

Summary of landlord's remedies on default by an insolvent tenant

	Distress	Forfeiture	Rent Deposits	Court Claims	Third Party Claims	Subtenants	Winding-up Orders
Description of remedy	The common law right of a landlord when its tenant is in arrears of rent to enter the premises and seize property of the tenant. If rent remains unpaid for 5 days the goods can be sold and the proceeds used to meet the arrears. The remedy is useful in pressurising tenants to pay arrears but to be abolished by s71 of Tribunals, Courts and Enforcement Act 2007 (the enforcement date of which is still to be confirmed).	Forfeiture may take place by Court proceedings or by peaceable re-entry. On tenant default it is important to consider forfeiture at an early stage to avoid an unintended waiver of the right to forfeit. The tenant has 6 months to apply to the Court for relief from forfeiture, which can be extended with the Court's permission. Forfeiture may not be desirable if the landlord cannot quickly find a replacement tenant as the landlord may be liable for vacant business rates.	A rent security deposit may have been provided by the tenant. Rent deposit deeds often purport to create a charge over the sums held in the rent deposit account.	Prior to issuing a claim a letter before action should be served on a tenant allowing the tenant an opportunity to pay the arrears. A Court fee will be payable on issue which is higher the larger the size of any claim for money. If a landlord is faced with a substantial sum of arrears or damages, issuing a Court claim may be a better option than a statutory demand as it can also claim statutory interest and legal costs.	Parties other than a defaulting tenant may be liable under the lease, such as guarantors of the tenant's obligations or former tenants under an authorised guarantee agreement. In order to recover rent arrears from a former tenant a notice under s17 of the Landlord and Tenant (Covenants) Act 1995 must be served within 6 months of the date that arrears fall due. Former tenants can demand an overriding lease if they pay the sums demanded.	Right to recover rent from subtenants is currently contained in s6 of the Law of Distress Amendment Act 1908. This allows a landlord to serve notice under s6 requiring the subtenant to pay rent direct to the landlord until the tenant's arrears are satisfied. The procedure is due to continue under s81 of the Tribunals, Courts and Enforcement Act 2007 (the enforcement date of which is still to be confirmed).	A statutory demand may be served on a tenant in relation to the tenant's arrears under s123 of the Insolvency Act 1986. The demand may require payment of arrears of at least £750 within 21 days, after which date the tenant is deemed unable to pay its debts. If the arrears are not paid a winding-up petition may be presented to the Court. If appointed a liquidator or trustee in bankruptcy will collect and distribute the tenant's assets. This can be an expensive remedy and recovery is uncertain.
Liquidation	Voluntary: available but liquidator may apply to restrain the landlord. Compulsory: permission of the Court or the tenant's liquidator is required. Not available in relation to rent falling	Voluntary: available but the tenant's liquidator may apply to Court to restrain proceedings. Compulsory: proceedings require permission of the Court or the tenant's liquidator and	Available subject to the terms of the rent deposit deed. It is prudent to explain to the tenant's liquidator the intention to drawdown on the rent deposit in advance to discourage the liquidator from	Voluntary: available but the tenant's liquidator may apply to Court to restrain the proceedings. Compulsory: proceedings require permission of the Court or the liquidator.	Available	Available	Voluntary: a winding-up petition may be presented notwithstanding that the tenant is already subject to a voluntary liquidation. Compulsory: not applicable.

	<p>due prior to the winding-up.</p> <p>Goods/proceeds will stand charged to preferential debts if distress is levied less than 3 months before liquidation.</p>	peaceable re-entry may be challenged.	subsequently seeking to challenge the draw down.	Alternatively the landlord may submit a proof of debt in the liquidation as an unsecured creditor, save when the premises have been utilised by the liquidator.			
Personal bankruptcy	<p>Available for a maximum of 6 months rent before the bankruptcy order is made.</p> <p>Goods/proceeds will stand charged to preferential debts if distress is levied less than 3 months before the bankruptcy order is made.</p>	Permission of the Court or the consent of the tenant's trustee in bankruptcy is required.	Permission of the Court or consent of the tenant's trustee in bankruptcy is required if chasing rent arrears.	Permission of the Court is required.	Available	Available	Not applicable
Administration including pre-packaged administration	Permission of the Court or the tenant's administrator is required.	Permission of the Court or the consent of the tenant's administrator is required.	Available, subject to the terms of the rent deposit deed. The Financial Collateral (No. 2) Arrangement Regulations 2003 allow drawdown despite the administration moratorium if the rent deposit is in charging form.	Permission of the Court or the administrator is required to issue proceedings. Alternatively the landlord may submit a proof of debt as an unsecured creditor, save when the premises have been utilised by the administrator.	Available	Available, although it could potentially be challenged by the tenant's administrator based on the administration moratorium.	Not available
Corporate voluntary arrangement ("CVA")	Available unless a 'small company' or an administration is in place. Available for rent after the CVA is approved and if its terms are breached.	Available unless a 'small company' or an administration is in place. Available for rent after the CVA is approved and if its terms are breached.	Available before the CVA is approved. After the CVA approved availability depends on the terms of the CVA.	Available unless a 'small company' or an administration is in place. Available after the CVA is approved depending on its terms.	Available before the CVA is approved. After the CVA approved availability depends on the terms of the CVA.	Available before the CVA is approved. After the CVA approved availability depends on the terms of the CVA.	A winding-up petition can only be presented once moratorium protection has ended. May be restricted by the terms of the CVA.

Individual voluntary arrangement (“IVA”)	Permission of the Court is required following an interim order. Available for rent after the IVA is approved if its terms are breached.	Permission of the Court required following an interim order. Available for rent after the IVA is approved if its terms are breached.	Available before the IVA is approved. After the IVA is approved availability depends on the terms of the IVA.	Permission of the Court is required.	Available before the IVA is approved. After the IVA is approved availability depends on the terms of the IVA.	Available before the IVA is approved. After the IVA is approved availability depends on the terms of the IVA.	Not applicable
Administrative receivership	Available but may be subject to challenge depending on type of charge held.	Available	Available	Available	Available	Available	Available
Law of Property Act/fixed charge receivership	Available	Available	Available	Available	Available	Available	Available

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