

Recently we were discussing Residential Landlord Distress Seizures with the RTDRS and were surprised to hear that they were not aware that Civil Enforcement Agencies in Alberta are in fact conducting Landlord Distress Seizures on Residential Tenants. After this conversation, I decided that this was a great topic for an upcoming bulletin.

Why should you or your client consider a Landlord Distress Seizure against a residential tenant to obtain payment for rental arrears?

In Alberta there are only two options available to landlord's looking to take action in an effort to obtain their rental arrears:

1. Conduct a Landlord Distress Seizure
2. Obtain a Judgment and seize under a Writ of Enforcement

Both of these options have the same eventual result – the tenants goods are seized and sold to repay the rental arrears. There are some important differences between these two actions that you should be aware of:

1. Locating the debtor and their goods
2. Costs incurred in obtaining a judgment
3. Priority over the proceeds from the seized goods
4. Fewer exemptions available to a debtor under a Landlord Distress seizure vs. a Writ of Enforcement Seizure

If you seize while your landlord tenant relationship is still in existence, you know where the debtor is and where their goods are. Once the tenant has vacated your premises you have to find their new location to serve them and to seize against them. This can be very difficult since a tenant in arrears seldomly tells their landlord where they are moving to.

The costs incurred in conducting a seizure are the same whether it is a Writ of Enforcement Seizure or a Landlord Distress seizure. Why incur additional costs to obtain a Judgment when you can seize the goods under a Landlord Distress without the extra court costs.

When a seizure and sale is conducted under a Landlord Distress – the landlord has priority **over** both General Security Agreements and Writs of Enforcement when the monies are being distributed.

When conducting a Landlord Distress Seizure the tenant has far fewer items that are exempt when compared to seizing under a Writ of Enforcement.

1. Vehicles – are not exempt under a Landlord Distress Seizure
2. Household furnishings - \$1,000 exemption vs. a \$4,000 exemption under Writ of Enforcement proceedings

Are there other advantages to conducting Landlord Distress Seizure?

The first and foremost advantage is SETTLEMENT. When a Consolidated bailiff attends a residence or a commercial property to conduct a Landlord Distress Seizure their first goal is to encourage the debtor to settle their rental arrears in full. They work to make the tenant understand that they are there to seize their goods to pay the rental arrears and that the only way the seizure will not proceed is if the tenant agrees to pay the full rental arrears and the costs incurred. It is very surprising to myself and to my staff how many tenants are in a position to pay their arrears when the bailiff arrives at their door.

How much did CCE Receive on behalf of Landlord Distress Seizures last year?

During 2012 Consolidated Civil Enforcement paid more than \$415,000 to their clients for rental arrears. Included in this amount was more than \$76,000 in settlement payments.

What can a landlord do to help make their Landlord Distress action more successful?

Landlord can take a few easy steps to help make their Landlord Distress action more successful:

1. **DON'T** allow your client to get too far in arrears before you start an action against them. You may feel that you are helping your tenant by allowing them to go into arrears. This decision can be based on their history as a good tenant or based on a change in their situation. Unfortunately if you do allow your tenants to go too far into arrears you are creating a situation that they cannot get themselves out of. The deeper the hole they dig – the harder it is to dig themselves out.
2. Start your action as soon as they are in arrears. If rent is due on the 1st – you can seize on the 2nd. You do not need to wait a week, month or more. As soon as they are in arrears you can seize. Remember the earlier you start your Landlord Distress action – the more likely the tenant will be in a position to make settlement arrangements. It is easier to come up with 1 month's rent than it is to come up with 6 months' rent.
3. Remember being a Landlord is a business – treat it as such. Keep your personal feelings out of any transactions with your tenant. Make sure they understand that your rental/lease agreement is a business transaction and that it will be treated as such. If they do not fulfill their side of the agreement you will take the necessary actions (Landlord Distress Seizure) against them to ensure they hold up their side of the transaction (payment of their rent)
4. Visit your tenants/property. We receive a large number of calls from Landlords who just discovered that their tenants moved without their knowledge and now they need our help to try to collect their arrears. Once a tenant has vacated the premises, your landlord/tenant relationship is no longer in existence and therefore your right to seizure becomes very limited.

You would not run a business and not visit its location frequently to ensure it is running smoothly. Visit your rental premises and keep an eye out for suspicious activity that could suggest they are attempting to leave without paying their rent.

5. Do your research on potential tenants. The more information you have on your tenant – before they move in – the easier it will be to locate them if they do decide to move out without notice. Think of these tenants as your business partners. You would not go into business without someone without doing your research. The same should be said for tenants.

Unfortunately, no matter how much research a landlord does, or how diligent a landlord is, they may still find themselves with a delinquent tenant. Consolidated can assist with these situations by conducting a Landlord Distress Seizure as noted above or by Obtaining and Enforcing an Order for Possession against the tenant.

If you are currently experiencing a situation with your tenant, and you have further questions on your options, please do not hesitate to give myself or our Residential Tenancies Specialist, Sabrina Wilson, a call for assistance. Sabrina can be reached directly at (403) 668-8813 or (780) 448-5833 ext. 8813 or by email at sabrinaw@ccebailiff.ca.

If I can assist you with any other civil enforcement questions/needs, please do not hesitate to drop me an email at patriciaw@ccebailiff.ca or contact me by phone at (403) 668-8804 or (780) 448-5833 ext. 8804.

I hope you have an opportunity to enjoy our beautiful spring weather,

Patricia Wilson

Director, Civil Enforcement