

## Landlords Have Lost Their Priority Right

The Swedish Rights of Priority Act has been changed as from 1 January 2004. This means amongst other things that landlords who rent property to businesses will have to be more active in respect of tenants who have financial problems.

### Priority Right in Bankruptcy

Until recently, landlords had a special priority right in the event of a tenant's bankruptcy equivalent to a maximum of three months rent. The reason this priority right was introduced was that it was considered to be in the interest of all creditors that the landlords did not immediately cancel the tenancy agreement due to temporary difficulties in paying the rent. Since the landlord's priority right in the event of the tenant's bankruptcy was dependent upon the contract being valid at the date of bankruptcy, the landlords often did not cancel the agreement despite the fact that the tenant stopped paying the rent, so as not to lose their priority right in a bankruptcy. The legislators have now considered that there are several other groups of creditors who contribute assets that are of value to other creditors, for example lessors and licensors and landlords should not have this advantage over them.

Through a change in the Act, the landlord's priority right has been abolished. As a consequence of this change, a landlord should always consider demanding security in the form of a bank guarantee from the tenant before entering into a lease agreement. If sufficient security has not been provided and the tenant has not paid his rent on time, the landlord should instantly consider using his right to cancel the agreement with immediate effect, since the landlord will no longer benefit from a priority right in the event of the tenant's bankruptcy.

### Tenant's Bankruptcy

A tenancy agreement is not automatically cancelled in the event of a tenant's bankruptcy. Nor can a bankruptcy estate be held accountable for rent unless it declares that it wishes to undertake the obligations of the existing tenancy agreement, or that it will provide security for the same. In several cases considerable time has elapsed from the time a tenant is declared bankrupt until the bankruptcy estate has left the premises.

In order to be allowed to terminate the agreement, the landlord has to ask the bankruptcy estate if it is willing to enter into the tenancy agreement or to provide security for the same. The bankruptcy estate then has one month to consider the options. If the bankruptcy estate declares after one month that it is willing neither to enter into the tenancy agreement nor to provide sufficient security, the ordinary rules for cancellation of the tenancy agreement apply. This means that if the bankruptcy estate fails to pay the rent, it might take a considerable amount of time before it is possible to evict the bankruptcy estate from the premises. Since a bankruptcy estate cannot be held accountable for rent unless it has declared that it wishes to undertake the obligations

of the existing agreement or provide security for the same, it could carry on with the activities of the business at the premises without being held accountable for the rent for quite some time. It has been argued that this leads to an unfair benefit for the bankruptcy estate in comparison with competing companies.

However, from 1 January 2004, a new provision has been inserted into the Land Act in addition to the right to cancel. This new provision states that, if the bankruptcy estate does not, upon request from the landlord, place the premises at the landlord's disposal within one month the bankruptcy estate is responsible for the payment of the rent, from the date of declared bankruptcy until the premises have been placed at the landlord's disposal. The fact that the bankruptcy estate is responsible means that payment of the rent shall be given top priority along with the costs for the receiver and similar debts. The new provision means that the landlord has to be active and constantly monitor if his tenants have been declared bankrupt and if so immediately send a notice to the receiver asking the estate to evacuate the premises. If the landlord does not do this the bankruptcy estate can remain on the premises without paying any rent and the claim upon rent is just another unprioritized debt.

### Conclusions

As a consequence of the changes in the law, landlords should from now on always consider demanding security from the tenant before entering into a lease agreement. In the event that no security has been provided or the security is not sufficient, the landlord should in case of non payment by the tenant seek to end the lease contract immediately even if the agreement has some time to run. A landlord should also monitor its tenants to see if any tenants have been declared bankrupt. If so the landlord should immediately request the bankruptcy estate to place the premises at the landlord's disposal. If the bankruptcy estate does not leave within one month, it becomes responsible for rent from the time of the declaration of bankruptcy and until it has left the premises.



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