

THE LANDLORD'S TOOLKIT: AN OVERVIEW

In these challenging times, a landlord needs to be aware of all remedies, both reactive and preventative that can be deployed to protect against tenant insolvency and breach by tenants of their leases.

Each of the remedies and actions looked at in this note involves a complex area of law and specific legal advice should always be sought. This note is not intended to be a substitute for such advice.

Good management

Good management of risk is essential. While it may sound obvious a landlord must not allow significant tenant rent arrears to build up. We have recently advised upon a situation where the landlord (a well-known national finance house, with an equally well known managing agent) was owed almost £500,000 in rent and other arrears. A significant proportion of the money owed related to the provision of utilities for which the landlord had paid out. It seems inconceivable that such a situation could have been allowed to arise. When a tenant owes a modest amount that is a problem for the tenant. When a tenant owes amounts such as these it is a problem for both.

Guarantees and Rent Deposits

Landlords should look to obtain personal guarantees where appropriate and/or rent deposits to provide themselves with some protection against tenant default. Having obtained security the landlord should always consider using that facility. A well-drawn rent deposit deed will have a top-up provision should the landlord need to have recourse to the funds within it. Where the tenant is insolvent the ability to rely upon the deposit will depend on the nature of the deposit and the form of tenant insolvency.

If the tenant defaults careful and early examination of any guarantees is essential. Delay and use of other remedies can prejudice your right to recover from guarantors. Taking early legal advice is essential.

Former tenants

Although it is quite natural to look in the first instance to the existing tenant and its guarantors or other security provided, a Landlord should always examine the potential on-going liability of any previous tenants and their guarantors. A Landlord's ability to make recovery from former tenants requires the giving of a formal notice to the former tenants/guarantors. Such notices must be given within strict time limits failing which a Landlord will lose its right to recover those arrears from those persons.

Sue for rent

A Landlord can resort to remedies always available to "ordinary" creditors if a tenant defaults in paying rent or other monies payable under the lease. Careful consideration should be given to the means by which such proceedings are brought - a Landlord who sues for the rent may well find a well advised tenant merely using this as a means to "buy" a further 28 days' grace. Quick and decisive action is often needed. Proceedings may be appropriate however where the amount claimed is in dispute.

Service of a statutory demand

Although not strictly a necessary precursor to serving a winding-up petition, it can be a useful step to remind a tenant of the seriousness of its arrears where those arrears are not disputed. However, it can also serve to give the tenant 21 days' further grace and may not be an effective remedy where quick action is required. Unless the lease provides otherwise there can be no recovery of the landlord's costs for preparing and serving the demand.

Seizing a tenant's goods

Distrain (the seizing of a tenant's goods and property to pay outstanding rent) is a special remedy for a landlord. The rules on distraint are to change this year. The change expected in April 2012 will replace the current law of distress with a modified regime for recovering rent arrears in the commercial property sector. One significant difference between the new procedure and the current law of distress is the requirement to serve a notice **before** seizing goods. Although we have yet to see how the new law will work in practice, there is concern that tenants will use the notice period to dispose of goods which might otherwise have been seized.

Terminate the lease

Forfeiting (or terminating) the lease, while one of the more powerful weapons in a landlord's armoury is unlikely to be an attractive remedy in the current market. However, it may still be the right remedy in appropriate circumstances. Forfeiture may not be available if a landlord has resorted to any of the other remedies.

Take control of rent from sub-tenants

If a tenant has sub-let the property a landlord has the right to request that the sub-tenant in occupation pays its rent directly to the landlord rather than to the tenant. This enables a landlord to maintain some income from the property. Legal advice should be sought on the procedure and the available options in respect of the defaulting tenant.

Refuse tenant rights

A well-drafted lease will entitle the landlord to refuse to allow a tenant in breach of the lease to exercise rights otherwise available to it, for instance assigning the lease or exercising break clauses.

Self-help

In the case of breach of repairing obligations the lease may give a landlord the right to go in and carry out the repairs itself at the tenant's expense.

Double rent or double value claims

In certain circumstances a landlord has the right to claim double the yearly value of the premises where the tenant is still in occupation of the property after notice demanding possession has been served. Similarly if a tenant gives notice to quit but remains in occupation after expiry of the notice the Landlord may be able to charge double rent.

Claims on termination of a lease

It is normal for landlords to have claims for dilapidations (items of disrepair) on the termination of a lease. While it is often considered these provisions favour landlords, such claims must nonetheless be pursued carefully. There are time limits for bringing claims and legal protocols that must be adhered to. A good expert is essential.

Do not delay

Failure to act may lead to a loss of rights, particularly if your tenant enters into insolvency. Some insolvency regimes such as administration give protection to a tenant in respect of arrears of rent.

Advice is essential

The number of remedies available to a landlord and the complexity of these does mean that early legal advice is essential.

More information on the Landlord's Toolkit

For further information or advice on the issues raised by this briefing note or indeed any commercial property matter please contact me by:

- calling: **0844 824 8744**; or
- email: barry.challender@abcorporatelaw.co.uk.

We are able to assist commercial landlords on both contentious and non-contentious matters.



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Barry Challender is commercial property partner at AB Corporate LLP with a wide and varied experience of all commercial property related matters. His clients include SMEs, PLCs, private pension funds and national charities. Barry's past experience as a director of both clients and business support agencies enables him to put his legal advice in a pragmatic and commercial context.

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