

Recovery of rent arrears: the end of distress

The impending abolishment of the common-law self-help remedy of 'Distress' will affect landlords and tenants.

Distress is the ability of landlords to recover arrears of rent without going to Court, by instructing bailiffs to seize, impound and sell certain goods located at the premises, and belonging to the tenant. This right will remain until 6th April 2014, but after that date Distress will no longer be available and commercial landlords will instead have to rely on Commercial Rent Arrears Recovery (CRAR).

CRAR sets out a new procedure for commercial landlords to recover commercial rent arrears by permitting seizure of certain goods to the value of those arrears. As with current rules on Distress, CRAR limits the types of goods which can be seized and sold.

The new procedure will only apply where the lease in question is in writing and relates to commercial premises. Any element of residential occupation authorised by the lease will prohibit the exercise of CRAR by the landlord.

At present a landlord can exercise the right of distress after only 1 day of rent arrears whereas there must be at least 7 days of arrears before CRAR can be exercised, and a 7 day notice must be served on the tenant. The surprise element is therefore removed and the notice period gives the tenant the opportunity to pay the arrears and so prevent the 'enforcement agent' turning up. Landlords are able to apply to Court for an Order reducing the 7 day notice period if they can demonstrate that the tenant is likely to remove goods from the premises. Once goods have been seized the tenant must be given a further 7 clear days prior notice of the intended sale of the goods, which must take place by auction with a valuation having been provided by the tenant beforehand.

CRAR will restrict landlords to the recovery of rent arrears and will give commercial tenants more certainty and protection.

At present a landlord can exercise the right of distress and seize goods without prior notice and then sell them within 5 days, whereas it will be at least 21 days before a sale can complete once CRAR comes into force.

Unfortunately, the entitlement to apply to Court to shorten the notice period will not protect landlords from the risk that service of the Notice may prompt some tenants to enter an insolvency process, thereby preventing the landlord from exercising CRAR. Where an administrator has been appointed the landlord will need their permission or the Courts to exercise CRAR.

Please note that should your clients require any confidential advice regarding this or any other insolvency matter they are welcome to contact one of our Partners. An initial consultation is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.