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LawTalk Blog



## What can I do if my commercial tenant doesn't pay their rent?

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You entered into a commercial lease on your property located on a busy retail street. Despite the tenant paying their rent for the first half of the year, their payments have been late and are now in arrears. You see no prospect of being paid, despite your demands. What can you do?

As the landlord you have a right to distrain goods for rent in arrears. This allows you to enter the premises, seize goods located on the premises and sell them in order to recover the owing rent.

The right to distrain has been abolished in almost all states; however it remains available to commercial landlords in South Australia under the *Landlords and Tenants Act 1936 (SA)*.

### What's the process to distrain?

You must first establish you have a right to distrain for rent. If no rent was actually due the tenant may claim from you double the value of those goods sold. Secondly, you should not take any action that would terminate the lease. After a lease has been terminated there is no right to distrain and doing so may be unlawful.

As a result of the introduction of the [PPSA](#) it is also necessary for a landlord to search the PPSR in regard to any distrained goods to ensure that there are no PPSA interests registered over them before that landlord can sell those goods. There are consequences to the landlord if goods registered on the PPSR are sold.

Once you are satisfied you have the right to distrain for rent and that the goods you intend to sell are not registered on the PPSR you can issue a Warrant for Distraint. To initiate distraint, you as the landlord or your authorised agent may do so between the hours of 6.00 am and 6.00 pm. A bailiff is normally engaged to undertake the task of seizing goods.

Upon entering the premises the bailiff is required to compile a written inventory of any goods distrained. A copy of this inventory should then be delivered to the immediate tenant or person residing on the premises. If there is no one to whom an inventory list can be delivered, a copy of the inventory should be affixed to the premises in clear view and an additional copy mailed to the tenant's last known address.

*"There are consequences to the landlord if goods registered on the PPSR are sold."*

The goods must then be held for five days. This gives the tenant an opportunity to pay the rent and allows those with an interest in the goods distrained to state their claim. After five days the landlord may sell the goods distrained for the best price that can be obtained at an auction conducted by a licensed auctioneer. After the rent and costs of the sale have been satisfied, any remaining proceeds must be returned to the tenant.

It is important to note that distraint for rent is only available to lessors engaged in a commercial lease. Those leasing out residential properties should consider other avenues of relief if their tenants' rent is in arrears.

At times acquiring rent due from your commercial tenant can be difficult and frustrating. If you are having problems obtaining rent from your tenant and have questions on your rights and available remedies please feel free to contact today's blog's writer.

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