

LAWS OF FIJI
CHAPTER 36
DISTRESS FOR RENT

*Ordinance No. 4 of 1961,
Order 4th November, 1970*

AN ACT RELATING TO DISTRESS FOR RENT

[1st September, 1961]

Short title

1. This Act may be cited as the Distress for Rent Act.

Interpretation

2. In this Act-

"landlord" means the lessor or sub-lessor of any premises, under any 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.

Distress to be levied by certified bailiff

3.-(1) From and after the commencement of this Act no person, other than a landlord in person, shall act as a bailiff to levy any distress for rent unless he shall be authorised to act as a bailiff by a certificate in writing to that effect, and such certificate may be general or apply to a particular distress or distresses, and may be granted at any time in such manner as may be prescribed by rules made under the provisions of this Act.

(2) Any resident magistrate may exercise the power of granting certificates in cases in which such magistrates may be authorised to do so by rules made under the provisions of this Act.

(3) If any person not holding a certificate under this section shall levy a distress contrary to the provisions of this section or if any bailiff holding such a certificate shall levy a distress otherwise than in accordance with this Act and any rules made thereunder, the person so levying shall be guilty of an offence, and shall be liable, on conviction, to a penalty not exceeding forty dollars or to imprisonment for any term not exceeding three months, in addition to any other liability which he may have incurred by his proceedings.

(4) Any person who shall authorise any person not holding a certificate under this section to levy a distress contrary to the provisions of this Act shall be guilty of an offence, and shall be liable,

on conviction, to a fine not exceeding forty dollars in addition to any other liability which he may have incurred by his proceedings.

(5) A certificate granted to a bailiff under this section may at any time for good reason be cancelled or declared void by a resident magistrate.

Articles, etc., exempted from distress

4.-(1) The following goods and chattels shall be exempt from distress for rent, namely-

(a) the property of the Crown;

(b) goods or chattels in the possession of the law;

(c) things delivered to a person exercising a public trade, to be carried, wrought, worked up or managed in the way of his trade;

(d) things in actual use, in the hands of a person at the time of seizure;

(e) things of a perishable nature, or such as cannot be restored again in the same state and condition that they were before being taken or must necessarily be damaged by removal or severance;

(f) wearing apparel and bedding of the person whose goods and chattels are being distrained upon and the tools and implements of his trade to the total value of forty dollars;

(g) things exempted from distress under the provisions of any Act relating to the supply of water or electricity.

(2) A resident magistrate, on complaint that goods or chattels exempt under this section from distress for rent have been taken under such distress, may, by summary order, direct that the goods and chattels so taken, if not sold, be restored; or, if they have been sold, that such sum as the magistrate may determine to be the value thereof shall be paid to the complainant by the person who levied the distress or directed it to be levied.

Time of making distress

5. No distress shall be levied between sunset and sunrise or on any Sunday, or on Good Friday or Christmas Day.

*No appraisalment required except on written request
of tenant or owner of goods*

6. Appraisalment of goods and chattels distrained upon shall not be required unless the tenant or owner of the goods and chattels, prior to the sale thereof, by writing requires such appraisalment

and deposits security sufficient for the payment of the expenses of appraisal. The costs and expenses of appraisal when required by the tenant or owner shall be borne and paid by him.

Rules

7. The Chief Justice may make rules-

- (a) for regulating conditions for the appointment of, the duration of and the fees for, certificates granted, to bailiff;
- (b) for regulating the security (if any) to be required from bailiffs and the fees (if any) payable by them;
- (c) for regulating seizure and sale;
- (d) for regulating the forms, fees, charges and expenses of and incidental to distress;
- (e) generally for the better carrying out of the purposes and provisions of this Act:

Provided that unless and until the Chief Justice shall make rules or amend, revoke or add to the rules contained in the Schedule, those rules shall be deemed to be the rules made under this section.

Exclusion of Crown rents

8. Nothing in this Act shall be held to apply to rents due to the Crown.

SCHEDULE

(Section 7)

DISTRESS FOR RENT RULES

1. A Form referred to by number in these Rules means the Form so numbered in Appendix B and may be used with such variations as the circumstances may require.

Certificates

2. Certificates may be general or special. A special certificate shall be in Form 2 and shall specify the particular distress or distresses to which it applies; a general certificate shall be in Form I and shall state at the foot of the certificate the date on which it will terminate.

3. A general certificate shall authorise the bailiff named to levy distress at any place in Fiji.

4. A general or special certificate may, on payment of the fee specified in Appendix C, be granted to any applicant who satisfies the magistrate granting the certificate that the applicant is

a fit and proper person to hold it and who gives an undertaking that he will not levy distress at any premises in respect of which he is regularly employed in person to collect rent.

5. An applicant for a general certificate shall satisfy the magistrate that he is resident or has his principal place of business in the area in which the magistrate to whom application is made, is exercising jurisdiction and shall state whether he has ever been refused a certificate, or had a former certificate declared void or cancelled.

Security

6. A magistrate to whom application is made for a certificate may, if he thinks fit, require the applicant to give security for the due performance of his duties.

7. (i) The security shall be given to the magistrate and may be by deposit, bond or guarantee, as the magistrate thinks fit.

(ii) The amount of the security shall be \$40 in the case of a general certificate and \$10 in the case of a special certificate.

8. A general certificate shall (unless previously cancelled or declared void) have effect until the 31st day of December next after the granting thereof and may be from time to time renewed by the magistrate of the area specified in the certificate for a further period of 12 months.

9. An applicant for the renewal of a certificate shall satisfy the magistrate that the security (if any) required under these Rules is subsisting, and shall give or renew the undertaking required by rule 4.

10. A renewed certificate shall be in Form 3 and the date on which the renewed certificate shall terminate shall be added at the foot thereof.

Cancellation of Certificates

11. On any application to cancel or declare void a certificate the magistrate may, whether he cancels the certificate or not, order that the security (if any) shall be forfeited either wholly or in part, and that the amount directed to be forfeited shall be paid to the party aggrieved.

12. Where the magistrate orders that the security shall be forfeited, either wholly or in part, he may direct that the bailiff shall give fresh security as a condition of retaining his certificate.

13. Where a certificate is cancelled or declared void the order of the magistrate shall be in Form 4, and, subject to the provisions of rule 11, the security (if any) shall also be cancelled, and the deposit (if any) returned to the bailiff.

14. Where a certificate is cancelled or declared void or expires, it shall nevertheless continue to have effect for the purpose of any distress where the bailiff has entered into possession before the date on which his certificate is cancelled or declared void or expires.

List of Certificates

15. There shall be made and signed by the clerk of the court of each resident magistrate in the month of February in every year and exhibited throughout the year in the office of the court a list of bailiffs holding certificates signed by the magistrate of that court, and if any such certificate is cancelled or declared void the clerk shall amend the list and publish the cancellation in the Gazette as soon as possible.

Fees, Charges and Expenses

16. No person shall be entitled to any fees, charges or expenses for levying a distress other than those authorised by the Tables in Appendix A.

17. In case of any difference as to fees, charges or expenses between the parties, or any of them, the fees, charges and expenses shall on application by a party be taxed by the magistrate, who may make such order as he thinks fit as to the costs of the taxation.

Production of Certificate

18. Every bailiff levying distress shall on the request of the tenant produce his certificate to the tenant.

19. A bailiff levying distress shall deliver to the tenant or leave on the premises where the distress is levied a memorandum in Form 5 setting out the amounts for which the distress is levied and the fees, charges and expenses as authorised by these Rules.

APPENDIX A

TABLE OF FEES, CHARGES AND EXPENSES

	Where sum demanded and due		
	Does not Exceed \$20	Does not Exceed \$40	Exceeds \$40
1. For levying distress	\$1	\$1.25	4% on the first \$100, 2½% on the next \$300, and 1% on any additional sum.

<p>2.(i) Physical possession per day (a) This fee is payable in respect of the day on which the distress is levied but a fee for physical possession must not be charged where a walking-possession agreement is signed at the time when the distress is levied. (b) Man in possession to provide his own board. (ii) For walking-possession under an agreement in Form 6 signed by the tenant – for each day on which the goods are inspected </p>	<p>\$1.59 50c</p>	<p>\$1.50 50c</p>	<p>\$1.75 50c</p>
<p>3. For appraisalment, where the tenant or owner of the goods by writing requires the appraisalment to be made; on the value as appraised but with a minimum fee of \$1; to be paid and borne by the tenant or owner requiring the appraisalment. In addition reasonable travelling expenses of the valuer, such expenses to be subject to taxation under rule 17 </p>	<p>5c in \$2</p>	<p>5c in \$2</p>	<p>5c in \$2</p>
<p>4. For removal, the reasonable costs and charges attending the removal; the costs and charges are to be borne and paid by the tenant or owner at whose request in writing the goods distrained have been removed, and are to be subject to taxation under rule 17.</p>			
<p>5. For all expenses of advertisements (if any) the sum actually and necessarily paid not exceeding </p>	<p>\$2</p>	<p>\$2</p>	<p>\$4</p>
<p>6. For commission on sale </p>	<p>15c in \$2</p>	<p>15c in \$2</p>	<p>15c in \$2 for the first \$200 and 8c in \$2 thereafter.</p>
<p>7. Reasonable fees, charges and expenses where distress is withdrawn, and no sale takes place, and for negotiations between land lord and tenant respecting the distress, subject to taxation under rule 17.</p>			

**APPENDIX B
FORMS**

FORM 1

DISTRESS FOR RENT ACT
(Chapter 36)

GENERAL CERTIFICATE TO ACT AS A BAILIFF

In the Magistrates' Court at.....
Pursuant to section 3 (1) of the Distress for Rent Act and the Rules made under the said Act,
I hereby authoriseof.....
to act as a bailiff to levy distresses for rent throughout Fiji until the 31st day of December, 19 .

Dated this day of , 19 .

Resident Magistrate.

FORM 2

DISTRESS FOR RENT ACT
(Chapter 36)

SPECIAL CERTIFICATE TO ACT AS BAILIFF

In the Magistrates' Court at.....

Pursuant to section 3 (1) of the Distress for Rent Act and the Rules made under the said Act,
I hereby authoriseof.....
to act as a bailiff to levy distress on the premises of
of..... for rent alleged to be due to.....of.....

Dated this day of , 19 .

Resident Magistrate.

FORM 3

DISTRESS FOR RENT ACT
(Chapter 36)

RENEWED GENERAL CERTIFICATE TO ACT AS BAILIFF

In the Magistrates' Court at

Pursuant to section 3(1) of the Distress for Rent Act and the Rules made under the said Act,

I, by this renewed certificate, authorise

of to act as a bailiff to levy distresses for rent throughout Fiji until the 31st day of December, 19 .

Dated this day of , 19 .

Resident Magistrate

FORM 4

**DISTRESS FOR RENT ACT
(Chapter 36)**

CANCELLATION OF CERTIFICATE

In the Magistrates' Court at.....
In pursuance of section 3 (5) of the Distress for Rent Act and the Rules made under the said Act, I hereby cancel and declare void the general/special certificate granted to of..... to act as a bailiff to levy distresses for rent, save and except as to any distress where the said.has entered into possession before the date hereof.

Dated this day of , 19 .

Resident Magistrate.

FORM 5

**DISTRESS FOR RENT ACT
(Chapter 36)**

NOTICE OF DISTRESS

To:
and all others whom it may concern.

TAKE NOTICE that by virtue of an authority given to me by ⁽¹⁾

I have this day seized distrained and impounded on the premises the goods specified in the following inventory for the sum of \$ being rent owing to the said ⁽²⁾
up to the day of 19 for ⁽³⁾

AND FURTHER TAKE NOTICE that unless the said rent be paid, together with the expenses of this distress, within 5 days from the date hereof they will be sold according to law.

Signed
Bailiff.

NOTE.-A man who may be left in possession of the goods distrained is not authorised to receive the amount for which the distress is made.

(1) State name and full address of person actually authorising the distress and if the person is an agent the name of the landlord for whom he acts.

(2) State name of landlord.

(3) State name, description and full address of premises

FORM 5 (back)
SCALE OF FEES

	Where sum demanded and due		
	Does not Exceed \$20	Does not Exceed \$40	Exceeds \$40
1. For levying distress	\$1	\$1.25	4% on the first \$100, 2½% on the next \$300, and 1% on any additional sum.
2.(i) Physical possession per day (c) This fee is payable in respect of the day on which the distress is levied but a fee for physical possession must not be charged where a walking-possession agreement is signed at the time when the distress is levied. (d) Man in possession to provide his own board.	\$1.59	\$1.50	\$1.75
(ii) For walking-possession under an agreement in Form 6 signed by the tenant – for each day on which the goods are inspected	50c	50c	50c
3. For appraisalment, where the tenant or owner of the goods by writing requires the appraisalment to be made; on the value as appraised but with a minimum fee of \$1; to be paid and borne by the tenant or owner requiring the appraisalment. In addition reasonable travelling expenses of the valuer, such expenses to be subject to taxation under rule 17	5c in \$2	5c in \$2	5c in \$2

4. For removal, the reasonable costs and charges attending the removal; the costs and charges are to be borne and paid by the tenant or owner at whose request in writing the goods distrained have been removed, and are to be subject to taxation under rule 17.			
5. For all expenses of advertisements (if any) the sum actually and necessarily paid not exceeding	\$2	\$2	\$4
6. For commission on sale	15c in \$2	15c in \$2	15c in \$2 for the first \$200 and 8c in \$2 thereafter.
8. Reasonable fees, charges and expenses where distress is withdrawn, and no sale takes place, and for negotiations between land lord and tenant respecting the distress, subject to taxation under rule 17.			

FORM 6

**DISTRESS FOR RENT ACT
(Chapter 36)**

FORM OF WALKING-POSSESSION AGREEMENT

For my convenience and in consideration of your not leaving your man in close possession of the goods distrained upon by you at in the position which they now occupy, I hereby agree:-

1. To pay the lawful fees for the man in walking-possession.
2. That you and the said man may re-enter the premises at any time whilst the distraint is in force.
3. That I will not remove or allow to be removed from the premises any goods so distrained.
4. That the goods so distrained are impounded on the premises.
5. That I will inform any person who may visit my premises for the purpose of levying any other distress or execution that you are already in possession of the goods so distrained, and that I will inform you of any such visit.

Dated this day of , 19 .

(Signature.)

APPENDIX C

FEEES FOR BAILIFFS' CERTIFICATES

General Certificate	\$4.00
Special Certificate	\$1.00

Controller by Ministry of the Attorney-General
