

Commercial Rent Arrears Recovery

Changes and Implications

Old right to distress (Pre 6 April 2014)	New statutory procedure (Post 6 April 2014)	Implications
Notice		
A landlord can enter and seize goods without warning.	Now a landlord must give a tenant at least seven clear days' notice in writing of its intention to use CRAR.	There is a real concern that this will reduce the effectiveness of the procedure as advance notice will forewarn tenants who will seek to remove any valuable goods to evade enforcement.
Arrears		
<p>The right is available to satisfy arrears of all sums reserved as rent in the lease. As commonly drafted this would include a wide range of payments other than principal rent e.g.:</p> <ul style="list-style-type: none"> • Rates • Service charges • Insurance 	The new right only attaches to the principal rent.	Again this reduces the effectiveness of the new procedure, and tenants will likely seek to pay the principal rent in priority to other sums due.
Threshold		
There is no minimum amount of arrears required to trigger the right.	Now the minimum amount of unpaid rent for which CRAR can be exercised is 7 days' worth. This is calculated <i>after</i> deducting any set off that the tenant would be entitled to claim in law or equity.	The new threshold, framed by reference to a tenant's right to set off, may lead to uncertainty as to whether the threshold is met, and more challenges by tenants.
Subtenants		
A landlord, A, can serve a "s6 notice" on his defaulting tenant's (B's) sub-tenant C, requiring C to immediately pay any rent it owes to A rather than to its immediate landlord B.	This procedure remains available under CRAR but now the notice will only take effect 14 clear days after it has been served.	Under the old law, there was a risk that C could receive notice but may not have had time to reverse payment to B (e.g. the cheque has been issued; the bank transfer has been authorised). As the notice had "immediate" effect, this meant C was still liable to A, despite having paid already to B. This perceived unfairness has been remedied under the new procedure as the notice is not effective for 14 days.
Who can exercise the right?		
The landlord himself or a bailiff	Only an authorised enforcement agent.	