

# Commercial rent arrears recovery – a summary

## Executive summary

Distress is an invaluable and frequently used remedy for the recovery of arrears. Its replacement by commercial rent arrears recovery ("CRAR") from 6 April 2014 causes a significant problem for landlords. The requirement with CRAR to serve prior notice gives tenants an opportunity to put goods out of landlords' reach and undermines the remedy. Whilst seeking to protect tenants' human rights and create a more level playing field between landlord and tenant, many landlords will perceive that CRAR has gone too far in helping tenants. The changes also weaken a superior landlord's right to recover rent from sub-tenants, if a tenant of the superior landlord is in arrears.

## Comparison table between CRAR and distress

Criteria	CRAR	Distress
Usefulness of remedy?	Administrative, forewarns tenant and narrow.	Cheap, effective and wide-ranging.
Minimum amount of arrears?	Seven days' rent and certain deductions.	No.
What does it cover?	Principal rent, VAT and interest.	Any payment reserved as rent including service charge.
Where can it not be used?	Residential. Also commercial if mixed-use lease.	Residential.
Advance notice before using remedy?	Yes - at least seven clear days' prior notice.	No – therefore, surprise and tenant cannot remove goods.
Period of day for exercise?	Between 6am and 9pm on any day of the week.	Between sunrise and sunset on any day except Sunday or public holiday.
Seizure of tools of the trade?	Yes, if aggregate value over £1,350.	No.
Procedure?	Taking control of goods: controlled goods agreement – enforcement agent.	Walking possession agreement – bailiff.
Immediate re-entry if agreement breached?	No - at least two clear days' prior notice needed.	Yes.
Period of notice before sale of goods?	At least seven clear days.	Five days.
Recovering rent from sub-tenants?	Yes – must wait 14 clear days.	Yes - no delay.
Prevented by insolvency moratorium?	Yes.	Yes.

## Conclusion

The requirement for the prior notice has emasculated CRAR and undermined its effectiveness by enabling tenants to remove goods before CRAR can be used. In view of the fact that distress is a regularly used and potent remedy for landlords if there are rent and service charge arrears, this statutory change creates a serious issue for landlords. It may incline landlords to seek rent deposits on a more regular basis, which they can dip into in the event of tenant breach without undue administration. The changes have also weakened the superior landlord's right to recover rent from a sub-tenant if the superior landlord's tenant is in arrears. Please click [here](#) for a more detailed analysis of the new regime.

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