



LAWS OF MALAYSIA

REPRINT

Act 255

DISTRESS ACT 1951

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DISTRESS ACT 1951

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LAWS OF MALAYSIA

Act 255

DISTRESS ACT 1951

An Act relating to distress for rent.

*[Peninsular Malaysia—1 September 1951, L.N. 503/1951;
Sabah and Sarawak—1 June 1981, P.U. (B) 303/1981]*

Short title

1. This Act may be cited as the Distress Act 1951.

Interpretation

2. In this Act, unless the context otherwise requires—

“bailiff” includes a Sheriff in the High Court;

“Judge” means a Judge of the High Court in all cases where proceedings are taken in the High Court, a Sessions Court Judge in all cases where proceedings are taken in a Sessions Court, and a First Class Magistrate in all cases where proceedings are taken in a Magistrates’ Court;

“landlord” means the lessor or sub-lessor of any premises, under any lease, sub-lease, or agreement of tenancy, and includes any person claiming to be entitled in any capacity to receive rents due under any such lease or agreement;

“Peninsular Malaysia” has the meaning assigned thereto in section 3 of the Interpretation Acts 1948 and 1967 [*Act 388*], and includes the *Federal Territory.

“prescribed form” means the form prescribed by any rules of practice and procedure in force in the court where the proceedings are taken;

*NOTE—“Federal Territory” refers to the Federal Territory of Kuala Lumpur and Labuan—see P.U. (A) 355/1985.

“Registrar” means the Registrar or an Assistant Registrar of the High Court in all cases where proceedings are taken in the High Court, the Registrar of the Subordinate Court in all cases where proceedings are taken in a Sessions Court, and a Magistrate in all cases where proceedings are taken in a Magistrates’ Court;

“tenant” means any person from whom a landlord claims rent to be due under any lease, sub-lease or agreement;

Not to apply to Government rents

3. This Act shall not apply to rents due to the Government of Malaysia or the Government of any State.

No distress otherwise than under this Act

4. No landlord shall distrain for rent except in the manner provided by this Act.

Application for warrant of distress

5. (1) A landlord or his agent duly authorized in writing may apply *ex parte* to a Judge or Registrar for an order for the issue of a warrant, to be called a warrant of distress, for the recovery of rent due or payable to the landlord by a tenant of any premises for a period not exceeding twelve completed months of the tenancy immediately preceding the date of the application and the Judge or Registrar may make such order accordingly.

(2) Such authority may be in the prescribed form, if any, with such variations as circumstances require, and shall be produced at the time of the application. A power of attorney may be accepted as such authority.

(3) Arrears of rent may be distrained for after the determination of the tenancy, provided that either the tenant is still in occupation of the premises in respect of which the rent is claimed to be due, or any goods of the tenant are still on the premises.

Provision for distress by one of joint owners

6. Where a right to a distraint accrues to persons jointly or together interested in any premises, such right may be exercised by any one of such persons in his own name and the names of those jointly or together interested with him, and the levy shall be a complete discharge to the defendant for the amount recovered; but the Judge or Registrar may in any case require the party so applying to produce a written authority to distrain, signed by the other persons jointly or together interested with him.

Warrant of distress

7. A warrant of distress shall be addressed to the bailiff, directing him forthwith to distrain any movable property found by him on the premises named therein, or such part of the property as may in his judgment be sufficient, when sold, to realize the amount of rent therein stated to be due to the applicant, together with such sum as may be due to the applicant by way of costs and to the bailiff for his fees and expenses:

Provided that before a warrant of distress is issued the court may require the applicant to pay into court in cash such sum as the court considers necessary to cover the fees and expenses of the bailiff.

Property exempted from seizure

8. Property seizable under a warrant of distress shall not include—
- (a) things in actual use in the hands of a person at the time of the seizure;
 - (b) tools and implements not in use, where there is other movable property in or upon the house or premises sufficient to cover the amount and costs;
 - (c) the tenant's necessary wearing apparel and necessary bedding for himself and his family;
 - (d) goods in the possession of the tenant for the purpose of being carried, wrought, worked up, or otherwise dealt with in the course of his ordinary trade or business;
 - (e) goods belonging to guests at an inn;

- (f) goods in the custody of the law;
- (g) property of any Government, property vested in any local authority for local authority purposes, and property vested for public purposes in any person or body of persons, whether incorporated or not, which the Minister may by notification in the *Gazette* declare to be exempted from distress proceedings.

Inventory and estimate of property seized, and notice to tenant of the seizure

9. (1) Immediately after seizing any property under a warrant of distress, the bailiff shall make an inventory and an approximate valuation thereof, and shall give to the tenant notice of the seizure with a copy of the inventory and valuation attached, informing him of the amount due under the warrant and that the property seized will be sold at a time and place to be named in the notice (not being less than six days from the date thereof), unless he pays the amount due within five days from the date thereof, or obtains an order restraining such sale.

(2) If the tenant is not on the premises, such notice may be given to any person appearing to be in occupation thereof, or, if there is no such person, by posting it in some conspicuous place thereon.

Application by under-tenant, lodger, etc., for discharge, suspension, or release

10. (1) Where any movable property of—

- (a) any under-tenant;
- (b) any lodger; or
- (c) any other person whatsoever 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,

has been seized under a warrant of distress issued to recover arrears of rent due to a superior landlord by his immediate tenant,

such under-tenant, lodger, or other person aforesaid may apply to a Judge to discharge or suspend the warrant, or to release a distrained article:

Provided that—

- (i) no order shall be made unless such under-tenant, lodger or other person aforesaid satisfies the court that the immediate tenant has no right of property or beneficial interest in such furniture, goods or chattels and that such furniture, goods or chattels are the property or in the lawful possession of such under-tenant, lodger or other person aforesaid; and also in the case of an under-tenant or lodger unless such under-tenant or lodger pays to the landlord or into court an amount equal to the arrears of rent in respect of which distress has been levied and also undertakes to pay to the landlord future rent, if any, due from him to the tenant; and
- (ii) in no case shall such under-tenant paying at least three-quarters of the full monthly letting value of the premises comprised in the under-tenancy or lodger be liable under this section to pay to the landlord or into court a sum greater than the rent which he owes to his immediate landlord.

(2) For the purposes of this section and of sections 11 and 14 a lodger's rent shall include such sum as he pays or owes to his immediate landlord for lodging, board, attendance and use of furniture.

Payments by under-tenant or lodger to superior landlord to be deemed rent

11. For the purposes of the recovery of any sums payable by an under-tenant or lodger to a superior landlord under the undertaking specified in section 10, or under a notice served in accordance with section 14, 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 as aforesaid, 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 like deductions from any rent due or which may become due from him to his immediate landlord.

Exclusion of certain goods**12.** Section 10 shall not apply—

- (a) to goods belonging to the husband or wife of the tenant whose rent is in arrear, or to goods comprised in any bill of sale, hire purchase agreement, or settlement made by such tenant, or to goods in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof;
- (b) to goods of a partner of the immediate tenant;
- (c) 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;
- (d) 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 like manner as a notice to quit) to remove the goods and vacate the premises; and
- (e) 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 such company or corporation.

Exclusion of certain under-tenants

13. Section 10 shall not apply to any 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.

To avoid distress

14. In cases where the rent of the immediate tenant of such superior landlord is in arrear, it shall be lawful for the superior landlord to serve upon any under-tenant or lodger a notice (by registered post addressed to such under-tenant or lodger upon the premises) stating the amount of such arrears of rent, and requiring all future payments of rent, whether the same has already accrued

due or not, by such under-tenant or lodger to be made direct to the superior landlord giving such notice until such arrears shall have been duly paid, and such notice shall operate to transfer to the superior landlord the right to recover, receive, and give a discharge for such rent.

Interpretation of sections 10 to 14

15. In and for the purposes of sections 10, 11, 12, 13 and 14 the words “superior landlord” shall be deemed to include a landlord in cases where the goods seized are not those of an under-tenant or lodger; and the words “tenant” and “under-tenant” do not include a lodger.

Application by tenant

16. The tenant may apply to a Judge to discharge or suspend the execution of the warrant, or to release any part of the property seized.

Powers of court

17. The Judge may, on any such application, deal with the matter summarily and dismiss the application or discharge the warrant, or order the release unconditionally or on such terms as he thinks fit of any property seized, or may direct an issue to be tried, and, pending the determination of such issue, suspend the execution of the warrant, or may order the property to be sold and the proceeds of sale to be lodged in court, or may make such other order on such terms as he considers fair as between the parties pending the final determination of the matter.

Costs

18. Any costs incurred in any such proceedings shall be in the discretion of the Judge and may in proper cases be added to the amount leviable under the warrant.

Sale of property seized

19. Subject to this Act the property seized under a warrant of distress shall be sold at the time and place named in the notice

required by section 9; and the net proceeds of sale shall be applied first in payment of the bailiff's fees and expenses and then in satisfaction of the rent and costs due by the tenant to the landlord. The balance, if any, remaining over after such payments shall be returned to the tenant or other person entitled thereto.

Procedure where property seizable under a distress is already under seizure by way of execution

20. (1) Where any property liable to be seized under a warrant of distress has already been seized in execution by order of any court, it shall not be seized under the warrant of distress so long as it remains under such seizure; but the officer in possession in execution shall be notified of the warrant of distress, and shall thereupon, subject to any prior claim by or on behalf of the Government of Malaysia or the Government of any State, be liable to pay out of the proceeds of sale of the goods seized by him, after payment thereout of the expenses of the execution and sale, but in priority to any other payment, the amount appearing to be due to the landlord:

Provided that such payment shall not in any case exceed the amount due for the last six months' rent.

(2) The officer in possession under the warrant of execution shall, on being notified as provided in subsection (1), give notice in writing to the execution creditor and the execution debtor of the warrant of distress. Notice to the execution debtor may be given by affixing it to the premises on which the goods were seized.

(3) The execution creditor or the execution debtor may apply to the court to discharge or suspend the warrant of distress, and the court may then exercise all or any of such powers as are provided in sections 17 and 18 in the case of an application under section 16.

Removal of goods to avoid distress

21. (1) If any person removes or causes or permits to be removed from any premises property liable to be seized under a warrant of distress, with the intention of hindering or preventing the distraint thereof, a Judge may, on application by the landlord, authorize the

bailiff, within thirty days of such removal, to follow and seize such property in execution of the warrant, wherever it may be found, and to deal therewith as if it had been seized on the premises.

(2) The bailiff may, without an order to that effect, follow and seize any such property discovered by him while in process of removal.

Where goods removed sold to *bona fide* purchaser

22. (1) If any property so removed has been sold for fair value, whether before or after removal, to a *bona fide* purchaser not knowing or having the means of knowing that it was liable to distress for non-payment of rent or was removed in order to hinder or prevent the distraint thereof, it shall not be seized, or, if seized, shall be restored to the purchaser.

(2) Any person claiming to be a *bona fide* purchaser for fair value of any property seized under section 21 may within four days of such seizure, or such further time as a Judge may allow, apply for an order that the property so seized may be restored to him, and a Judge may make such order accordingly.

Deserted premises

23. (1) Where—

- (a) any premises are let at a rack rent or a rent not less than three-fourths of its annual value;
- (b) rent is in arrears for not less than two months of the tenancy; and
- (c) the tenant has abandoned possession of the premises and left thereon no sufficient property out of which arrears of rent may be recovered by distress,

a Judge may, on the application of the landlord, authorize the bailiff to enter on the premises, using such force as may be necessary to effect an entry into any building thereon, and take possession thereof; and the bailiff shall in such case enter on the premises and affix in a conspicuous place thereon a notice that possession thereof will be delivered to the landlord, unless within ten days a Judge, on the application of any person interested, otherwise orders.

(2) If no such application is made within ten days, the bailiff shall put the landlord in possession of the premises, and the lease or agreement of tenancy shall therefrom be deemed to be determined.

(3) If any such application is made, the Judge may make such order for possession of the premises, and on such terms as to payment of rent due or otherwise, as he deems fair as between the parties, and for that purpose may direct that any preliminary question be tried as an issue.

(4) An order made under this section may be discharged for sufficient reason and on such terms as the Judge deems fair, on application by any person interested, notwithstanding that the period thereby prescribed has expired.

(5) An order made under this section shall be deemed to be a warrant of distress for the purposes of section 72 and proviso (b) to subsection 93(1) of the Subordinate Courts Act 1948 [*Act 92*].

Penalty

24. Any person who sells or abets the sale of any property seized under a warrant of distress in contravention of the provisions of this Act or of any rules of court relating to the sale of property seized under a warrant of distress, shall, on conviction, be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding three months.

Notice to quit

25. Where rent due by any tenant, otherwise than for a term certain, of any house or premises to the landlord thereof has remained unpaid for not less than fourteen days after payment thereof became due and still remains unpaid, then, in the absence of an express agreement between the parties to the contrary, any notice to quit given by the landlord to the tenant shall, if the length thereof be otherwise sufficient, expire on such day as may by the terms of the notice be appointed for the expiration thereof, whether such day coincide with the termination of some period of the tenancy or not.

Repeal

26. (1) The written laws set out in the Schedule hereto are hereby repealed to the extent specified in the third column of such Schedule.

(2) Nothing in this Act shall affect any proceedings pending at its commencement, unless the court shall otherwise order.

(3) Notwithstanding such repeal, and subject to this Act, the practice and procedure relating to distress proceedings in the High Court shall be deemed to continue in force until other provision is made therefor by rules of court.

SCHEDULE

[Section 26]

<i>Written law</i>	<i>Short title</i>	<i>Extent of repeal</i>
S.S. Cap. 49	Distress Ordinance	The whole
F.M.S. Cap. 7	Civil Procedure Code	Part VI
Sabah Cap. 37	Distress for Rent Ordinance	The whole

LAWS OF MALAYSIA

Act 255

DISTRESS ACT 1951

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 160	Malaysian Currency (Ringgit) Act 1975	29-08-1975
P.U. (A) 359/1980	Distress Ordinance (Extension) Order 1980	01-06-1981
P.U. (A) 355/1985	Federal Territory of Labuan (Modification of Distress Act) Order 1985	16-04-1984
Act A671	Subordinate Courts (Amendment) Act 1987	22-05-1987

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Section	Amending authority	In force from
2	Act A671	22-05-1987
24	Act 160	29-08-1975



