ARBITRATION ACT 1996

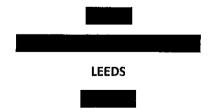
In the matter of an

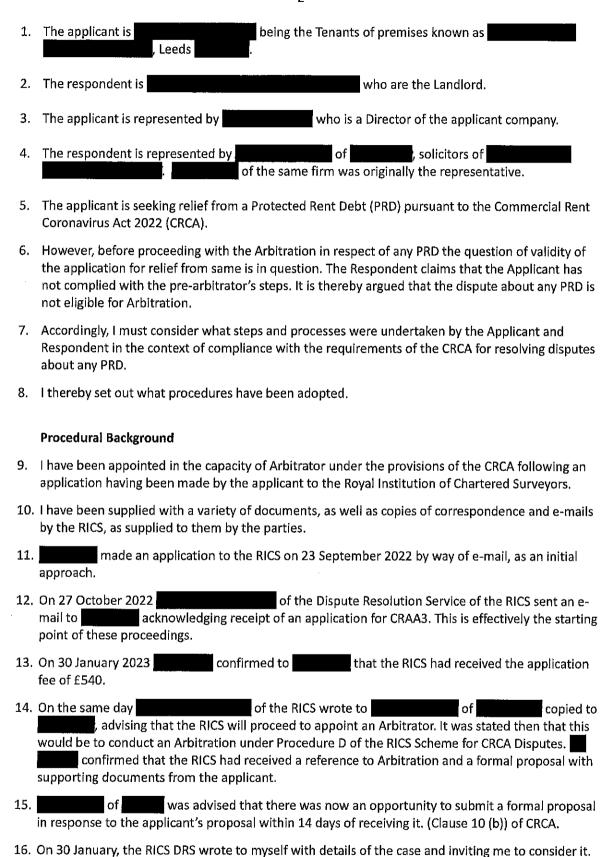
ARBITRATION UNDER THE TERMS OF THE COMMERCIAL RENT (CORONAVIRUS) ACT 2022

(applicant) and (respondent)

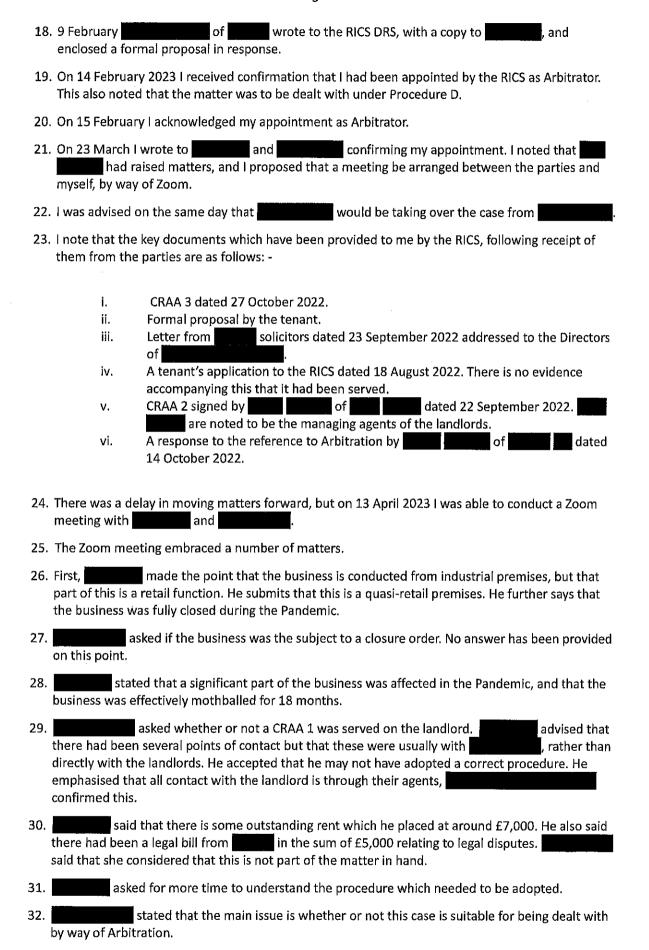
PRE-ARBITRATION RULING

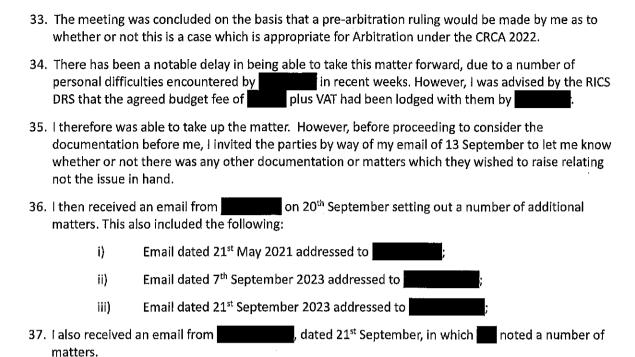
Relating to premises known as





17. I replied on the same day confirming that I will be prepared to act in the matter.





Procedure for making a reference to Arbitration.

38. Both parties have been supplied with a copy of these emails.

- 39. The CRCA provides under clause 10 the requirements for making a reference to Arbitration.
- 40. The starting point for any Arbitration under the CRCA is as follows: -
 - Clause 10 (1) Before making a reference to Arbitration
 - (a) The tenant or landlord must notify the other party (the respondent) of their intention to make a reference, and
 - (b) The respondent may, within 14 days of receipt of the notification under Paragraph (a), submit a response.
 - (2) The reference to Arbitration must not be made before -
 - (a) The end of the period of 14 days after the day on which the response under sub section (1) (b) is received, or
 - (b) If no such response is received, the end of the period of 28 days beginning with the day on which the notification which under subsection (1) (a) is served.
- 41. Under Clause 10 this then goes on further as follows: -
 - (3) A reference to Arbitration must be made to an approved Arbitration body.
 - 42. The RICS is such a body, and therefore once an application is made to them, the procedure to be adopted is as set out in their guidance. This is in the "A Guide For Users" Covid Rent Arrears Arbitration.

- 43. That Arbitration process is clearly set out within the guide and provides for four separate Arbitration procedures to be adopted. The appropriate procedure under the RICS scheme is as listed under Arbitration A, B, C, and D.
- 44. As noted above the applicant made an application to the RICS for this Arbitration to proceed with an Arbitrator being appointed.
- 45. My appointment was made on 15 February 2023 and the RICS notified me that the matter would proceed under the RICS Arbitration Procedure D.
- 46. Under Arbitration D there is provision for formal submissions to be made to the Arbitrator. In addition, it provides for a pre-arbitration discussion to take place between the arbitrator and the parties. This is intended to agree how the arbitration would be conducted, how long it may take the arbitrator to deal with the evidence, and thereby enable the parties to agree a fee structure which is appropriate.
- 47. The guidance also provides that once agreed between the parties and the Arbitrator then the RICS would be advised of that sum, who would then arrange for it to be collected from the applicant.
- 48. In this instance it was appropriate to hold a pre-arbitration discussion for the manner in which this case will be progressed, and such Zoom meeting took place on 13 April 2023.

Contents of Documentation Submitted

- 49. As under Clause 10 of the CRCA the starting point for a reference to Arbitration about a disputed PRD is that the applicant must notify the respondent of their intention to make a reference (Clause 10 (1) (a).
- 50. An application to an approved Arbitration body cannot be made before a) 14 days after the notice has been served and when the respondent submits a response to the applicant, or b) 28 days after such notice if the respondent does not submit a response.
- 51. In any event an application to appoint an Arbitrator is not permitted after 24 September 2022.
- 52. Hence, in order for an application for reference to Arbitration to succeed, there are two tests:
 - (i) The applicant must notify the Respondent of their intention to make a reference to Arbitration; This must be by 26 August 2022; and
 - (ii) An application to an approved Arbitration Body must be made before 24 September 2022.
- 53. says that he served notice of intention to Arbitrate on the Respondent and has produced such document which is dated 18th August 2022. He refers to this in his email of 21st September to
- 54. Nothing has been put before me which confirms that the said notice was received by the Respondent. However, completed a "Response to the Reference to Arbitration" dated 14th October 2022.
- has produced a form CRAA2 dated 22nd September 2022 and signed by one of
- 56. It is agreed by both parties that are the Managing Agents for this property on behalf of the Landlords (Respondents).

6	
57.	It is therefore clear to me that did indeed serve a CRAA1 notice on the Respondent, most likely to the Managing Agent, contact to the CRAA2.
58.	The test at 52 (i) above is therefore satisfied.
59.	Turning to the second test at 52 (ii) above, I have been sent a copy of CRAA3 dated 23 rd September 2022 which was submitted to the RICS.
60.	Accordingly, therefore the second test is satisfied.
61.	I now consider the PRD issue.
62.	In the CRAA2 the Respondent's Agent notes that "a protected rent debt as contemplated by the Act does not exist". There is no explanation given as to this position.
63.	The second thread of this dispute relates to the matter of Protected Rent Debt. The Respondent claims that this does not exist.
64.	In support of that position the Respondent relies on two points: -
	i) Whether or not the tenancy was "adversely affected by Coronavirus (Clause 4 CRCA), and
	ii) That the business was subject to a requirement imposed by Coronavirus Regulations to close.
65.	They say that retailers were permitted to remain open, and that this included launderettes/dry cleaners. The subject premises are at least partly used for these purposes. Thereby it is claimed that the business could remain open for trading and therefore was not adversely affected.
66.	It follows from this, they contend, that no PRD exists and can therefore be the subject of an Arbitration.
67.	The Applicant chose to close down the business activity during the Coronavirus Pandemic, and as a consequence of that decision it may be concluded that the business was adversely affected. However, the adverse effect was not as a result of imposition but choice on the part of the Applicant.
68.	I cannot therefore come to the conclusion that this act or event constituted something which brought about a PRD.
	Conclusion
69.	I therefore FIND that this matter is not one for Arbitration under the CRCA and there is no Protected Rent Debt to deal with.

BARRY G. CRUX FRICS ACIArb

Date