

WARM WELCOME TO OUR NEW VICE CHANCELLOR/PRESIDENT

With great pleasure the Legal Office takes note of the appointment of a distinguished educationist, YBhg Emeritus Professor Dato' Dr Hassan Said who has been appointed the new Vice Chancellor of UiTM, effective 1 February 2016. He takes over from YBhg Tan Sri Dato' Sri Prof Ir Dr Sahol Hamid Abu Bakar whose term as Vice Chancellor of UiTM ended on 31 December 2015.

Prior to his appointment, Emeritus Professor Dato' Dr Hassan Said was the Vice Chancellor and President of Taylor's University, as well as the former Director-General of the Department of Higher Education, Ministry of Higher Education (January 2005 - April 2008). He holds a Bachelor's Degree in Mathematics from the University of Manchester, UK (1979), Master of Science from Brunel University, UK (1981) and a PhD from Brunel University (1984). He specialises in Computer-Aided Geometric Design.

We, at PPUU warmly welcome our new Vice Chancellor to UiTM. We are confident that in view of his excellent leadership record and academic achievements, YBhg Emeritus Professor Dato' Dr Hassan Said will take UiTM to a higher level, both in the richness of education and the quality of its staff.



*"Allah never changes a condition which
He has conferred upon a people until they
change what is in their own selves"*

(Holy Qur'an, Surah 8:53).

DISTRESS PROCEEDINGS UNDER DISTRESS ACT 1951 IN MALAYSIA

By: Nurfarizma Rahayu Mohd Annuar*

Frequent issue in tenancy is where tenants are in rent arrears or overdue rental and reluctant to vacate the premises. Therefore, it is important that the landlord has the awareness relating to their rights and handling the situation in an effective lawful practice. For this occurrence, the landlord has to decide whether he wants to continue to let the premise to the tenant or to terminate the tenancy.

If the landlord does not wish to continue with the tenancy, he may proceed with the termination of the tenancy as stipulated in the agreement. The termination starts with the issuance of termination notice to the tenant. The notice shall notify the tenant that the landlord desires to terminate the tenancy and requires the tenant to surrender the vacant possession of the demised premises within specified time stated in the tenancy agreement. If the tenant refuses to pay the rental arrears although there is a proper termination, the landlord has the right to sue the tenant. However, if the landlord decides to continue the tenancy, then the landlord may apply for the warrant of distress. Distress proceeding is one of the landlord's remedies for non-payment of rental by tenant whereby this action allows the tenant's goods to be seized and to be sold for payment of rental arrears.

The distress proceeding does not terminate the tenancy, therefore if the tenant repeatedly defaulted in the payment of rental then the landlord will have to reapply for another distress proceeding. Distress action under Distress Act 1951 is one of the legal remedy for the landlord to recover the rental arrears from the tenant. Meanwhile Section 7(2) of the Specific Relief Act 1950 specifically requires landlord to obtain a court order before they can recover possession of the property from the tenant.

Under Section 5(1) of the Distress Act, a landlord is permitted to apply ex parte in writing to a Judge or Registrar for the issue of warrant of distress to recover the rent due and payable to the landlord by a tenant of any premises for a period not exceeding twelve (12) completed months of the tenancy preceding the date of the application. As the writ of distress is an ex parte application, it is taken out without the knowledge of the tenant which it allows the landlord with the assistance of a bailiff to distrain or seize any moveable property on the premises and later auction off the tenants property to recover the overdue rental. Under Section 7 of the Distress Act, before a warrant of distress is issued the court may require the applicant (landlord) to pay the fees and expenses for the bailiff.

Section 5(3) of the Distress Act provides the rental arrears may be distrained after determination of tenancy provided that the tenant

is still in occupation of the premises and the goods or properties of tenant are still in the premises. There are circumstances whereby the landlord takes action into his own hands by going to the premise and seal the property without obtaining for a distress order from the court. This action is illegal and might cause the landlord to be charged as a trespasser or for unlawful detention. Section 4 of the Distress Act provides that no landlord shall distrain for rent except in the manner provided by the Act. Section 8 of the Distress Act provides the 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 moveable 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 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.

Section 20(1) of the Distress Act also gives priority to landlord for payment of six (6) months rental over the arrears owed by the tenant to other judgment creditors who may have attached the property of the tenant for the recovery of judgment sums before the landlord. However, this priority is subject to any prior claims by the Federal Government or any State Government.

In sum, it can be said that distress action is a straightforward proceeding and a remedy for landlord to recover rental arrears. A writ of distress does not terminate the tenancy, therefore if the tenant later on fails to pay the rental, the landlord may have to file again the distress action to recover the arrears. However, regardless that there are problems such as costly and lengthy action especially if the tenant contests the action, distress proceeding is an option for landlord to recover arrears of rental from a tenant.

*Assistant Registrar, Office of the Legal Advisor, UiTM