

Distressed about the recovery of commercial rent arrears?

On 6 April 2014, the right of distress to recover arrears of rent for commercial premises was replaced with a new statutory procedure, Commercial Rent Arrears Recovery (CRAR).

The ancient common law remedy of distress (now abolished in respect of commercial premises) was a 'self-help' remedy allowing landlords to recover arrears of rent by seizing a tenant's goods and selling them in instances of tenant default to raise money to pay up arrears of rent. Distress was a particularly useful remedy for landlords because there was no requirement for a landlord to give notice or obtain permission from the court before exercising the remedy. However, with the new CRAR changes, the elements of surprise and speed have been lost.

CRAR still allows landlords to remove and sell a defaulting tenant's goods, but the procedure is now more regulated and protects tenants. A summary of the key points is below:

1. Commercial premises

CRAR only applies to rent arrears due under leases of commercial premises. Therefore, it is not available to landlords of mixed use premises or residential premises.

2. Written tenancies

CRAR only applies to a written 'tenancy' e.g. a commercial lease. Therefore, landlords cannot use CRAR if the tenancy is unwritten or for non-payment of a licence fee under a licence to occupy.

3. Basic rent

It is available for basic rent with VAT and interest only. Other sums reserved as rent, e.g. service charges, insurance charges, rates etc., are not recoverable under CRAR (even if these sums are reserved as 'rent' in the lease). This is a key change from the use of distress under which sums for service charge arrears, insurance charges or rates were recoverable.

4. 7 clear days' notice

Landlords are now required to serve a 'notice of enforcement' on tenants before sending in the bailiffs. 7 clear days' notice must be given and landlords are no longer able to show up at a tenant's premises unannounced. Landlords are able to apply to court to ask that the notice period be reduced if they believe (and can show) that there is a serious risk of tenants removing the goods.

5. Minimum level of arrears

CRAR can only be exercised if the outstanding sums exceed a minimum amount of 7 days' rent (once interest, VAT and any set-off have been deducted).

6. Enforcement agents

Only an enforcement agent authorised in writing by the landlord can seize the goods and therefore landlords themselves are no longer be able to carry out the distraint themselves.

7. Any day of the week

The enforcement agent may enter the premises on any day of the week between the hours of 6:00 a.m. and 9:00 p.m. (and sometimes, even outside of these hours).

8. Selling goods

A further notice of 7 clear days will need to be served prior to the goods being sold.

Comment

Although CRAR brings welcome news to tenants of commercial premises, there is little to cheer about for commercial landlords as it limits the ability of landlords to take immediate enforcement action without prior notice. The introduction of a 7-day notice period before goods can be seized may well be sufficient time for a tenant to remove valuable goods. The narrowing of the types of 'rent' that are recoverable under CRAR is also an unwelcome development for landlords. There may also be issues as to whether a tenant has been properly served notices and complications regarding mixed use premises.

However, whilst CRAR is more restrictive than distress, if a tenant has valuable goods which it is unable to move quickly, the procedure will still be useful. As an alternative, landlords may now look to guarantors or former tenants if the tenant is in arrears.

If you are a landlord seeking advice on the best way to recover rent arrears or a tenant that has been served with a notice of enforcement then please contact a member of Rooks Rider Solicitors' Dispute Resolution team.

If you would like more information on the above, or any related matter, please contact a member of Rooks Rider Solicitors' Dispute Resolution team.



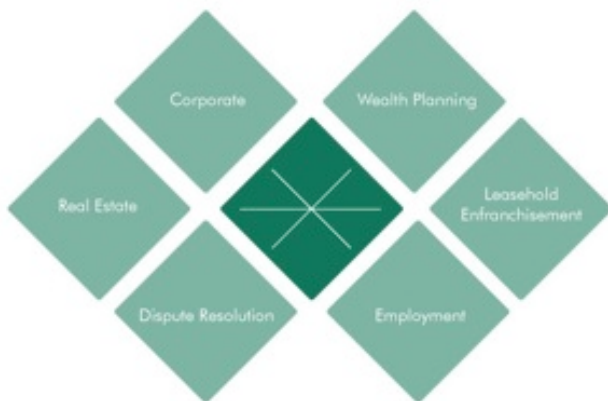
Nicola Stewart
Senior Associate
nstewart@rooks rider.co.uk
+44 (0)20 7689 7252



Amanda Pullinger
Senior Associate - Head of
Dispute Resolution and
Employment
apullinger@rooks rider.co.uk
+44 (0)207 689 7180



Aaron Heslop
Solicitor
aheslop@rooks rider.co.uk
+44 (0)20 7689 7209



CREaTe

Rooks Rider Solicitors LLP
Challoner House
19 Clerkenwell Close ■ London ■ EC1R
0RR

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