

## **Landlords to Lose Right of Distress**

The Department for Constitutional Affairs has published the draft Tribunals, Courts and Enforcement Bill. If enacted as it stands, it will deprive landlords of the ability to levy distress as presently used, thereby removing an effective weapon in cases of rent arrears.

The change in the law follows much adverse comment on how the law of distress is operating in practice and the voicing of concerns as to whether its operation could represent an infringement of the human rights of tenants.

Under the present law, when a tenant is overdue with rent, the landlord or the landlord's bailiff is entitled to enter the premises and seize goods to the value of the rent due, which can then be sold to pay the outstanding rent. The remedy is normally very effective since there is no need to give notice to the tenant, the right to distraint being available the day after the expiry of the period of grace for payment of the rent due. No court process is needed.

The Bill will replace distress with a procedure termed 'commercial rent arrears recovery' where the outstanding arrears exceed a minimum sum. The procedure will restrict the amount recoverable by landlords of commercial premises to the rent unpaid. Insurance costs and service charges unpaid will not be recoverable using distraint, nor will it be usable for arrears on residential or mixed-use premises. Furthermore, the tenant will be entitled to receive a notice, which they can apply to have set aside. The tenant will also be able to claim setoff of any sums owed by the landlord to the tenant.

These changes will make it more difficult for landlords to avoid losses when tenants become insolvent.

Whether or not the Bill reaches the statute book will depend on whether time can be found for it in the parliamentary timetable.

Contact us for advice on your options if you have a tenant who is in arrears of payment.