

## **Law changes spell problems for commercial rent recovery**

Changes in the way commercial rent arrears can be recovered could mean distressing times ahead for some landlords, a leading property litigation lawyer has warned. Simon Trees, head of commercial dispute resolution at Else Commercial Solicitors, says the introduction of the Tribunals, Courts and Enforcement Act 2007 (part three) will place new constraints on landlords in line with European human rights legislation. The Act, which has received royal assent, has yet to come into force. However, it is anticipated this will come into force in the near future, and possibly during 2009.

The previous Distress for Rent Act, and the common law right to distress, allowed landlords to seize goods from commercial leased premises and sell them without any court formalities. It was criticised as archaic and draconian because there was no limit or control to a landlord's actions, with only limited controls over bailiffs. It was also considered to be contrary to the Human Rights Act, and the right to a "private life". The new Act abolishes the common law right of distress for rent and all statutory rights to levy distress for rent arrears and non-payment of a rent-charge. It replaces common law with a new regime called Commercial Rent Arrears Recovery (CRAR).

Mr Trees said: "CRAR retains the entitlement for tenants' goods to be seized and sold without court order, but imposes restrictive pre-conditions.

"CRAR will apply only to arrears owed under leases of commercial property – not mixed use leases." "Landlords should seek legal advice on their position with regard to their leases because CRAR can be avoided by a tenant if the lease fails to expressly prohibit any part of the building to be let as a dwelling, and the tenant uses part of the premises as a dwelling."

"CRAR can only be used to recover rent – and that means the amount payable for possession of a property together with interest and VAT."

"It does not include other liabilities such as rates, services, repairs and insurance. Landlords will have some difficulty in the event they charge an inclusive rent, due to this restriction."

"CRAR can only be enforced by an agent holding a certificate issued by a judge and Notice of Enforcement must be served before entry. At present it is not clear the amount of notice a landlord must give, this has yet to be determined. However it is clear that landlords will lose the element of surprise. I would be extremely surprised if goods of any value would be left in the premises after a Notice has been served."

Mr Trees said the Act may enable tenants to challenge a proposed enforcement before the court and thus create a dispute – or pay a minimum sum to avoid CRAR. As such, it was incumbent upon Landlords to take steps now to protect their position before CRAR comes into force. He said the Act embodied many other provisions relating to enforcement, anti-avoidance, end of lease and sub-tenancies.

Landlords could mitigate the constraints of the new Act by, for example, taking larger rent deposits, getting better tenant references, tightening up lease terms to exclude residential occupation and avoiding inclusive rents – or if included, specifying the apportionment.

“Failure to do all of these things in consultation with an expert lawyer could mean distressing times ahead for commercial landlords,” he added “Now is the time to act, especially if Landlords are considering lease renewals or new lettings.”



**Simon Trees, Partner  
Head of Property Litigation**

**For more information, please contact: [Simon Trees](#)**

**Tel: [01283 526 200](tel:01283526200) Email: [simon.trees@elselaw.co.uk](mailto:simon.trees@elselaw.co.uk)**