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DISTRESS FOR RENT ACT

CHAPTER 293

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CHAPTER 293

DISTRESS FOR RENT ACT
ARRANGEMENT OF SECTIONS

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CHAPTER 293
DISTRESS FOR RENT ACT

[Date of commencement: 1st June, 1938.]

An Act of Parliament relating to distress for rent

[Cap. 154 (1948), Act No. 28 of 1961, L.N. 2/1964, Act No.
19 of 1964, Act No. 5 of 1996, Act No. 17 of 2006.]

1. Short title

This Act may be cited as the Distress for Rent Act.

2. Interpretation

In this Act, except where the context otherwise requires—

“**agricultural holding**” means any land used for agricultural or pastoral purposes;

“**approved valuer**” means a valuer licensed under the Valuers Act (Cap. 532) or a licensed auctioneer, but excludes an auctioneer levying distress or any person acting on his behalf;

“**licensed auctioneer**” has the meaning assigned to it in section 2 of the Auctioneers Act, 1996;

“**superior landlord**” includes a landlord in cases where the goods seized are not those of an under-tenant or lodger;

“**tenant**” and “**under-tenant**” do not include a lodger.

[Act No. 28 of 1961, Sch., Act No. 5 of 1996, s. 34.]

3. Right of distress

(1) Subject to the provisions of this Act and any other written law, any person having any rent or rent service in arrear and due upon a grant, lease, demise or contract shall have the same remedy by distress for the recovery of that rent or rent service as is given by the common law of England in a similar case.

(2) No distress shall be levied between sunset and sunrise or on any Sunday.

[Act No. 5 of 1996, s. 34.]

4. Distrained goods may be sold under certain circumstances

(1) Where any goods or chattels are distrained for rent reserved and due upon a grant, demise, lease or contract, and the tenant or owner of the goods or chattels so distrained does not, within fourteen days after distress has been made, and notice thereof (stating the cause of the making of the distress) left on the premises charged with the rent distrained for, pay the rent together with the costs of the distress, or replevy them, with sufficient security to be given to the licensed auctioneer according to law, the person distraining may lawfully sell on the premises or remove and sell the goods and chattels so distrained for the best price which can be obtained for them, towards satisfaction of the rent for which they are distrained, and of the charges of the distress, removal and sale, handing over the surplus (if any) to the owner.

(2) If, before the expiration of the seven days after the distraint, the tenant or owner of the goods distrained, in writing, so requests, the goods and chattels distrained shall be removed to a public auction room or to some other fit and proper place specified in the request, and be there sold by public auction by a licensed auctioneer towards satisfaction of the rent for which they are distrained, and of the charges of the distress and sale, and the surplus (if any) shall be handed over to the owner; but the costs and expenses of removal, and any damage to the goods and chattels arising therefrom, shall be paid by the person requesting the removal.

(3) If, before the expiration of the seven days after distraint, the tenant or owner of the goods and chattels distrained by writing requires that the value of the goods and chattels shall be ascertained, the person distraining shall cause them to be valued by an approved valuer and, after the valuation and the expiration of the ten days, may, unless the goods are sold by public auction as mentioned in subsection (2), lawfully sell the goods and chattels so distrained for the best price which can be obtained for them, towards satisfaction of the rent for which they are distrained, and of the charges of the distress, valuation and sale, handing over the surplus (if any) to the owner; and the costs and expenses of valuation, when required by the tenant or owner, shall be paid by him.

(4) The period of fourteen days within which the tenant or owner of goods and chattels distrained may replevy them shall be extended to a period of not more than fifteen days if the tenant or owner makes a request in writing in that behalf to the landlord or other person levying the distress, and also gives security for any additional cost that may be occasioned by the extension of time:

Provided that the landlord or person levying the distress may, at the written request, or with the written consent, of the tenant or owner, sell the goods and chattels distrained or part of them, at any time before the expiration of the extended period.

[Act No. 28 of 1961, Sch., Act No. 5 of 1996, s. 34.]

5. Rent in arrear may be distrained for after determination of lease

Any person having rent in arrear and due upon a demise, lease or contract after the ending or determination of the demise, lease or contract, may distrain for the arrears after the ending or determination in the same manner as he might have done if the demise, lease or contract had not been ended or determined:

Provided that distress under this section shall be made within the space of six months after the determination of the demise, lease or contract and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due.

6. Crops may be detained and sold

(1) Any person having rent in arrear and due upon a grant, demise, lease or contract may instruct a licensed auctioneer to seize and secure any crops loose and not attached to the land or lying and being in any barn or granary, or in any place or building used for the storage of crops or otherwise, upon any part of the land or ground charged with that rent, and may lock up or detain them in the place where they are found, for or in the nature of a distress, until they are replevied, and in default of their being replevied upon security to be given within fourteen days from the seizure thereof the crops be sold for the best price which can be obtained for them:

Provided that crops so distrained shall not be removed by the person distraining to the damage of the owner thereof out of the place where they are found and seized, but be kept there (as impounded) until they are replevied or sold in default of replevying them within the fourteen days.

(2) The provisions of subsections (2), (3) and (4) of section 4 shall apply to crops seized and secured under this section.

[Act No. 5 of 1996, s. 34.]

7. Penalty for pound breach

If any person in any unauthorized manner removes or causes to be removed goods, chattels, stock or crops distrained upon for rent from any place where they or any of them are lawfully stored or detained, he shall be guilty of an offence and liable to pay to the person or persons aggrieved by the removal three times the value of the goods, chattels, stock or crops so removed, in addition to any costs incurred by the person or persons so aggrieved in the prosecution of the offender, and the tenant or owner of the goods, chattels, stock or crops or any of them so removed shall be liable to the same penalties as are imposed upon the person removing or causing to be removed the goods, chattels, stock or crops, where they or any of them are afterwards found to have come into his use or possession.

8. Repealed by Act No. 5 of 1996, s. 34.

9. Landlord may distrain and sell goods fraudulently carried off premises

If the tenant or lessee or person in possession or occupation of any premises in respect of which any rent is reserved, due or made payable, fraudulently or clandestinely removes or carries away, or causes or permits to be removed or carried away, from the premises any goods or chattels liable to be seized for that rent to prevent the landlord or lessor from distraining them for arrears of rent so reserved, due or made payable, the landlord or lessor or any person or persons lawfully empowered by him for that purpose, may, within the space of thirty days following the removal or carrying away of those goods or chattels instruct a licensed auctioneer to take and seize the goods and chattels, wherever they are found, as a distress for the arrears of rent; and may sell or otherwise dispose of them as if the goods and chattels had actually been distrained by a licensed auctioneer:

Provided that no licensed auctioneer shall take or seize as a distress any such goods or chattels which are sold *bona fide*, and for a valuable consideration, before the seizure, to any person or persons not privy to the fraud, notwithstanding anything herein contained to the contrary.

[Act No. 5 of 1996, s. 34.]

10. Penalty for fraud, or assisting therein

If a tenant or lessee referred to in section 9 fraudulently removes and conveys away his goods or chattels, or if any person wilfully and knowingly aids or assists a tenant or lessee in fraudulent conveying away or carrying off of any part of his goods or chattels, or in concealing them, the tenant, lessee or other person shall be liable to pay to the landlord or lessor from whose estate the goods and chattels were fraudulently carried off double the value of the goods so carried off or concealed, and that liability shall be a civil debt recoverable summarily.

11. Landlord may break into house to seize goods fraudulently secured therein

Where any goods or chattels fraudulently or clandestinely conveyed or carried away by a tenant or a lessee or his servant or agent, or other person or persons aiding or assisting therein are kept in any house, barn, stable, out-house, yard, close or place locked up, fastened or otherwise secured so as to prevent the goods or chattels from being taken and seized as distress for arrears of rent, a licensed auctioneer acting on behalf of the landlord or lessor may, in the day time, break into such place and may take and seize the goods or chattels for the arrears of rent as he might have done by virtue of this Act if those goods or chattels had been put in an open field or place.

[Act No. 5 of 1996, s. 34.]

12. Power to distrain stock or crops on premises for arrears of rent

(1) A licensed auctioneer acting on behalf of the lessor or landlord, may take and seize, as a distress for arrears of rent, any cattle or stock of any lessee or tenant feeding or depasturing upon any part of the premises demised or held, or upon any unalienated Government land; and he may also take and seize all sorts of crops of whatsoever description which are growing on any part of the premises so demised or held, as a distress for arrears of rent, and cut, gather, make, cure, carry them and lay them up, when ripe, in the barns, or other proper place on the premises so demised or held; and, where there is no barn or proper place on the premises so demised or held, then in any other barn or proper place which the lessor or landlord or a licensed auctioneer hires or otherwise procures for that purpose, and as near as may be to the premises, and thereafter he may sell the cattle and crops in the manner provided by section 4:

Provided that, in the event of a valuation of the crops being made, the valuation shall be made when the crops are cut, gathered, cured and made, and not before.

(2) Notice of the place where the goods and chattels so distrained are lodged or deposited shall, within the space of seven days after the lodging or depositing thereof in that place, be given to the lessee or tenant, or left at the demised premises, and if, after any distress for arrears of rent so taken of any crops which are growing, and at any time before they are ripe and cut, cured or gathered, the tenant or lessee, his executors, administrators or assignees pay or cause to be paid to the lessor or landlord for whom the distress is taken, or to the person usually employed to receive the rents of the lessor or landlord, the whole rent which is then in arrear, together with the full costs and charges, of making the distress, and which have been occasioned thereby, then upon payment or lawful tender thereof actually made, whereby the object of the distress will be fully answered, the distress and every part thereof shall cease, and the crops so distrained shall be delivered up to the lessee or tenant, his executors, administrators or assigns, notwithstanding anything contained in this section to the contrary.

[Act No. 19 of 1964, Sch., Act No. 5 of 1996, s. 34.]

13. Distress may be secured and sold on premises

Any person or persons lawfully taking distress for any kind of rent may impound or otherwise secure the distress so made, of whatever nature or kind it may be, in such place or on such part of the premises chargeable with the rent as is most fit and convenient for the impounding and securing thereof, and may value, sell and dispose of the distress upon the premises in the same manner and under the same

directions and restraints as a person taking a distress for rent may now do off the premises under this Act; and any person or persons may come and go to and from that place or part of the premises where the distress for rent is impounded and secured in order to view, value and buy and also in order to carry off or remove the distress, on account of the purchaser thereof.

14. Tenant holding premises after time notified to pay double rent

If a tenant gives notice to his landlord of his intention to quit the premises held by him, at a time mentioned in the notice, and does not accordingly deliver up the possession thereof at the time specified in the notice, then the tenant or his executors or administrators shall from thenceforward pay to the landlord double the rent or sum which he should otherwise have paid, to be levied, sued for and recovered at the same times, and in the same manner, as the single rent or sum could be levied, sued for or recovered before the giving of the notice; and the double rent or sum shall continue to be paid while the tenant continues in possession, and the double rent may be distrained for in the same manner as is provided in this Act for distraint for rent.

15. Distress for rent not unlawful for any irregularity

Where distress is made for any kind of rent justly due, and any irregularity or unlawful act is afterwards done by the party distraining, or by his agents, the distress itself shall not be therefore deemed to be unlawful nor the party making it be deemed a trespasser *ab initio*, but the party aggrieved by the unlawful act or irregularity may recover full satisfaction for the special damage he has sustained thereby in a suit for that purpose:

Provided that—

- (i) when the plaintiff recovers in that suit, he shall be paid his full costs of suit and have the same remedies for them as in other cases of costs;
- (ii) no tenant or lessee shall recover in any suit for any such unlawful act or irregularity, if tender of amends has been made by the party distraining or his agent before the suit is brought.

[Act No. 5 of 1996, s. 34.]

16. Articles exempted from distress

- (1) The following goods and chattels shall be exempt from distress for rent—
 - (a) The property of the Government;
 - (b) goods and chattels in the possession of the law;
 - (c) things delivered to a person exercising a public trade, to be carried, wrought, worked up or managed in the way of his trade;
 - (d) things in actual use or occupation of the person distrained upon at the time of the distress;
 - (e) things of a perishable nature, or such as cannot be restored again in the same state and condition that they were before being taken or must necessarily be damaged by removal or severance;
 - (f) animals *ferae naturae*;
 - (g) wearing apparel and bedding of the persons whose goods and chattels are being distrained upon and the tools and implements of his trade to the total value of one hundred shillings;

- (h) things exempted from distress under the Electric Power Act (Cap. 314); and
- (i) any metre (together with any fittings thereto) supplied and let on hire by a corporation or company supplying water to the premises on which the distress is levied for the purpose of ascertaining the quantity of water consumed on or supplied to those premises.

(2) A subordinate court, on complaint that goods or chattels exempt under this section from distress for rent have been taken under that distress, may by summary order direct that the goods and chattels so taken, if not sold, be restored; or, if they have been sold, that such sum as the court may determine to be the value thereof shall be paid to the complainant by the person who levied the distress or directed it to be levied.

[Act No. 19 of 1964, Sch.]

17. Licensed auctioneer to give copy of charges to person distrained

A person who makes and levies any distress shall, if requested to do so by the person or persons on whose goods and chattels distress is levied, give a copy of his charges, and of all the costs and charges of any distress, signed by him, to that person, and, in default of doing so, shall be guilty of an offence and liable to a fine not exceeding one hundred shillings.

[Act No. 5 of 1996, s. 34.]

18. *Repealed by Act No. 17 of 2006, s. 21.*

19. Under-tenant or lodger may make declaration that goods distrained are his property

(1) If a superior landlord levies, or authorizes to be levied, a distress on any furniture, goods or chattels of—

- (a) an under-tenant liable to pay by equal instalments not less often than every quarter of a year a rent which would return in any whole year the full annual value of the premises or of such part thereof as is comprised in the under-tenancy; or
- (b) a lodger; or
- (c) any other person not being a tenant of the premises or of any part thereof, and not having any beneficial interest in any tenancy of the premises or of any part thereof,

for arrears of rent due to the superior landlord by his immediate tenant, the under-tenant, lodger or other person may serve the superior landlord, or the licensed auctioneer or other agent employed by him to levy distress, with a declaration in writing made by the under-tenant, lodger or other person, stating that the immediate tenant has no right of property or beneficial interest in the furniture, goods or chattels so distrained or threatened to be distrained upon, and that the furniture, goods or chattels are the property of or in the lawful possession of the under-tenant, lodger or other person, and are not goods or livestock to which this section is expressed not to apply; and also, in the case of an under-tenant or lodger, stating the amount of rent (if any) then due to his immediate landlord, and the times at which future instalments of rent will become due, and the amount thereof, and containing an undertaking to pay to the superior landlord any rent so due or to become due to his immediate landlord, until the arrears of rent in respect of which the distress was levied or authorized to be levied have been paid off.

(2) To the declaration there shall be annexed a correct inventory, subscribed by the under-tenant, lodger or other person, of the furniture, goods and chattels referred to in the declaration.

(3) If a tenant, lodger or other person makes or subscribes a declaration and inventory knowing either of them to be untrue in any material particular, he shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand shillings, or to both such imprisonment and fine.

(4) The provisions of this section shall not apply—

- (a) to goods belonging to the husband or wife of the tenant whose rent is in arrear, nor to goods comprised in any bill of sale, chattels mortgage, hire purchase agreement or settlement made by the tenant, nor to goods in the possession, order or disposition of the tenant by the consent and permission of the true owner under such circumstances that the tenant is the reputed owner thereof; nor to any livestock to which section 25 applies;
- (i) to goods of a partner of the immediate tenant;
- (ii) to goods (not being goods of a lodger) upon premises where any trade or business is carried on in which both the immediate tenant and the under-tenant have an interest;
- (iii) to goods (not being goods of a lodger) on premises used as offices or warehouses where the owner of the goods neglects for one calendar month after notice (which shall be given in the same manner as a notice to quit) to remove the goods and vacate the premises;
- (iv) to goods belonging to and in the offices of any company or corporation on premises the immediate tenant whereof is a director or officer, or in the employment, of that company or corporation:

Provided that a subordinate court, upon application by the superior landlord, or any under-tenant or other person, upon hearing the parties may determine whether any goods are in fact goods covered by this subsection.

[Act No. 5 of 1996, s. 34.]

20. Penalty on superior landlord disregarding lodger's declaration

If a superior landlord, or a licensed auctioneer or other agent employed by him, after being served with the declaration and inventory referred to in section 19, and in the case of an under-tenant or lodger after an undertaking has been given, and the amount of rent (if any) then due has been paid or tendered in accordance with that undertaking, levies or proceeds with a distress on the furniture, goods or chattels of the under-tenant, lodger or other person, the superior landlord, licensed auctioneer or other agent shall be deemed guilty of an illegal distress, and the under-tenant, lodger or other person may apply to a subordinate court of the first or second class for an order for the restoration to him of those goods, and the court shall inquire into the truth of the declaration and inventory, and shall make such order for the recovery of the goods or otherwise as to it may seem just, and the superior landlord shall also be liable to an action at law at the suit of the under-tenant, lodger or other person, in which action the truth of the declaration and inventory may likewise be inquired into.

[Act No. 5 of 1996, s. 34.]

21. Payments by lodger to superior landlord

For the purposes of the recovery of any sums payable by an under-tenant or lodger to a superior landlord under an undertaking referred to in section 19, or under notice served in accordance with section 23, the under-tenant or lodger shall be deemed to be the immediate tenant of the superior landlord, and the sums payable shall be deemed to be rent; but, where the under-tenant or lodger has, in pursuance of any such undertaking or notice, paid any sums to the superior landlord, he may deduct the amount thereof from any rent due or which may become due from him to his immediate landlord, and any person (other than the tenant for whose rent the distress is levied or authorized to be levied) from whose rent a deduction has been made in respect of such a payment may make the same deductions from any rent due or which may become due from him to his immediate landlord.

22. Exclusion of certain tenants

The provisions of sections 19, 20 and 21 shall not apply to an under-tenant where the under-tenancy has been created in breach of any covenant or agreement in writing between the landlord and his immediate tenant or where the under-tenancy has been created under a lease existing at the date of the passing of this Act contrary to the wish of the landlord in that behalf, expressed in writing and delivered at the premises within a reasonable time after the circumstances had come, or with due diligence would have come, to his knowledge.

23. To avoid distress

In cases where the rent of the immediate tenant of the superior landlord is in arrear, the superior landlord may serve upon any under-tenant or lodger a notice (by registered post addressed to the under-tenant or lodger upon the premises) stating the amount of the arrears of rent, and requiring all future payments of rent, whether already accrued due or not, by the under-tenant or lodger to be made direct to the superior landlord until the arrears shall have been duly paid, and the notice shall operate to transfer to the superior landlord the right to recover, receive and give a discharge for the rent.

24. No goods to be taken in execution unless party before removal pays landlord the rent due up to one year's arrears

No goods or chattels lying or being in or upon any land which is leased for life or lives, term of years, at will or otherwise shall be liable to be taken by virtue of any execution or any pretence whatsoever, unless the party at whose suit the execution is levied, before the removal of those goods from the premises, pays to the landlord of the premises or his licensed auctioneer (provided that a request for payment is made by the landlord or his licensed auctioneer before the removal of the goods) such sum or sums of money as are due for rent for the premises at the time of the taking the goods or chattels:

Provided that the arrears of rent shall not amount to more than one year's rent, and, where they exceed one year's rent, then the party at whose suit execution is levied, after paying the landlord or his licensed auctioneer one year's rent, may proceed to execute his judgment as he might have done before the passing of this Act, and the licensed auctioneer or other officer shall levy and pay to the plaintiff as well the money so paid for rent as the execution money.

[Act No. 5 of 1996, s. 34.]

25. Limitation of distress in respect of things to be distrained

(1) Where livestock belonging to another person has been taken in by the tenant of an agricultural holding to be fed at a fair price, the stock shall not be distrained for rent where there is other sufficient distress to be found, and, if so distrained by reason of other sufficient distress not being found, there shall not be recovered by that distress a sum exceeding the amount of the price agreed to be paid for the feeding, or any part thereof which remains unpaid.

(2) The owner of the stock may, at any time before it is sold, redeem the stock by paying to the distrainer a sum equal to the amount referred to in subsection (1), and any payment so made to the distrainer shall be in full discharge as against the tenant of any sum of the same amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding.

(3) Any portion of the stock, so long as it remains on the agricultural holding, shall continue liable to be distrained for the amount for which the whole of the stock is distrainable.

(4) Agricultural or other machinery which is the property of a person other than the tenant, and is on the agricultural holding under an agreement with the tenant for the hire or use thereof in the conduct of his business, and livestock which is the property of a person other than the tenant and is on the agricultural holding solely for breeding purposes, shall not be distrained for rent.

[Act No. 5 of 1996, s. 34.]

26. Remedy for wrongful distress

(1) Where any dispute arises—

- (a) in respect of any distress having been levied on an agricultural holding contrary to the provisions of this Act; or
- (b) as to the ownership of any livestock distrained or as to the price to be paid for the feeding of that stock; or
- (c) as to any other matter or thing relating to a distress on an agricultural holding,

the dispute may be heard and determined by a subordinate court, and that court may make an order for restoration of any livestock or things unlawfully distrained, or may declare the price agreed to be paid for feeding, or may make any other order which justice requires.

(2) Any person aggrieved by any decision of a subordinate court under this section may appeal to the High Court.

27. Rules

The Chief Justice may make rules—

- (a) for regulating the security (if any) to be required from licensed auctioneers;
- (b) for regulating the fees, charges and expenses in and incidental to distresses;
- (c) for establishing pounds and pound-masters for the purposes of this Act and for regulating the fees, charges and expenses in connection therewith;

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- (d) for carrying into effect the objects of this Act.
[Act No. 5 of 1996, s. 34.]
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