

Is CRAR a cause for Distress?

By Brian Noble, Partner at Galloway Hughes LLP.

The previous position...

Distress has long been an established remedy available to landlords, affording them the ability to seize the goods of a tenant where they have failed to comply with lease obligations to make a payment reserved as rent.

Distress not only applied to principal rent but also extended to any other fixed sums which were reserved as rent under the terms of the lease. It was cheap and very effective and could be utilised by Landlords for payments both large and small, with no lower limit of the sums being pursued.

There was also no requirement to notify the tenant of the landlord's intention to seize goods and therefore a landlord had an element of surprise, denying the tenant the opportunity to place its goods out of reach.

The very threat of bailiffs attending a tenant's property and threatening to seize goods was often sufficient encouragement for the tenant to settle the arrears without the goods having to be seized.

The legal bit...

The concept of changing the law surrounding distress was first put forward under the Tribunals, Courts and Enforcement Act 2007, but successive governments have stalled on fully implementing those changes.

However the new provisions were finally implemented by The Taking Control of Goods Regulations 2013 and The Taking Control of Goods (Fees) Regulations 2014 which took effect from 6th April 2014. The effect also finally abolished the previous established remedy of distress replacing it with a new remedy called **Commercial Rent Arrears Recovery (CRAR)**.

The new position....

CRAR is the taking control of goods to recover rent from the tenant payable under the lease – it is available only to Landlords of commercial property and is a substantially weaker remedy to distress.

There are a number of changes to the procedure now available to Landlords but perhaps the most important change is the introduction of the requirement for the landlord to give 7 clear days' notice to the tenant of their intention to take control of the tenant's goods. It has been argued that this takes away the Landlords element of surprise and gives the tenant plenty of time to remove any items of value from the property.

A summary of the new procedure can be outlined as follows;

- Only applies to those sums payable by the tenant for the possession and use of the premises, so not available to service charges, insurance premiums, council tax (even if they are reserved as rent under the Lease)
- Only applies to sums over the equivalent of 7 day's rent and will only be available once the rent is in arrears for 7 days
- It is not available in mixed commercial/residential use property
- You have to warn the tenant that you intend to use CRAR allowing them the opportunity to remove goods.
- Not available once the lease has ended.

Whether you are a landlord or tenant, it is important that you understand the new procedure and the effect this will have on your existing or proposed lease.

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If you have any questions in relation to this article or would like to discuss your commercial property matter please contact [Brian Noble on 01372 237075](tel:01372237075) or by email at brian@gallowayhughes.co.uk