|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Opposing business lease renewalsLandlord and Tenant Act 1954 (“the 1954 Act”) |  |  |  |  |
|  | **Mairead McErlean**Property Litigation Senior Associate SolicitorDD: 01727 738230E: mtm@debenhamsottaway.co.uk **Simon Tucker** Senior Associate Solicitor**DD:** 01727 735662**E:** st@debenhamsottaway.co.uk  |  |  | Key points* A tenant’s insolvency may prevent a landlord from taking action to forfeit the lease and/or from the enforcement of the lease covenants. See overleaf for moratorium examples.
* Careful consideration ought to be given as to the actions available to the landlord, depending on the form of insolvency process in which the tenant is engaged.
* Tenant insolvency is a “once and for all” breach, meaning that if the landlord wishes to forfeit the lease as a result of the tenant’s insolvency, they must not take any action which would waive the right to forfeit.
* Landlords will be concerned to ensure that the premises remain insured if the tenant has ceased trading. Insurers may have additional requirements, which need to be met in order for cover to remain in place. This will however need to be dealt with delicately if the landlord wishes to forfeit the lease, so as not to waive the right to forfeit.
* Rent will only be payable as an expense of the administration if the administrator has retained the premises for the purpose of the administration.
* If rent is payable as an expense of the administration, it will accrue on a day to day basis, rather than the full quarter being automatically payable. This is to be contrasted with the position in the case of forfeiture when the full quarter’s rent remains due even if the lease is forfeited mid-quarter.
 |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |  |

## \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Moratorium

### Examples of restrictions in place when a tenant is insolvent include:

* A landlord cannot forfeit a lease by peaceable re-entry for non-payment of rent when a tenant is in administration or compulsory liquidation, unless they have the consent of the administrator or liquidator or the leave of the Court.
* IVAs and CVAs also prevent the landlord forfeiting by peaceable re-entry for non-payment of rent without the leave of the Court.
* CRAR may only be used during an IVA interim moratorium period with the Court’s permission.
* A landlord cannot draw down from a rental deposit when a tenant is in compulsory liquidation without leave of the Court.
* In the case of a tenant in administration, a landlord cannot draw down from the deposit unless it is a financial collateral arrangement, without the consent of the administrator or leave of the Court.

Top tips

* Landlords ought to check for any available guarantors and consider taking action against them.
* If action is to be taken against a former tenant and/or a guarantor of a former tenant, then the landlord must serve notice on such person pursuant to the Landlord and Tenant (Covenants) Act 1995 within 6 months of the date the rent

became due, otherwise they will lose the right to seek payment of those sums from them.

* A landlord may be able to require a guarantor to take on a lease of the premises – the provisions of the lease ought to be checked in this regard.
* Liquidators (not administrators) have the power to disclaim leases.
* A Landlord may wish to put pressure on the liquidator to decide whether to disclaim a lease, by serving notice on the liquidator requiring them to elect whether to disclaim within 28 days.

### **This note has been prepared as information in respect of the process and procedure involved in the insolvency of commercial tenants. It does not constitute advice. The information in this note is correct as at February 2018. In reading this note you agree that no reliance may be placed on it and accept that Debenhams Ottaway LLP excludes any liability arising from reliance upon it. You should always take independent legal advice in respect of any actions relating to a tenant’s insolvency.**