

## **Landlord –v- Tenant in the age of CRAR**

Prior to the enactment of the Tribunals, Courts and Enforcement Act 2007 and introduction of the Commercial Rent Arrears Recovery (CRAR) procedures in April 2014, any landlord who was owed rent arrears was entitled to secure the debt by seizing any business assets held on the premises – a process known as distraint. Of course, in most cases, preventing a business from using its equipment or selling stock will ensure that trading comes to a crashing halt. Customers will buy from elsewhere; turnover will evaporate, and suppliers will go unpaid. Meanwhile, the landlord will have enjoyed an advantage over all of the other creditors, and a business that may well have recovered will likely be doomed to closure and, possibly, a terminal insolvency process.

## **The Dark Ages**

The pre-CRAR status quo was based on medieval common law known as Distress for Rent and later refined by an act of Parliament in 1689. Under the law, a landlord could enter and seize goods without giving the tenant any notice. With its detrimental consequences for struggling businesses and unfair benefits for one particular type of creditor, it seems surprising that such archaic legislation would survive up until the early 21st Century. Certainly, the introduction of CRAR - which incorporates a number of stipulations by which landlords must abide – at least gives businesses some breathing space and time to seek professional advice as regards their overall financial predicament, not only any issues they may have paying their rent.

## **The limitations of CRAR**

CRAR legislation only applies to rent (plus interest and VAT) owed by commercial tenants under the terms of a written lease. Any outstanding service charges or insurance payments, for example, are not recoverable under the rules. For CRAR to be applied, it must be possible to determine the exact sum of the rent that's due, and the arrears accumulated must be in respect of at least seven days' of unpaid rent. The legalisation only covers commercial premises, so if a lease covers both business and residential use, a landlord will need to obtain a court judgement to seek recovery of the debt. However, if the residential area has a separate entrance and is covered by a separate lease, CRAR may be used to recover the rent arrears on the commercial lease only, without the need for a court order.

## **A fair opportunity to object**

CRAR can only be exercised by certified enforcement agents, and tenants must be given seven days' notice of the seizure date. On receipt of a notice, a tenant can make an application to Court for an order either setting aside the notice or to stop any future steps being taken under CRAR without a further order. Aside from a lack of funds, there may be other reasons as to why rent payments are being withheld, and - as with all other commercial disputes - the court system is responsible for enforcing a resolution when this can't be achieved by negotiation between the parties. This aspect of the legislation allows for a defaulting business to continue trading with full use of its assets whilst arrangements are made for the court to decide upon any dispute between landlord and tenant. While this may cause some consternation over vexatious court applications by tenants attempting to frustrate the process, it's certainly a fairer, more balanced system than Distress For Rent which effectively gave landlords certain rights that could destroy a business overnight.

## Seizure and sale

Mandated controls over the disposal of assets form another key component of CRAR. An enforcement agent must give any defaulting tenant an inventory and valuation of any seized items. The goods must be valued within seven days and then sold for the best price that can reasonably be achieved. This not only gives greater transparency to the seizure process but also ensures that assets are not hastily sold at an auction for a fraction of their value. Only goods that belong to the tenant of the premises may be seized and the enforcement agent must not take items with a value greater than the rent owing plus the costs. As regards businesses that may, unfortunately, be destined for liquidation, this serves to protect assets that would subsequently be realised and sold for the benefit of all creditors. Importantly, for sole traders, essential tools are exempt up to a value of £1,350. CRAR also limits seizures to the goods owned by the tenant thereby excluding any items owned by a sub-tenant or other third-party.

## Are there any benefits for the landlord?

While their rights have undeniably been curbed since 2014, CRAR still allows landlords to enforce the collection of overdue rent without the need for a court order, furthermore, all of the associated fees have to be met by the debtor. In addition, the process also allows for the tenant to remain in the property which avoids the problem of seeking a new tenant for an empty property. Ultimately, regardless of the controls imposed, CRAR still gives commercial landlords a privilege that no other type of creditor enjoys.

## BRI - on hand to advise on rent payment problems

Whether you're a tenant facing the possibility of asset seizure under CRAR, or a landlord struggling to collect rent from a business leasing your property, BRI are on hand to help you consider the available options at a free initial consultation, in confidence and without obligation. Please don't hesitate to contact us if you feel that we can be of assistance.

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