

LANDLORDS LIABLE FOR BUSINESS RATES IF LEASE DISCLAIMED

Under the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008 owners of empty properties may be liable for business rates. Where a property had been let to a tenant then liability rates usually fell on the tenant. However where the tenant has gone into liquidation and the liquidator has disclaimed the lease, the question as to whether or not the landlord then became liable for rates had not been decided by the court. The recent High Court case of *Schroder Exempt Property Unit Trust and Anor v Birmingham City Council* [2014] has now confirmed that the landlord will become liable for rates following a disclaimer.

Facts

- In 2006 Schroder Exempt Property Unit Trust ("the Landlord") granted a 10 year lease to the Tenant, who had a Guarantor.
- In 2008 the Tenant assigned the lease to the Assignee and guaranteed the Assignee's obligations under the lease through an Authorised Guarantee Agreement ("AGA").
- On 20 April 2011 the Assignee and the Guarantor both went into liquidation and the lease was disclaimed.
- Under the AGA the Landlord continued to demand and to receive rent from the Tenant whilst the property remained empty.
- Birmingham City Council made demands on the Landlord for c.£590,000 of business rates for the period after the lease was disclaimed.
- The Landlord argued that it was not liable to pay these rates because it was not entitled to possession of the property, and therefore was not the owner for the purposes of paying rates.

Decision

- The Court found that on disclaimer of the lease, the Landlord automatically acquired the right to immediate possession of the property, despite the Guarantor having the right to call upon the lease, and was therefore liable for business rates.

Implications for landlords

- The immediate concern for landlords is that Local authorities are likely to use *Schroder* to argue that all landlords of disclaimed leases are liable for business rates from the date of disclaimer.
- In order to mitigate their position landlords should serve notice under section 17 of the Landlord and Tenant (Covenants) Act 1995 on a former tenant or guarantor of the liquidated tenant within six months of the business rates falling due, in order to try to reclaim these sums. Alternatively, the landlord may be able to call upon a guarantor under an AGA.
- One positive outcome from *Schroder* is that landlords can use *Schroder* to strengthen their position when refusing consent to a licence to assign because they have doubts over the proposed assignee's financial standing. This is because if the assignee enters liquidation, it will be the landlord who will be liable for business rates even if there is a guarantor in place.

**For more information, please contact
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