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CHAPTER 165

DISTRESS FOR RENT (No. 2)

An Act for the more effectual securing the payment of rents and preventing frauds by tenants.

*11 Geo. 2, c. 19
extended by 2 of
1799
[A.D. 1737]
Short title.*

1. [This Act may be cited as the Distress for Rent (No. 2) Act.]

2. In case any tenant or tenants, lessee or lessees for life or lives, term of years, at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is or shall be reserved, due, or made payable, shall fraudulently or clandestinely convey away, or carry off or from such premises, his, her, or their goods or chattels, to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rent so reserved, due, or made payable, it shall and may be lawful to and for every landlord or lessor, landlords or lessors or any person or persons by him, her, or them for that purpose lawfully empowered, within the space of thirty days next ensuing such conveying away or carrying off such goods or chattels, as aforesaid, to take and seize such goods and chattels, wherever the same shall be found, as a distress for the said arrears of rent, and the same to sell or otherwise dispose of in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, lessors or landlords, in and upon such premises for such arrears of rent, any law, custom, or usage to the contrary in anywise notwithstanding.

*Landlords may
distrain and sell
goods
fraudulently
carried off the
premises:*

3. No landlord or lessor, or other person entitled to such arrears of rent, shall take or seize any such goods or chattels as a distress for the same, which shall be sold *bona fide*, and for a valuable consideration before such seizure made, to any person or persons not privy to such fraud, as aforesaid, anything herein contained to the contrary notwithstanding.

*unless sold to any
person not privy to
the fraud.*

Penalty on the said fraud, or assisting thereto.

4. If any such tenant or lessee shall fraudulently remove and convey away his or her goods or chattels, as aforesaid, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the same, all and every person and persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him, her, or them respectively carried off or concealed as aforesaid, to be recovered by action of debt.

Landlords may break open houses to seize goods fraudulently secured therein;

5. Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her, or their servant or servants, agent or agents, or other person or persons aiding or assisting therein, shall be put, placed, or kept in any house, barn, stable, outhouse, yard, close, or place, locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her, or their steward, bailiff, receiver, or other person or persons empowered to take and seize as a distress for rent such goods and chattels (first calling to his, her, or their assistance the constable, headborough, borsholder, or other peace officer of the hundred, borough, parish, district, or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein; and in case of a dwelling-house, oath being also first made before some Justice of the Peace of a reasonable ground to suspect that such goods or chattels are therein), in the day-time, to break open and enter into such house, barn, stable, outhouse, yard, close, and place, and to take and seize such goods and chattels for the said arrears of rent, as he, she, or they might have done by virtue of this or any former Act, if such goods and chattels had been put in any open field or place.

and may distrain stock or cattle on the premises, for arrears of rent.

6. It shall and may be lawful to and for every lessor or landlord, lessors or landlords, or his, her, or their steward, bailiff, receiver, or other person or persons empowered by him, her, or them, to take and seize as a

distress for arrears of rent any cattle or stock of their respective tenant or tenants feeding or depasturing upon any common, appendent or appurtenant, or any ways belonging to all or any part of the premises demised or holden; and also to take and seize all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever, which shall be growing on any part of the estates so demised or holden as a distress for arrears of rent, and the same to cut, gather, make, cure, carry, and lay up when ripe in the barns or other proper place on the premises so demised or holden; and in case there shall be no barn or proper place on the premises so demised or holden, then in any other barn or proper place which such lessor or landlord, lessors or landlords, shall hire or otherwise procure for that purpose, and as near as may be to the premises, and in convenient time to appraise, sell, or otherwise dispose of the same, towards satisfaction of the rent for which such distress shall have been taken, and of the charges of such distress, appraisement, and sale, in the same manner as other goods and chattels may be seized, distrained, and disposed of; and the appraisement thereof to be taken when cut, gathered, cured, and made, and not before.

7. Notice of the place where the goods and chattels so distrained shall be lodged or deposited, shall, within the space of one week after the lodging or depositing thereof in such place, be given to such lessee or tenant, or left at the last place of his or her abode; and that if after any distress for arrears of rent so taken, of corn, grass, hops, roots, fruits, pulse, or other product which shall be growing as aforesaid, and at any time before the same shall be ripe and cut, cured, or gathered, the tenant or lessee, his or her executors, administrators, or assigns, shall pay or cause to be paid to the lessor or landlord, lessors or landlords, for whom such distress shall be taken, or to the steward or other person usually employed to receive the rents of such lessor or lessors, landlord or landlords, the whole rent which shall be then in arrear, together with the full costs and charges of making such distress, and which shall have been occasioned thereby; that then, and upon such payment or lawful tender thereof actually made, whereby the end of such distress will be fully answered, the same and every part thereof shall cease, and the corn, grass, hops, roots, fruits,

Tenants to have notice of the place where the distress is lodged. Distress of corn, etc., to cease, if rent be paid before it be cut.

pulse, or other product so distrained shall be delivered up to the lessee or tenant, his or her executors, administrators, or assigns, anything hereinbefore contained to the contrary notwithstanding.

Distresses may be secured, and sold on the premises.

8. It shall and may be lawful to and for any person or persons, lawfully taking any distress for any kind of rent, to impound or otherwise secure the distress so made, of what nature of kind soever it may be, in such place or on such part of the premises chargeable with the rent, as shall be most fit and convenient for the impounding and securing such distress; and to appraise, sell, and dispose of the same upon the premises, in like manner and under the like directions and restraints to all intents and purposes, as any person taking a distress for rent may now do off the premises, by virtue of an Act made in the fourth year of His present Majesty, intituled “An Act for the more effectual preventing frauds committed by tenants, and for the more easy recovery of rents, and renewals of leases”; and that it shall and may be lawful to and for any person or persons whatsoever to come and go to and from such place or part of the said premises, where any distress for rent shall be impounded and secured as aforesaid, in order to view, appraise; and buy, and also in order to carry off or remove the same on account of the purchaser thereof; and that if any pound-breach or rescous shall be made of any goods and chattels or stock distrained for rent, and impounded or otherwise secured by virtue of this Act, the person or persons aggrieved thereby shall have the like remedy as in cases of pound-breach or rescous is given and provided by the said statute.

Attornments of estates by tenants void.

9. All and every attornment and attornments of any tenant or tenants of any messuages, lands, tenements, or hereditaments shall be absolutely null and void to all intents and purposes whatsoever; and the possession of their respective landlord or landlords, lessor or lessors shall not be deemed or construed to be anywise changed, altered, or affected by any such attornment or attornments:

Exceptions

Provided always that nothing herein contained shall extend to vacate or affect any attornment made pursuant to and in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee, after the mortgage is become forfeited.

10. Every tenant to whom any declaration in ejectment shall be delivered for any lands, tenements, or hereditaments shall forthwith give notice thereof to his or her landlord or landlords, or his, her, or their bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises so demised or holden in the possession of such tenant, to the person of whom he or she holds, to be recovered by action of debt.

Against tenants secreting ejectments.

11. It shall and may be lawful for the Court where such ejectment shall be brought, to suffer the landlord or landlords to make him, her, or themselves defendant or defendants, by joining with the tenant or tenants to whom such declaration in ejectment shall be delivered, in case he or they shall appear; but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord or landlords of any part of the lands, tenements, or hereditaments for which such ejectment was brought, shall desire to appear by himself or themselves, and consent to enter into the like rule that by the course of the Court the tenant in possession, in case he or she had appeared, ought to have done, then the Court where such ejectment shall be brought shall and may permit such landlord or landlords so to do, and order a stay of execution upon such judgment against the casual ejector until they shall make further order therein.

Landlord empowered to make himself defendant by joining with the tenant, etc.

12. It shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments held or occupied by the defendant or defendants in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action any parol demise, or any agreement (not being by deed) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefor be non-suited, but may make use thereof as an evidence of the quantum of the damages to be recovered.

Rents how to be recovered, where the demises are not by deed.

13. Where any tenant for life shall happen to die before or on the day on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the

Rents recoverable from under-tenants, where tenants for life die before the lease is expired.

death of such tenant for life, that the executors or administrators of such tenant for life shall and may, in an action on the case, recover of and from such under-tenant or under-tenants of such lands, tenements or hereditaments, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived, of the last year, or quarter of a year, or other time in which the said rent was growing due, as aforesaid, making all just allowances or a proportionable part thereof respectively.

Provision for landlords, where tenants desert the premises.

14. If any tenant holding any lands, tenements, or hereditaments at a rack-rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent shall desert the demised premises, and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, it shall and may be lawful to and for two or more Justices of the Peace of the county, riding, division or place (having no interest in the demised premises) at the request of the lessor or landlord, lessors or landlords, or his, her, or their bailiff or receiver, to go upon and view the same, and to affix, or cause to be affixed, on the most notorious part of the premises notice in writing what day (at the distance of fourteen days at least) they will return to take a second view thereof; and if upon such second view the tenant, or some person on his or her behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises, then the said Justices may put the landlord or landlords, lessor or lessors, into the possession of the said demised premises, and the lease thereof to such tenant, as to any demise therein contained only, shall from thenceforth become void.

Tenants holding premises after the time they notify for quitting them, to pay double rent from such time.

15. In case any tenant or tenants shall give notice of his, her, or their intention to quit the premises by him, her, or them holden at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained, that then the said tenant or tenants, his, her, or their executors or administrators, shall from thenceforward pay to the landlord or landlords, lessor or lessors, double the rent or sum which he, she, or they 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 before the giving such notice could be levied, sued for, or recovered, and such double rent or sum shall continue to be paid during all the time such tenant or tenants shall continue in possession as aforesaid.

16. Where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her, or their agents, the distress itself shall not be therefor deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers *ab initio*; but the party or parties aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby, and no more, in an action of trespass or on the case, at the election of the plaintiff or plaintiffs:

Distresses for rent not unlawful, etc., for any irregularity in the disposition of them;

Provided always, that where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs.

17. No tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining, his, her, or their agent or agents, before such action brought.

No tenants to recover by action on tender of amends.

18. In all actions of trespass or upon the case to be brought against any person or persons entitled to rents or services of any kind, his, her, or their bailiff or receiver, or other person or persons, relating to any entry by virtue of this Act, or otherwise, upon the premises chargeable with such rents or services, or to any distress or seizure, sale or disposal or any goods or chattels thereupon, it shall and may be lawful to and for the defendant or defendants in such actions to plead the general issue, and give the special matter in evidence, any law or usage to the contrary notwithstanding; and in case the plaintiff or plaintiffs in such action shall become nonsuit, discontinue his, her, or their action, or have judgment against him, her, or them, the defendant or defendants shall recover double costs of suit.

In actions against persons entitled to rents, the defendants may plead the general issue, etc.

Defendants in replevin to make conuzance that the plaintiff held the premises at a certain rent, etc.

19. It shall and may be lawful to and for all defendants in replevin to avow or make conuzance generally that the plaintiff in replevin, or other tenant of the lands and tenements whereon such distress was made, enjoyed the same under a grant or demise at such a certain rent, during the time wherein the rent distrained for was incurred, which rent was then and still remains due; or that the place where the distress was taken was parcel of such certain tenements held or such honour, lordship, or manor, for which tenements the rent, relief, heriot, or other service distrained for was at the time of such distress and still remains due, without further setting forth the grant, tenure, demise, or title of such landlord or landlords, lessor or lessors, owner or owners of such manor, any law or usage to the contrary notwithstanding; and if the plaintiff or plaintiffs in such action shall become nonsuit, discontinue his, her, or their action, or have judgment given against him, her, or them, the defendant or defendants in such replevin shall recover double costs of suit.