/km one way.

### SCALE 2 – FOR DISTRESS IF THE AMOUNT OF RENT OR PENALTY DOES NOT EXCEED \$100

|   | \$   |
|---|------|
| For levying distress .....                            | 5.00 |
| For person in possession, per day .....               | 6.00 |
| For appraisal, whether by one appraiser or more ..... | 5.00 |

For all expenses of advertisements, if any, the sum actually paid.

For catalogues, sale and commission, and delivery, 10% on the net proceeds of the sale.

If distress is withdrawn or if no sale takes place, 10% of the amount of rent or penalty or claim.

For removal at request of party whose goods are distrained, the reasonable expenses attending the removal.

## RENT DISTRESS — HISTORICAL TABLE

### Legislative History

### RENT DISTRESS ACT

RSBC 1996, chapter 403

| Section  | History                                 |
|----------|---|
| 1 .....  | RS1979-362-1.                           |
| 2 .....  | RS1979-362-2.                           |
| 3 .....  | RS1979-362-4; 1990-11-95.               |
| 4 .....  | RS1979-362-5.                           |
| 5 .....  | RS1979-362-6; 1982-46-38.               |
| 6 .....  | RS1979-362-7.                           |
| 7 .....  | RS1979-362-8; 1982-46-39.               |
| 8 .....  | RS1979-362-9(1); 1982-46-40.            |
| 9 .....  | RS1979-362-10.                          |
| 10 ..... | RS1979-362-11.                          |
| 11 ..... | RS1979-362-12.                          |
| 12 ..... | RS1979-362-13.                          |
| 13 ..... | RS1979-362-14.                          |
| 14 ..... | RS1979-362-15.                          |
| 15 ..... | RS1979-362-16.                          |
| 16 ..... | RS1979-362-17.                          |
| 17 ..... | RS1979-362-18.                          |
| 18 ..... | RS1979-362-19.                          |
| 19 ..... | RS1979-362-20.                          |
| 20 ..... | RS1979-362-21.                          |
| 21 ..... | RS1979-362-22; 1989-30-46; 1989-40-186. |
| 22 ..... | RS1979-362-23.                          |
| Sch..... | RS1979-362-Sch.                         |

### EXPLANATORY NOTE

**Amendments Not in Force:** If there are any legislative changes to the Act that are not in force as of December 31, 1996, these are identified in *italics* at the beginning of the historical table. The "Section" column identifies the affected provisions of the Act. The "Citation" column identifies the amending legislation by its citation in the 1996 Statute Revision Supplement.

**Legislative History:** The second part of the table provides a legislative history of each section of the Act between the 1979 Statute Revision and the 1996 Statute Revision. The "Section" column identifies all sections of the Act in force on December 31, 1996. The "History" column for each section begins with the citation of the section immediately before the 1996 Statute Revision. This is followed by a list of citations for the legislation that enacted or amended the section between the 1979 Statute Revision and the 1996 Statute Revision (if a section was repealed and replaced during that period, these last citations begin at the most recent replacement).

Legislative citations have the format of "year-chapter-section".

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