

OPTIONS TO RECOVER ARREARS

Remedy	Description	Advantages	Disadvantages	Points to Note
Distress	Instruct a certified bailiff to enter the premises and seize the tenant's goods. The bailiff can either remove the goods or enter into a walking possession agreement so the goods can remain onsite. The goods can either be held until tenant pays or sold within 5 days of giving notice to tenant.	Quickly realises sums due. The tenant is under extreme pressure to pay the arrears.	Goods need to be appropriately stored and insured. Risk of damages being awarded to tenant should goods be damaged. Risk of restricting tenant's ability to trade which may result in additional financial difficulties for the tenant and ultimately further arrears.	Can only be used to recover rent or sums reserved as rent. There has to be the relationship of landlord and tenant.
Statutory Demand	Often used as the first step or a threat towards petitioning for either bankruptcy (where the tenant is an individual) or winding-up (where the tenant is a company) if they fail to pay the arrears within 21 days of the date the demand is served.	The threat of being made bankrupt or wound up puts pressure on the tenant to pay the arrears. A relatively cheap and quick method of recovery.	The cost of proceeding with a petition for bankruptcy or winding up is expensive. The landlord will only rank as an unsecured creditor in such proceedings and there are no guarantees that the tenant will have enough money to satisfy the arrears after all secured creditors have been paid, if indeed the tenant has any money/assets to pay all/any creditors.	The debt must be undisputed or the tenant could have the demand set aside.
Rent Deposit	The landlord will hold the tenant's money under the terms of a deposit deed. Should funds be used, the deed usually requires the tenant to replenish the deposit.	Recover sums quickly and easily.	If the tenant is unable to replenish funds, the landlord will be left with less security against other sums (such as for dilapidations) which may be difficult to recover from the tenant.	Check whether landlord is required to give notice before withdrawing sums. Check that the deposit sums can be used for particular arrears.
Court Proceedings	Issuing debt proceedings against the tenant to recover the arrears in the County or High Court.	Tenant under pressure to avoid having judgment made against it.	Can be a costly and slow procedure. Once claim is served it cannot be withdrawn unless the landlord pays tenant's costs. May not recover any sums even if receive judgment, if tenant has no assets against which you can enforce.	Check whether the tenant has any assets against which landlord can enforce the judgment. For example, any property, cars, bank accounts etc.
Sub-tenants	A superior landlord can serve a Section 6 Notice under the Law of Distress Amendment Act 1908 to require a sub-tenant to pay its rent directly to the landlord	Quick and cheap procedure. Ensures the arrears do not continue to accrue.	May make the tenant's financial position worse if you take away income. The rent the sub-tenant pays may be less than the superior rent.	Notice must be served on the sub-tenant before the date on which rent falls due. Fresh notices will have to be served ahead of each rent payment date.

<p>Former Tenants / Former Guarantors</p>	<p>Old leases entered into <u>before</u> 1 January 1996.</p> <p>The original tenant will always be on the hook</p> <hr/> <p>New leases entered into <u>on or after</u> 1 January 1996.</p> <p>Only available where the former tenant/guarantor has provided an Authorised Guarantee Agreement (AGA).</p>	<p>Fairly quick and simple procedure.</p>	<p>Problem if the original tenant/guarantor does not exist.</p> <p>Consider whether you would want the former tenant as a direct tenant.</p> <p>Fresh notices need to be served every 6 months.</p> <p>Consider whether would want any former tenant as a direct tenant.</p>	<p>Applies to original guarantors subject to wording of the lease.</p> <p>Need to serve Section 17 notice pursuant to Landlord and Tenant (Covenants) Act 1995. Notice must be served before any action is taken against former tenant.</p> <p>Section 17 notice must be served within 6 months of the arrears becoming due or, if later, the landlord can only recover arrears dating back the previous 6 months and will lose the right to recover sums that have accrued prior to this.</p> <p>If former tenant pays arrears then they have a right to take an overriding lease and can become the landlord's direct tenant.</p>
<p>Guarantors</p>	<p>A third party to the lease who has agreed to guarantee the tenant's liabilities and obligations under the lease where the tenant fails to do so.</p>	<p>Potentially quick method of recovery.</p> <p>A further party to pursue for the arrears.</p>	<p>If arrears are not paid, the landlord will have to pursue the guarantor using another method of recovery.</p>	<p>Consider covenant strength of guarantor when accepting them in such a position. For example, if the tenant and guarantor are closely connected, the failure of one may affect the other and your ability to recover will be limited.</p>

Other points to consider:

- *Is the tenant in a form of insolvency?* This may restrict which options are available to recover the arrears and you may need the leave of the court before being able to take any action.
- *Can you forfeit?* Consider if you would prefer to recover possession of the premises. If so, be careful to avoid waiving the right to forfeit, for example by demanding or accepting rent.
- *Can you reach an agreement?* Recovering possession will result in empty rates liability payable by the landlord until a new tenant can be found. It may therefore be preferable to reach an agreement with the tenant such as:
 - agreeing a repayment plan for the arrears;
 - accepting a rent concession period for a certain amount of time to assist the tenant to get back on its feet; or
 - agreeing that you can market the property on the tenant's behalf and, once a new tenant is found, agree a surrender.

For further information, please contact:



Ros Cullis on +44 (0)20 7863 8383 or ros.cullis@forsters.co.uk



Helen Pickard on +44 (0)20 7863 8562 or helen.pickard@forsters.co.uk



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