

CVS LAW

DISTRESS FOR RENT

From 6 April 2014 Commercial Rent Arrears ('CRAR') replaces a landlord's common law right to distress for rent. Under current legislation if a tenant of commercial premises fails to pay its rent or any sum reserved as rent, the landlord, using a certified bailiff, can without notice go on to the leased premises and take possession of any goods on site to satisfy the outstanding debt. From 6 April 2014 this will not be possible. Instead a landlord must, in writing, instruct an enforcement agent who in turn must serve a written notice on the tenant informing the tenant of the intention to remove goods if the outstanding rent is not paid.

However, before any action can be taken the landlord must note the following:

1. There must be a written lease in place.
2. A landlord will only be able to recover pure rent which includes any VAT or interest payable in relation to the rent. This means that service charge or any sums reserved as rent cannot be claimed. Instead court or forfeiture proceedings will have to be used if the landlord wants to recover these monies.
3. If part of the premises is occupied for residential purposes, in accordance with the lease, then the landlord will not be able to use the CRAR process.
4. Only the goods of the tenant can be possessed unless the appropriate notice have been served on the sub-tenant and they have failed to pay their rent direct to the superior landlord. Where there is more than one sub-tenant it may not be possible to serve more than one notice.

Currently the landlord does not have to give notice to the tenant that he intends to distrain. In future the tenant will have to be given seven clear days (which excludes Sundays, bank holidays, Good Friday and Christmas Day) written notice of the landlord's intention to remove goods. A court, in certain circumstances, can agree to less notice being given. At the time the notice is served and when goods are seized the outstanding rent, excluding VAT and interest must be equal to or more than seven days rent.

Clearly these new regulations will be to the disadvantage of landlords. Tenants will seek to ensure that where possible goods are registered in the names of others, remove goods from the premises and/or make applications to set aside or delays execution. Alternatively pay enough rent to reduce the outstanding amount to less than seven days.

Landlords may want to consider obtaining increased rent deposits or obtaining personal guarantees and/or security over other property of the tenant as a means of protecting their position.



Should you want to discuss this or any landlord/tenant related matter, please contact:

Audrey Lawrence

Email: al@cvcs-law.co.uk

Tel: 020 7518 7926

For further details about CVS Solicitors LLP, CVS Private Equity Partners and examples of what we can achieve, please visit www.cvs-law.co.uk and www.cvs-privateequity.co.uk.