

Arrears of Rent – A Landlord’s Rights

With the economy in decline, commercial landlords can reasonably expect to face an increasing problem with rent arrears and breaches of lease terms by tenants. In such cases, a landlord has rights which can be enforced without a court order but, as in all such matters, it is important to take professional advice before you act.

When faced with arrears of rent, one possible solution is to exercise the remedy of distraint, the law relating to which has recently been revised. A landlord is entitled to enter a tenant’s premises to seize goods of sufficient value to secure the payment of overdue rent. If the rent remains unpaid, the landlord can sell the goods distrained to pay the rent due. There are complex rules which limit which goods can be distrained and when, but it can be an effective remedy if used correctly.

The biggest problems with the use of distraint are that not only does it almost inevitably destroy any goodwill between the landlord and tenant, but also the seizure of goods often removes the only source of income for the tenant from which the rent might be paid.

Another possible remedy is that of forfeiture, under which the landlord enters the premises and repossesses them, terminating the lease. This remedy is normally only available for rent arrears, not for other breaches of the rent agreement. This has the effect of making the tenant’s liability for rent terminate from the date the premises are taken over by the landlord. In the present market, finding another tenant may not be easy, a factor that should be borne in mind if forfeiture is being considered.

The right strategy to adopt towards any tenant demands careful consideration of the individual circumstances. We can advise you on your options and help you decide which approach to take.