

COMMERCIAL RENT ARREARS RECOVERY

6 April 2014 saw the introduction of the new procedure for landlords recovering rent arrears in relation to commercial properties.

The Old Law

Prior to 6 April 2014, landlords of commercial premises were able to use a bailiff to seize goods belonging to their tenant and sell them to recover rent arrears. These powers were known as levying distress, or distraining on the tenant's goods.

The law was often criticised because in the majority of cases use of the powers required no judicial input. This had the potential for unscrupulous landlords or bailiff to abuse the powers.

The New Law

On 6 April 2014, the law of distress was abolished. The new process for recovering rent from commercial tenants is known as Commercial Rent Arrears Recovery ("CRAR").

The landlord can only use CRAR when the tenant is in arrears of rent equivalent to at least 7 days. Once that threshold is passed, the landlord must serve a notice giving the tenant at least 7 clear days before the bailiff attends the property to seize goods.

Once that notice expires, the bailiff may enter the premises demised by the lease and seize goods. The bailiff can use reasonable force to enter the premises. The bailiff can only enter and seize goods between 6am and 9pm or, if outside of those times, during the tenant's business hours.

Repeated entry is allowed, but two clear days notice must be given of the landlord's intention to re-enter.

Certain goods are exempt from seizure, such as items necessary for the tenant's personal use in their employment, such as tools, vehicles or computers. Any such items over £1,350 in value can be seized.

As an alternative to seizure, the bailiff can enter into a controlled goods agreement with the tenant. This gives control of the goods to the bailiff but allows the tenant to retain custody save that they cannot be disposed of until the debt is paid to the landlord.

Any goods that are seized must be valued within 7 clear days from seizure. Notice of the same length must be given to the tenant before the goods are sold. Sale must be by public auction, unless otherwise authorised by the Court.

The proceeds of sale are used to pay the amount of the debt which remains unpaid and then the landlord's recoverable costs of exercising CRAR.

There will inevitably be a period within which landlords and bailiffs will become used to the CRAR process. As a landlord, it is important to obtain advice on all enforcement options open to you. Use of CRAR may not always be appropriate, as amongst other things it waives the landlord's right to forfeit.

For specific advice on your circumstances, please contact Ellisons' property litigation department.

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