

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

BETWEEN

[REDACTED] CLAIMANT)

AND

[REDACTED] LIMITED (RESPONDENT)

IN RESPECT OF

PART OF GROUND FLOOR, [REDACTED]  
LONDON, [REDACTED]

FINAL AWARD OF

ANDREW LLOYD CREASE DIPARB FRICS FCIARB

NOVEMBER 2023

## BACKGROUND

- 1 The Applicant is the tenant of Part of Ground Floor, [REDACTED]  
[REDACTED]
- 2 The Respondent is the Landlord of Part of Ground Floor, [REDACTED]  
[REDACTED]
- 3 The parties have been unable to agree on the appropriate relief concerning rent arrears arising under the Commercial Rent (Coronavirus) Act 2022 (hereinafter referred 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 RICS to act as Arbitrator under the CRCA. After carrying out conflict checks I advised that I would be able to accept the appointment.
- 6 I was appointed to act as Arbitrator on 23 November 2022. There then followed a period where I tried to arrange a preliminary meeting which was eventually convened by Teams on 9 January 2023.
- 7 I the points discussed in an email on 10 January 2023. One of the points was that reference had been made under Procedure B of the RICS scheme which is a fixed price scheme costing £1,500 plus VAT. This was the fee which the Applicant had paid with their application fee.
- 8 At the meeting I pointed out that Procedure B could only be utilised if there was agreement from both parties and in this instance the Respondent was not prepared to agree to Procedure B. I explained that the relevant procedure was Procedure D, which involved an hourly charge of up to

£400 per hour plus VAT. I indicated that my fees would be £395 per hour and having assessed the issues being discussed at the preliminary meeting, I estimated 10 hours at £395, so a payment of £3,950 plus VAT, i.e. £4,740 would be required to begin proceedings.

9. I communicated this to the Royal Institution of Chartered Surveyors, who raised an invoice for the difference between the £1,800 received and the £4,740 estimate under Procedure D.
10. Further time extensions were agreed by the Respondent whilst the Applicant sought legal advice.
11. On 6 March 2023 the Respondent requested that I dismiss the case for lack of prosecution a request that was repeated on the 17<sup>th</sup> July 2023.
12. On 30 August 2023, having heard nothing further from the Applicant, I issued a peremptory order indicating that if the remaining £2,940 of my estimated fee was not paid within 14 days I would dismiss the case under the powers granted to me under Section 41(3) of the Arbitration Act 1996.

#### **CONSIDERATION OF THE RESPONDENT'S APPLICATION TO DISMISS THE CASE**

13. Section 19 of the CRCA deals with the Arbitrator's fees and expenses, specifically sub-section 4 states "The Applicant must pay Arbitration fees (other than all hearing fees) in advance of the Arbitration taking place". Sub-section 9 states "In this section, the Applicant is the party which has made the reference to Arbitration".
14. I indicated on 30 August 2023 that I would dismiss the reference using my powers under Section 41(3) of the Arbitration Act if the RICS did not receive payment within the next 14 days.

15. No communication has been received from the Claimant since the peremptory order was made
16. Accordingly no explanation of the delay has been made.
17. The Respondent requested I dismiss the case on 6 March 2023 and again on 17 July 2023.

#### **FINDING**

18. I dismiss the Reference.

#### **REASONS**

19. The CRCA was designed as a means of resolving unpaid rent disputes arising during the Coronavirus pandemic. Applications had to be made by the end of August 2022 with strict timetables to ensure a quick resolution of such matters.
20. The Applicant made their application but have not lodged the Arbitration fees required under the CRCA 19, sub-section 4.
21. It may be possible to argue some mitigation in that they initially paid the Arbitration fee under Procedure B, however, it was pointed out to them in a preliminary meeting in January 2023 that agreement was needed for Procedure D and in the absence of such agreement, the default procedure was Procedure D which required an hourly fee charge and an estimate, which was provided to them at that time.
22. Further latitude has been given to the Applicant in two agreed extensions by the Respondent, but the Arbitration fee has remained outstanding. No response has been received to my peremptory order.

23. I am satisfied that there has been an inexcusable and inordinate delay in these proceedings. I am further satisfied that this delay has likely caused prejudice to the Respondent as until this matter is concluded, they are unable to clarify or collect the unpaid rent from the pandemic period.

#### **COSTS**

24. Section 19, sub-section (5) of the CRCA states that "when making an award under Section 13 or 14, the Arbitrator must (subject to sub-section (6)) also make an award requiring the other party to reimburse the applicant for the Arbitration fees paid. Section 19 (6) states that the general rule in sub-section (5) does not apply if the Arbitrator considers it more appropriate in the circumstances of the case to award a different proportion (which may be zero).
25. Although not making an award under Section 13 or 14 of the CRCA, this award dismisses the claim and is in my view analogous with an award dismissing the reference under Section 13 (2) and therefore I apply the principles in Section 19.
26. The Respondent has not asked to be a party to these proceedings and as the Claimant has failed to move the matter forward by making the payment required under Section 19 (4), I conclude that it would be unreasonable to award the Respondent to pay any proportion of the application fee or the fees of this Arbitration.

#### **AWARD**

27. I dismiss this reference.
28. I determine that the Applicant is responsible for all of the arbitral body application costs and my costs in this Arbitration.

**SEAT**

29 The seat of this Arbitration is England and Wales.

Signed



.....  
Andrew L. Crease DipArb FRICS FCI Arb

Date: 7<sup>th</sup> November 2023