

**IN THE MATTER OF AN ARBITRATION  
UNDER THE COMMERCIAL RENT (CORONAVIRUS) ACT 2022**

**Between**

[REDACTED]

**(APPLICANT TENANT)**

**and**

[REDACTED]

**(RESPONDENT LANDLORD)**

**In respect of**

[REDACTED]

Award by  
Robert Clifford MRICS  
Newmark HDH Limited  
84 Grosvenor Street  
London  
W1K 3JZ  
United Kingdom

**1. PRELIMINARY**

2. The Applicant, [REDACTED] of [REDACTED], is a tenant of premises at [REDACTED]  
[REDACTED]
3. The Respondent, [REDACTED] of [REDACTED], is the landlord of said premises and is represented by [REDACTED] of [REDACTED].
4. I have not been provided with a copy of the lease.
5. The Applicant applied to the RICS for the appointment of an Arbitrator under the Commercial Rent (Coronavirus) Act 2022 ("2022 Act"), and I was duly appointed in this capacity on 5 December 2022. The application was made under procedure B.
6. I have received and considered the following documents: -
  - a) A Formal Proposal from [REDACTED]
  - b) A number of emails from the parties, in particular:
    - i. An email from [REDACTED] dated 06/12/2022 stating that an agreement on the arrears had been reached, the applicant was not the tenant during the relevant period and that the applicant has not given the respondent the requisite notice
    - ii. An email from [REDACTED] dated 06/01/2023 enclosing exchanges of emails and a licence to occupy
    - iii. Emails from [REDACTED] dated 13/01/2023 and 01/02/2023 requesting further time to deal with the matter
    - iv. An email from [REDACTED] dated 02/02/2023 opposing the applicant's second request for further time
    - v. An email from [REDACTED] dated 03/04/2023 informing me that his client has forfeited the lease
7. The above documents have been copied to both parties. I have heard nothing from [REDACTED]  
[REDACTED] since her email of 01/02/2023.

**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 two stages which the Arbitrator must decide, as follows: -
  - a. Stage 1: Have the parties already reached an agreement, or is the tenancy not a business tenancy, or is there no protected rent debt as defined by the 2022 Act? If, as the Arbitrator, I determine “yes” to any of these, I must make an award dismissing the reference.
  - b. Stage 2: Is the tenant’s business viable, or would it be viable if rent relief were given? And if so, should the tenant be given relief and, if so, what form should it take?
13. If I move to Stage 2 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 a brief history of the occupation of the property since she became a Director of the tenant company on 11 November 2021 and points out that the majority of the rent from 25 March 2020 to 19 July 2021 has been paid. It appears that £10,800 is outstanding and she asks that this is either waived or an affordable payment plan be agreed.
18. The Respondent’s agent, [REDACTED] states that payment of the arrears has been agreed, and provides emails to support this. Furthermore he states that the property was not occupied by [REDACTED] during the relevant period, and that a company, [REDACTED] were the occupiers. Accordingly the application should fail on two of the grounds set out in Stage 1 as referred to in 12.a. above.
19. He also states that the requisite notice was not given before the matter was referred to arbitration.

20. Finally he points out that the lease has now been forfeited.

## 21. ELIGIBILITY OF THE CLAIM

22. Firstly, there is a dispute that this referral relates to a business tenancy as defined by the 2022 Act. [REDACTED] has provided a licence suggesting the Applicant may have sublet the property. However this is not signed or dated, and therefore I cannot determine that the tenancy is not a business tenancy based on this evidence alone.

23. Secondly, there is the suggestion that the arrears have been agreed. The email of 14 September 2021 signed as [REDACTED] to [REDACTED], copying in [REDACTED] and [REDACTED] and the preceding chain suggests there were negotiations and an agreement was being discussed. However there is no explicit or implied acceptance from [REDACTED] to the last proposal. Therefore I cannot determine an agreement has been reached.

24. Accordingly I must move to Stage 2.

25. 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.

## 26. RELIEF FROM PAYMENT

27. 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 £10,800.

28. The question is that by giving relief on this debt, would it restore or preserve the viability of the tenant's business?

29. According to [REDACTED], the property has now been forfeited. I presume that the debt remained outstanding at the point of forfeiture.

30. I can only conclude therefore that relief from the debt would not restore the business.

## 31. COSTS

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

33. 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).

34. I have received no proposals regarding the Arbitration fees and expenses. However given that the Applicant has paid the Arbitration fee but now forfeited the lease, it would be illogical for the Respondent to pay the Applicant half of the fee for the Arbitration.

**35. AWARD**

36. I hereby Award and Direct as follows; -

- a) The Applicant will be granted no relief for any of the "protected rent debt".
- b) The Applicant is responsible for the fees of this Award.

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

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

39. This Final Award is made and published this 17th day of May 2023.



Robert Clifford MRICS

ARBITRATOR

Dated 17 May 2023

This award is solely for the use of the parties to this dispute, and no responsibility is accepted to any third parties for the whole or any part of its contents. Neither the whole nor any part thereof may be reproduced without the approval of the parties and the Arbitrator.