

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

BETWEEN

W [REDACTED] (CLAIMANT)

AND

N [REDACTED] (RESPONDENT)

FINAL AWARD

OF

**ANDREW LLOYD CREASE FRICS FCIARB
ARBITRATOR**

JANUARY 2023

BACKGROUND

1. The Applicant is the tenant of [REDACTED]
2. The Respondent is the landlord of [REDACTED].
3. The parties have been unable to agree on the appropriate relief concerning rental arrears arising under the Commercial Rent (Coronavirus) Act 2022 (hereinafter referred to as the CRCA).
4. Notice was given of intention to arbitrate under the CRCA by the Applicant, followed by an application to the Dispute Resolution Service of the Royal Institution of Chartered Surveyors for the appointment of an Arbitrator.
5. I was approached by the Royal Institution of Chartered Surveyors to act as Arbitrator under the CRCA. After checking for conflicts I advised I would be able to accept the appointment.
6. I was appointed to act as Arbitrator on 26th September 2022.
7. I contacted the parties and arranged an initial meeting on 13th October 2022 on Teams.
8. Having been appointed under Scheme D of the RICS process, the parties agreed to my suggestion of adopting Scheme B, a lower cost paper only procedure more suited to the protected rent in dispute.
9. The parties agreed to further time to making revised final offers with supporting evidence and I issued Directions to this effect.
10. Revised offers were received on 24th November 2022.
11. This is the Award of Andrew Lloyd Crease, final in all regards, made this day in London England.

MATTERS IN AGREEMENT

12. The parties have agreed to adopt Procedure B of the RICS Scheme.
13. I raised the issue of eligibility at the initial meeting and the Respondent was uncertain as whether they were going to challenge eligibility. I indicated that if they wished to challenge eligibility they should do so in their evidence along with a revised offer. No such challenge has been made and therefore the matter of eligibility has been taken as agreed.

MATTERS IN DISPUTE

- i) The protected rent.
- ii) The appropriate relief from payment.
- iii) Costs.

i) The protected rent

14. The definition of protected rent in the CRCA, Section 3(i) is, "*Protected rent is a debt under a business tenancy consisting of unpaid protected rent*".
15. Rent paid during the protected rent period cannot be protected rent as it is not unpaid and is not a debt.
16. The parties appear to agree what the rent should have been payable during the protected rent period of the 21st March 2020 to 18th July 2021 as being £104,048, of which the tenant paid £55,250.03. Both parties are therefore agreed that the outstanding amount is £48,750.
17. Under the terms of the CRCA this is the amount on which I may give relief, i.e. the protected rent.

FINDING

18. **I FIND THE PROTECTED RENT TO BE £48,750.**

ii) The appropriate relief from payment

The Final Offers

19. The Applicant's offer is made under the misapprehension that the rent paid amounts would be part of the protected rent debt.
20. On this basis they were seeking to pay £3,250, which would have meant that they would have paid £58,503 of the rent due during the protected rent period of £104,048, i.e. 58.26% of rents due.
21. However, the offer in reality is to pay £3,250 of the actual protected rent of £48,750, i.e. 6.66%.
22. In support of this the Applicant points me to their payment record during the pandemic. I am also provided with details of rent payments via their bank statements in the months post the pandemic.
23. I acknowledge that they paid sums towards the outstanding rent in the protected rent period amounting to over half of the contractual rent due.
24. I also acknowledge that they have paid rent on a monthly basis at the correct amount since the pandemic.
25. The Applicant makes the point that as 24-hour members only gym, that during the closure period their income was zero.
26. I am provided with six months of bank statements to 25 July 2022.
27. The statements show a business that is broadly breaking even post the pandemic but doing so with the benefit of cash injections from the directors.
28. The Respondent's final offer is to write off 53.3% of the protected rent debt of £48,750 and therefore offers that the outstanding amount is settled in the sum of £22,750.

29. The CRCA sets out the principles I must consider when looking at the final offers in Section 15, which I would summarise as:
- i) they should aim to restore/preserve the viability of the tenant's business
 - ii) the tenant should meet their obligations under the contractual terms of the lease to pay rent as far as is consistent with i) above.
30. Section 16 of the CRCA indicates that which I must have regard to when assessing the viability. Essentially, this section states that I must have regard to these matters when assessing viability if they are brought to my attention:-
- (a) assets and liabilities of the tenants, including any other tenancies to which the tenants are party;
 - (b) the previous rental payments made under the business tenancy from the tenants to the landlord;
 - (c) the impact of Coronavirus on the business of the tenant; and
 - (d) any other information relating to the financial position of the tenant the Arbitrator considers appropriate.
31. I have been presented with no detailed evidence regarding the assets and liabilities for the Applicant or information as to whether they own any other tenancies or businesses.
32. I have not been given the financials for the pre-pandemic period or during the pandemic or post the pandemic periods.
33. Items such as numbers of members, income, expenditure, gross profit, net profit, have not been provided to me. I have not had sight of profit and loss accounts or balance sheets.

34. I can see under the terms of Section 15(i)(a) that both of the formal offers are aimed at restoring/preserving viability. The key difference is the amount of the protected rent that the offers seek to pay.
35. At the initial meeting I held on Teams and in my Directions, I directed the parties to Section 16 and emphasised that I could only make a decision on whatever evidence was put before me and I drew the parties' attention to what I must have regard to under Schedule 16.
36. On the evidence put to me I can see that both offers appear consistent with the first part of Section 15, i.e. the aim of the offer is to restore or preserve viability.
37. 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.
38. 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.

FINDING

39. **BOTH OFFERS ARE CONSISTENT WITH SECTION 15. THE RESPONDENT'S OFFER IS MORE CONSISTENT. I AWARD UNDER SECTION 14 (3)(a) THAT THE RESPONDENT'S OFFER IS THE MOST CONSISTENT.**

iii) Costs

40. Section 19(5) requires me to make an Award on the costs that reimburses the Applicant for the application fee and my fee, unless under Section 6 of the CRCA I consider it more appropriate to award alternatively.
41. I have not received any pleadings from the parties as regards costs and can see no reason to depart from the default position.
42. Therefore, under Section 19(5) I will Award that the Respondent pays the Applicant half of my fee and half of the application fee.

AWARD

43. I hereby Award and Direct as follows:-
- i) The Applicant will pay the Respondent the sum of £22,750 within 14 days of the date of this award.
 - ii) The Respondent pays the Applicant half of my fees and one half of the RICS application fee within 14 days of the date of this award.


PUBLICATION

44. This award must be published. I intend to publish it on the RICS website.
45. I attach a redacted copy of the award which I will send to the RICS for publication unless I hear back from you that you require further redactions to be made within the next seven days.

SEAT

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

Signed

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Andrew L Crease DipArb FRICS FCI Arb

Date: ...18/01/2022.....
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