

Options for commercial landlords to recover rent arrears

For the first time since March 2020, all pre-pandemic methods of rent recovery are now available again to landlords. This coincides with rising operating costs which mean tenants will find it increasingly more difficult to meet lease liabilities. Commercial landlords who are concerned with the impact defaulting tenants will have on their cashflow may want to consider the following options to recover rent arrears.

Debt Recovery Proceedings

Landlords could issue a court claim and obtain a money judgement for arrears. Enforceability will depend on whether the tenant has any assets worth pursuing, therefore a landlord should consider the likelihood of recovery before committing to incurring legal costs.

If a tenant has no reason to withhold rent pursuant to a lease or no counterclaim, it may be relatively straightforward to obtain a judgement. A landlord would often be able to obtain a default or summary judgement and avoid reaching trial.

Commercial Rent Arrears Recover (CRAR)

CRAR allows a landlord to instruct an enforcement agent to take control of a tenant's goods and sell them in order to recover an equivalent value to the rent arrears. This method, however, only relates to principal rent and not service charge or other sums due under the lease.

If landlords want to recover arrears quickly whilst leaving the lease in full force (and the tenant's liabilities) this option is worth considering.

Forfeiture

Most modern commercial leases include a forfeiture clause. Forfeiture is the landlord's right to terminate the lease by peaceably re-entering the property. This can be done by simply changing the locks or by way of a court application, and no prior notice has to be given to tenant before terminating the lease if they have not paid rent.

Whilst this option appears to be straightforward, a landlord could find itself to have wrongfully forfeited a lease



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as there are several potential pitfalls. We would recommend seeking legal advice before pursuing this option.

If you are worried about the impact rent arrears are having on your business and cashflow, please contact Kent Reynolds at The Jonathan Lea Network at kent.reynolds@jonathanlea.net.

