

REBALANCING THE LANDLORD-TENANT EQUATION POST COVID



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One sector that has been severely impacted by the pandemic is the Landlord and tenant sector. For over 12 months Landlords have been unable to pursue attempts to recover unpaid rent using the Commercial Rent Arrears Recovery [CRAR] Process, unable to evict residential tenants causing them great financial hardship and unable to terminate commercial leases using their entitlement to forfeit. Pressure from many quarters on the government to (rightfully) protect vulnerable tenants has led to a very cautious approach effectively protecting all tenants which has in many cases directly affected the wellbeing and businesses of Landlords.

A Landlord can utilise CRAR to recover outstanding rent that has not been paid by a commercial tenant. The enforcement process for using CRAR is similar to that of a Writ or Warrant of Control and involves seizure and sale of assets to recover and satisfy the outstanding rent. A Writ of Possession on the other hand would be used by a landlord who has a residential tenant who has stopped payment rent and an order for possession of the residential premises has been made by the Court. As mentioned above many people invest in property as an alternative to a pension scheme so the significant delays in the eviction process may be causing landlords to suffer financial hardship.

With effect from the beginning of June the Government have lifted the restrictions on evictions whilst this should give Landlords some hope, many commentators this week have spoken about the problems facing that sector not least because the County Court Bailiffs service is backed up with over 12 months' worth of eviction cases to deal with. We have heard from some Landlords who have been given eviction dates by the County Court Bailiff that are over 12 months away, this is clearly not a workable scenario causing Landlords to continue to suffer significant losses and in some instances hardship.

As most practitioners are aware there is provision in the legal process for a landlord or Claimant to transfer a County Court order for possession up to the High Court for Enforcement to enable an application for permission to issue a Writ of Possession to be made in the High Court. This is a process that most professionals in the enforcement arena are familiar with and enables a faster and more efficient process than the County Court service can offer. The problem however is that the decision to transfer the County Court Order for possession up to the High Court is discretionary and in reality, individual Landlords and in the hands of the particular District Judge that hears there application. Many legal commentators have raised concerns about the inconsistency of approaches taken by District Judges

in considering these applications. We have on occasion had first-hand experience of making 2 applications to different Courts in relation to identical circumstances and have been granted permission in one instance and refused, without application in relation to the other. In the past District Judges were often hesitant at granting transfer requests because not all High Court Officers provided notice to Defendants of eviction. However, with the change in the rules last year it is now a legal requirement that formal notice of eviction is provided in all matters (apart from scenarios such as proceedings relating to trespass). It is therefore our view that there should now be no reason to prevent Claimants from being able to transfer up their possession orders.

In light of effect of the pandemic upon this sector surely there must now be a strong case to fast track this system to allow Claimants and Landlords proper and swift access to Justice by accelerating this system whilst still maintaining protection for vulnerable tenants.

It seems unequitable that a landlord is forced to wait months if not years for an eviction date when in fact High Court Enforcement Officers throughout England and Wales have the skills and expertise to offer a fast-tracked service, often for a fixed fee, of days and weeks rather than Months if not years. Landlords will often be prepared to invest in the slightly higher cost of instructing a High Court Enforcement Officer with the knowledge that they are unlikely to have to wait months or even years to evict their tenants if they use the County Court system. This has the potential of saving Landlords

thousands of pounds in rent that would have been lost if they wait in the queue within the County Court system.

With the introduction of the Taking Control of Goods Regulations in 2014 the Government reformed that archaic process of distress for rent and provided a framework for a simpler and straightforward process by way of taking control of goods using Commercial Rent Arrears Recovery or CRAR. The process is the very similar to that of enforcing a Writ or Warrant of Control. The procedures around giving notice and taking control of goods are the same.

The regulations provided that to instruct an Enforcement Agency to recover rent the Landlord simply need to confirm that there was a period of 7 days of more outstanding. There is no requirement for a Warrant, but the Landlord needs to formally confirm that the rent is outstanding, and the process cannot be used to recover additional expenses such as insurance which would need to be recovered using the Civil Claim procedure. CRAR offered a quick and easy process for Landlords to use and utilized the non-High Court fee scale prescribed within the Taking Control of Goods (Fees) Regulations 2014. The process can be initiated immediately on instruction to an Enforcement Agent with the issue of a notice of enforcement.

The pandemic however greatly impacted this procedure with a series of restrictions to the procedure by way of the number of days rent that must be outstanding before a Landlord can utilize the procedure. This currently stands at 554 days rent

up until the 30th June 2021. We believe this is unreasonable given changed economic and social circumstances as we begin to exit the pandemic and hope that this position will be reviewed in the coming weeks to allow Landlords to take action to recover outstanding rent.

At present some Landlords are forced to bring Civil Claims to work around the CRAR restrictions and in an effort to achieve some form of recovery of the money that is rightfully owed to them.

Whilst the last year has been incredibly difficult for the Landlord and Tenant sector with the lifting of the ban on evictions and hope for the relaxing of restrictions around CRAR and forfeiture there is hope that the sector can start the slow journey to recovery.

At Just we believe that we can help Landlords by offering fast tracked services to obtain and then enforce Writs of Possession to prevent landlords from having to sit in an exceptionally long queue within the faltering County Court system. Just are also ideally placed to assist with CRAR and forfeiture instructions when the rules are relaxed to enable it to do so.

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