

1. PRELIMINARY

2. The Applicant, [REDACTED], is a tenant of premises at [REDACTED] and is represented in this matter by [REDACTED].
3. The Respondent, [REDACTED], is the landlord of said premises and is represented by [REDACTED].
4. I have not been provided with a copy of the lease. However, neither party has raised a dispute as to whether the tenant is a qualifying tenant under the terms of the Commercial Rent (Coronavirus) Act 2022 ("2022 Act").
5. The Applicants applied to the RICS for the appointment of an Arbitrator under the 2022 Act and I was duly appointed in this capacity on 2 December 2022. The application was made under procedure B.
6. I have received and considered the following documents: -
 - a) Personal Statement from [REDACTED]
 - b) The unaudited accounts for [REDACTED] for the years end 31 March 2020 and 2021
 - c) Business rates invoices for 2020/21 and 2021/22
 - d) Quarterly VAT reports for 2019, 2020 and 2021
 - e) A summary of the accounts for the period March 2019 to June 2022
 - f) An email forwarded from [REDACTED] commenting on the above accounts
7. The above documents have been copied to both parties.

8. LEGAL FRAMEWORK

9. Section 1(1) of the 2022 Act provides that the Act "... enables the matter of relief from payment of protected rent debts due from the tenant to the landlord under a business tenancy to be resolved by arbitration".
10. Section 3(1) of the 2022 Act provides that "a protected rent debt" is a debt under a business tenancy consisting of unpaid protected rent. There is no dispute that the tenancy of the premises in this case was a business tenancy at the relevant time (s.3(2)(b)).
11. Section 4 of the 2022 Act provides that a business tenancy was adversely affected by Coronavirus if, for any relevant period, the whole or part of the business, or the whole or part of the premises, was subject to a closure requirement.
12. Section 13 of the 2022 Act sets out the main issues which the Arbitrator must decide, as follows: -
 - Is the tenancy a business tenancy, and is there a protected rent debt as defined by the 2022 Act?

- Is the tenant's business viable, or would it be viable if rent relief were given?
- If so, should the tenant be given relief and, if so, what form should it take?

13. I am required to consider the formal proposals set out by the parties and decide which is more consistent with the principles set out in section 15 of the Act. If I consider that neither proposal is consistent, then I must make an award that I consider appropriate.

14. The principles set out in section 15 are as follows; -

- The award should preserve (or restore and preserve) the viability of the tenant's business, whilst also preserving the landlord's solvency.
- The tenant should meet its obligations as regards payment in full and without delay.

15. Section 16 of the 2022 Act provides for the arbitrator's assessment of the viability of the business of the tenant and the solvency of the landlord.

16. SUBMISSIONS OF THE PARTIES

17. The Applicant, [REDACTED], sets out in a written statement the history of the occupation of the property since [REDACTED]. He states that the business was profitable up to February 2020 with sales figures of [REDACTED].

18. From February 2020 the business was adversely affected by the pandemic and the corresponding figures up to 31 March 2021 show sales of [REDACTED].

19. The following year showed some recovery, but the [REDACTED] down on the pre-pandemic figures.

20. During the period of the pandemic, the tenant paid half rent for the second, third and fourth quarters of 2020 and no rent for the first quarter of 2021. Together with insurance, the table below sets out that there is an amount of £29,272.16 unpaid to the landlord.

2020		ex vat	incl vat	Amount paid by Tenant		Amount Remaining Unpaid
	Q2	9,166.67	11,000.00	5,500.00	50%	5,500.00
	Q3	9,166.67	11,000.00	5,500.00	50%	5,500.00
	Q4	9,166.67	11,000.00	5,500.00	50%	5,500.00
2021	Q1	9,166.67	11,000.00	0		11,000.00
	insurance	1,476.80	1,772.16	0		1,772.16
	Total					29,272.16

21. These figures have not been disputed by the landlord. The tenant has asked that the rent arrears be annulled.
22. The Respondent, [REDACTED], has forwarded an email originally sent to the RICS on 21 October 2022, which was copied to the other parties. The email, headed "Response to DRS 00005086" includes comments from [REDACTED] in respect of the accounts provided by [REDACTED]. These comments include that the tenant company is viable and could pay the rent with no significant effect on the company's trading activity.
23. In support of this they make reference to the balance sheets, which they point out have a Cash and Bank balance of [REDACTED] as at 31 March 2021 and that the company's liquidity has increased with the Net Asset Shareholders Funds being [REDACTED] at 31 March 2021. They calculate the EBITDA at [REDACTED] as at 31 March 2021, a decrease in the previous years figures.

24. ELIGIBILITY OF THE CLAIM

25. At the pre-arbitration stage it is necessary for the parties to follow certain requirements set down in the 2022 Act. I have received the documents referred to in section 6 of this Award which appear to comply with the requirements.
26. There is no dispute that this referral relates to a business tenancy.
27. "Protected rent debt" is defined in S.3 of the 2022 Act, which states that the rent will be "protected rent" if –
 - a) The tenancy was adversely affected by coronavirus, and
 - b) The rent relates to a protected period.
28. Issue (a) is dealt with in S.4 of the 2022 Act and I accept that the business carried on at the property was impacted by the restrictions imposed due to the covid pandemic.
29. Issue (b) the protected period, is defined as from 21 March 2020 to 18 July 2021.
30. Both parties have made final offers, and these are summarised in paragraphs 21 and 22 of this Award.
31. The 2022 Act sets out the principles I must consider when looking at the final offers in Section 15, which I would summarise as:
 - they should aim to restore/preserve the viability of the tenant's business
 - the tenant should meet their obligations under the contractual terms of the lease to pay rent as far as is consistent with above.
32. Section 16 of the 2022 Act indicates that which I must have regard to when assessing the viability, if they are brought to my attention:-

- assets and liabilities of the tenants, including any other tenancies to which the tenants are party;
- the previous rental payments made under the business tenancy from the tenants to the landlord;
- the impact of Coronavirus on the business of the tenant; and
- any other information relating to the financial position of the tenant the Arbitrator considers appropriate.

33. In assessing the viability of the tenant, I have considered the financial information provided by the Applicant. The accounts for the years ending 31 March 2020 and 2021 illustrate to me that, whilst covid clearly impacted the business, it is a viable company.

34. The turnover of the business fell significantly during the periods of lockdown and restrictions, but the figures provided for the y/e 2022 illustrate an improvement in turnover, albeit still below pre-pandemic levels.

35. The landlord has not raised the issue of his solvency.

36. RELIEF FROM PAYMENT

37. In the case of the subject property, I have assessed the “protected rent debt” for the period 21 March 2020 to 18 July 2021 equates to £29,272.16.

38. On the evidence put to me, I am of the opinion that both offers appear consistent with the first part of Section 15 of the 2022 Act, i.e. the aim of the offer is to restore or preserve viability.

39. Having found both offers consistent with the principles in section 15 I must, under the terms of section 14 3 (a), decide which offer is the most consistent with the principles of section 15 and award that offer.

40. It is evident that the Applicant’s business has been severely and adversely affected by the pandemic. Unfortunately I do not believe that the Applicant has provided me with enough evidence to show that the business would become unviable if they have to meet their obligations under the contractual terms of the lease to pay rent.

41. The Respondent’s offer repays more of the protected rent debt and therefore comes closer to the Tenant meeting their contractual obligations and in the absence of clear evidence that this is not consistent with Section 15(a) I find that the Respondent’s offer is more consistent with the principles of Section 15.

42. COSTS

43. Section 19 of the 2022 Act relates to the arbitration fees and expenses.

44. The Arbitration fees are defined as the Arbitrator's fees and expenses and the fees and expenses of any approved arbitration body. Under procedure B, the arbitrators fee is £1,500 (plus VAT).

45. I have received no proposals regarding the Arbitration fees and expenses and have therefore followed the guidance of the 2022 Act that each party should bear equal responsibility for these costs.

46. AWARD

47. I hereby Award and Direct as follows; -

- a) The Applicant will be granted no relief for any of the "protected rent debt".
- b) The outstanding debt is to be paid by the Applicant within 28 days of this Award.
- c) No interest is due on the outstanding debt.
- d) The Respondent pays the Applicant half of my fees within 28 days of this Award.

48. An anonymised copy of this Award will be published by the RICS.

49. The seat of this Arbitration is England and Wales.

50. This Final Award is made and published this 14th day of April 2023.



Robert Clifford MRICS

ARBITRATOR

Dated 14 April 2023

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