

When can you conduct a Landlord Distress Seizure?

In the Province of Alberta a Landlord can only conduct a Landlord Distress Seizure when their tenant is in arrears for RENT. There is no amount of time the tenant needs to be in arrears for – it can be one day, 10 days, 10 months or 2 years, it only matters that they are in arrears.

Section 8.2 of the Civil Enforcement Manual

“Common law allows a landlord the right to seize under distress for unpaid rent. If the rental agreement allows, you may seize for accelerated rent. Taxes, or other charges, can be added if the rental agreement states they are collectable as rent. Rent must be in arrears before a landlord can seize.”

One of the most common questions/issues relating to a Landlord Distress Seizure is: What exactly is deemed rent?

Most leases have clauses relating to items over and above the actual rent or lease amount, things like operating costs, utilities, parking, garbage, NSF charges and/or late payment charges. In the majority of leases and rental agreements these extra items are not actually identified as RENT, they are most commonly referred to as extra costs or extra charges. Because these are not identified as rent these amounts CANNOT be seized for, even though they are in fact part of the lease and the payment for the same remains outstanding – they are not specifically referred to specifically as RENT, therefore they cannot be seized for.

Sample Lease Clauses

The following are two examples of lease clauses that allow the landlord to seize for those other fees/costs contained within the lease. Please feel free to use one of these clauses in your future leases:

All monies owing by the Tenant to the Landlord under this Lease, are deemed to constitute and shall be collectable as rent by the Landlord, upon default by the Tenant of any provision of this Lease.

Payment of Rent, and/or utility charges, property taxes, common area operating costs, the costs of remedying any default or collecting any monies owing to the Landlord by the Tenant and any amount due to the Landlord as the result of a default of the Tenant under this Agreement, shall be deemed and collectable as Additional Rent.

Accelerated Rent

Accelerated rent can be seized for if the lease or rental agreement contains such a clause and a related default has occurred. Your civil enforcement agency should be provided a copy of the lease or the specific sections of the lease relating to the rental acceleration and the related default, prior to the commencement of the seizure action.

It is important to note that a Landlord Distress Seizure is a very viable solution for Landlords who find themselves with a tenant who is in arrears. The majority of Landlord Distress Seizures result in full settlement of rental arrears and civil enforcement related costs upon the bailiff's first attendance.

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

Patricia Wilson

Director, Civil Enforcement