

# A quick reference guide to landlord's remedies for non-payment of rents

Remedy	Rent Deposit	CRAR	Sub-Tenant to pay rent direct to Landlord	Court proceedings	Guarantor to Lease	Former Tenant or Guarantor	Statutory Demand & Insolvency	Compromise	Forfeiture
<b>Summary</b>	<p>Draw down from rent deposit to satisfy arrears</p> <p>Typically, Tenant must also top up the deposit back up to the initial balance</p>	<p>Statutory regime allowing commercial Landlords to instruct an enforcement agent to enter the premises, take control of goods and sell those goods if arrears remain unpaid</p>	<p>Serve a "Section 81 Notice" on the Sub-Tenant requiring it to pay rents directly to its superior landlord rather than the immediate Landlord</p>	<p>Issuing debt proceedings in the County or High Court for recovery of the sums owing</p>	<p>Pursue the Guarantor of the Lease</p> <p>Availability subject to the terms of the guarantee, but usually the same remedies are available</p>	<p>Pursuing the former Tenant or Guarantor of the lease for "fixed charges" due</p> <p>Options are subject to the terms of the guarantee, but usually the same remedies are available</p>	<p>Service of a formal demand for payment of the arrears due</p> <p>If not paid (or challenged) within 21 days, can be used as evidence to initiate insolvency proceedings (bankruptcy or winding up)</p>	<p>Negotiated compromise for a payment plan, deferral or writing off arrears</p>	<p>Landlord may peaceably re-enter the premises determining the lease without notice</p>
<b>Practical Points</b>	<p>Check notice requirements</p> <p>Worth considering other available options first to preserve a secure source of funds available to the Landlord</p>	<p>Must be carried out by a licensed enforcement agent (bailiff)</p> <p>Only useful up to the value of the goods in the premises</p>	<p>May cause the immediate Tenant to suffer further financially by removing their income stream</p>	<p>Landlord should check what assets the Tenant holds against which it may enforce judgment</p> <p>Usually preceded by a formal letter before action (7-day letter)</p>	<p>Consider the financial covenant strength of the Guarantor</p> <p>If Guarantor is foreign entity, consider how you might enforce judgment</p>	<p>Payment may lead to an overriding lease granted in favour of the payor</p> <p>Should consider the solvency of the party being pursued before serving notice</p> <p>If Tenant persistently in arrears, keep track of when further notices are required</p>	<p>If arrears are potentially disputed, then may allow the Tenant to challenge the demand – this may lead to lengthy proceedings</p> <p>Be aware of different rules for individuals and companies</p> <p>More effective if Tenant is solvent</p>	<p>Allows the parties to agree more than pure financial compensation</p>	<p>Check carefully when the right to forfeit arises</p> <p>Any communication / act which acknowledges the lease is continuing after the right to forfeit has arisen will be a waiver</p> <p>Previous side letters / concessions may complicate matters</p>
<b>Pros</b>	<ul style="list-style-type: none"> <li>Quick and cheap</li> <li>Tenant suffers no reputational damage</li> <li>May deplete funds otherwise available to apply against other liabilities – e.g. dilapidations</li> </ul>	<ul style="list-style-type: none"> <li>Threat alone may be effective</li> <li>Potential for reputational damage puts pressure on Tenant</li> </ul>	<ul style="list-style-type: none"> <li>Once served, the Sub-Tenant is treated as if it were immediate Tenant of the Landlord</li> <li>More than one party to pursue for the arrears</li> </ul>	<ul style="list-style-type: none"> <li>Tenant may pay to avoid a judgment against it – applies pressure</li> <li>Landlord might recover some costs as part of the proceedings</li> </ul>	<ul style="list-style-type: none"> <li>No need to serve notice to pursue or preserve a claim</li> <li>More than one party to pursue for the arrears</li> </ul>	<ul style="list-style-type: none"> <li>More than one party to pursue for the arrears</li> </ul>	<ul style="list-style-type: none"> <li>Relatively inexpensive and effective provided Tenant is solvent</li> </ul>	<ul style="list-style-type: none"> <li>Avoids costly enforcement action</li> <li>Maintains positive Landlord / Tenant relationship</li> </ul>	<ul style="list-style-type: none"> <li>Allows Landlord to relet to stronger covenant</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>Tenant may not top up if solvency is in question</li> <li>May waive Landlord's right to forfeit</li> </ul>	<ul style="list-style-type: none"> <li>Recover 'basic' rent only</li> <li>If arrears relate to service charge or other sums, unlikely to be appropriate</li> <li>Goods not owned by Tenant cannot be removed</li> </ul>	<ul style="list-style-type: none"> <li>Only available if entitled to exercise CRAR against the immediate Tenant</li> </ul>	<ul style="list-style-type: none"> <li>May be defended by the Tenant</li> <li>Could be protracted and costly</li> <li>If proceedings withdrawn prior to judgment, Landlord would be liable for costs</li> </ul>	<ul style="list-style-type: none"> <li>Only effective if Guarantor is solvent</li> <li>Might waive the right to forfeit</li> </ul>	<ul style="list-style-type: none"> <li>Must serve a S17 notice within 6 months of the arrears falling due</li> <li>May require multiple notices if arrears continue to fall due</li> <li>May waive right to forfeit</li> </ul>	<ul style="list-style-type: none"> <li>Likely to cause Tenant severe reputational damage</li> <li>No merit if Tenant already insolvent or on cusp of insolvency</li> </ul>	<ul style="list-style-type: none"> <li>Likely to require some element of concession on the part of the Landlord</li> <li>Open negotiations for surrender will waive right to forfeit</li> </ul>	<ul style="list-style-type: none"> <li>Landlord will assume liability for business rates</li> <li>May struggle to find a new Tenant</li> <li>Uncertainty as Tenant entitled to apply for relief</li> </ul>

**Stop & think**

- What security does the Landlord hold?
- Does the Landlord want possession back?
- Is the Tenant solvent?

If you have any queries or further information is required, please contact the property litigation team – details overleaf

# CLYDE&CO

## Property Litigation Team



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