

1937

c 122 Costs of Distress Act

Ontario

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CHAPTER 122.

The Costs of Distress Act.

1.—(1) No person making distress for rent or for a penalty where the sum demanded and due, in respect of the rent or penalty, does not exceed \$80, and no person employed in making the distress, or doing any act in the course of the distress, or for carrying the same into effect, shall levy, take or receive any costs in respect of the distress other than such as are set forth in Schedule 1.

Tariff of costs where sum demanded does not exceed \$80.

(2) Where the sum demanded and due exceeds \$80 no charges shall be made for or in respect of costs or expenses, except such as are set forth in Schedule 2. R.S.O. 1927, c. 110, s. 1.

Where sum demanded exceeds \$80.

2. No costs shall be levied, taken or received for or in respect of exempted goods when they may not be lawfully sold, and when sold no greater sum in all than \$2 and actual and necessary payments for possession money shall be levied, taken or received for or in respect of costs and expenses of sale of such exempted goods. R.S.O. 1927, c. 110, s. 2.

Costs in respect of seizure of exempted goods.

3. No person making a seizure or sale of goods for default in payment of the principal money or interest secured by a chattel mortgage or for default in payment of any instalment of principal or interest, secured by any instrument under the terms of which the vendor retains the right to take possession of any chattel sold by him for default in payment of any instalment of principal or interest, shall levy, take or receive any greater or other fees or costs than those set forth in Schedule 3. R.S.O. 1927, c. 110, s. 3; 1929, c. 34, s. 2.

Tariff of costs under chattel mortgage.

4. No person shall make any charge for anything mentioned in such Schedules unless it has been actually done. R.S.O. 1927, c. 110, s. 4; 1929, c. 34, s. 3.

No charge for anything not done.

5. No person aggrieved by a seizure or sale of goods under a chattel mortgage or by a distress for rent or for default in payment of any instalment of principal or interest secured by any instrument under the terms of which the vendor retains the right to take possession of any chattel sold by him for default in payment of any instalment of principal

Right of action not affected.

or interest, shall be barred from any action or remedy which he would have had if this Act had not been passed. 1931, c. 28, s. 3.

Furnishing
statement of
demand and
costs.

6.—(1) A person who makes a distress shall give a statement in writing of the demand, and of all the costs and expenses of the distress, signed by him, to the person on whose goods the distress is made, and a person who makes a seizure under a chattel mortgage or for default in payment of any instalment of principal or interest secured by any instrument under the terms of which the vendor retains the right to take possession of any chattel sold by him for default in payment of any instalment of principal or interest, shall give to the person in possession of the goods seized a statement in writing signed by him of the demand and of the costs charged in respect of the seizure and subsequent proceedings. R.S.O. 1927, c. 110, s. 15 (1); 1931, c. 28, s. 4 (1).

Taxation of
costs of
distress.

(2) The person whose goods are distrained or seized, or the person authorizing the distress or seizure, or any other person interested, upon giving two days' notice in writing, may have the costs and expenses of the bailiff or other person making the distress or seizure taxed by the clerk of the division court within whose division the same was made.

Furnishing
bill of costs
to clerk for
taxation.

(3) The bailiff or person making the distress or seizure shall furnish the clerk with a statement of his costs and expenses for taxation at the time mentioned in the notice, or at such other time as the clerk may direct, and in default of his so doing he shall not be entitled to any costs or expenses.

Duty of
clerk on
taxation.

(4) The clerk upon the taxation shall, amongst other things, consider the reasonableness of any charges for removal and keeping possession of the goods, and for advertising, or any sums alleged to have been paid therefor, and may examine either party on oath, touching the same, and the person requiring the taxation shall pay the clerk a fee of twenty-five cents therefor. R.S.O. 1927, c. 110, s. 15 (2-4).

Appeal.

(5) An appeal may be made from such taxation to a judge of the county or district court. 1931, c. 28, s. 4 (2).

SCHEDULE 1.

*(Section 1 (1).)*COSTS ON DISTRESS WHERE SUM DEMANDED AND DUE DOES NOT
EXCEED \$80.

1. Levying distress.....	\$1.00
2. One man keeping possession, per diem.....	.75
3. Appraisement, whether by one appraiser or more— <i>two cents in the dollar on the value of the goods.</i>	
4. If any printed advertisement, not to exceed in all.....	1.00
5. Catalogues, sale and commission, and delivery of goods— <i>five cents in the dollar on the net proceeds of the sale.</i>	
6. Where the amount due is satisfied in whole or in part after seizure and before sale— <i>three cents in the dollar on the amount realized.</i>	

R.S.O. 1927, c. 110, Sched. 1.

SCHEDULE 2.

(Section 1 (2).)

COSTS ON DISTRESS, WHERE SUM DEMANDED AND DUE EXCEEDS \$80.

1. Levying distress.....	\$1.00
2. One man keeping possession, per diem.....	1.00
3. Appraisement whether by one appraiser or more, <i>two cents in the dollar on the value of the goods.</i>	
4. Advertisement when reasonably published in a newspaper, the actual outlay not exceeding.....	5.00
5. If any printed advertisement otherwise than in a newspaper, the actual outlay not exceeding.....	3.00
6. The actual expenses reasonably incurred in removing the goods distrained or part thereof when such removal is necessary.	
7. Catalogues, sale and commission and delivery of goods, <i>five cents in the dollar on the net proceeds of the sale, up to \$100, and where the proceeds of the sale exceed \$100 in addition thereto, two and one-half per centum on the excess over \$100.</i>	
8. Where the amount due is satisfied in whole or in part after seizure and before sale, <i>three cents in the dollar on the amount so realized.</i>	

R.S.O. 1927, c. 110, Sched. 2.

SCHEDULE 3.

(Section 3.)

COSTS ON SEIZURE UNDER CHATTEL MORTGAGES.

1. Making seizure where amount does not exceed \$80.....	\$1.00
2. Making seizure where amount exceeds \$80.....	1.50
3. One man keeping possession, per diem.....	1.00
4. Where the amount exceeds \$80, advertisement when reasonably published in a newspaper, the actual outlay not exceeding.....	5.00
5. If any printed advertisement otherwise than in a newspaper, where the amount does not exceed \$80, the actual outlay not exceeding.....	1.50
and where the amount exceeds \$80 the actual outlay not exceeding.....	3.00
6. Catalogues, sale and commission and delivery of goods, <i>five cents in the dollar on the net proceeds of the sale, up to \$100, and where the proceeds of sale exceed \$100, in addition thereto two and one-half per centum on the excess over \$100.</i>	
7. Where amount is paid before sale, <i>a commission of two cents in the dollar, and the amount actually disbursed in cartage not to exceed.....</i>	2.00

R.S.O. 1927, c. 110, Sched. 3.