

**In The Matter of Arbitration under the terms of the Commercial Rent
(Coronavirus) Act 2022**

Between

(The Applicant)

And

(The Respondent)

In respect of

London SW12



1. The Parties and Premises

2. The Applicant is *** a tenant of premises at *** London SW12.
3. The Respondent is *** the landlord company.
4. I have not been provided with a copy of the lease, though it is common ground between the parties that;
 - i. The Applicant occupies the premises for the purposes of a tanning salon
 - ii. The lease creates a business tenancy sufficient to satisfy the requirements of the Commercial Rent (Coronavirus) Act 2022 (CRCA)
5. **Procedural Background**
6. I received a copy of the Applicants formal proposal, together with the Respondents response from the RICS with confirmation of my appointment on 26th September. These were duly exchanged and comments invited from both parties on 29th September 2022.
7. The parties consider that the amount of the protected rent debt is £15,508.82. The Applicant referring to this as “rent payments for the ring-fenced period (252 days)” while the Respondent refers to the “rent that was due for the mandated closure periods”. However, both parties have erred in their understanding and calculation of the protected rent debt in interpreting this as the rental liability for the defined periods. The act clearly defines the protected rent debt as the unpaid rent. The parties have confirmed that the amount of unpaid rent is £7,754.41.
8. **The figure of £7,754.41 is therefore is the protected rent debt upon which I must decide whether to grant relief and if so in what form.**
9. The Applicant seeks relief of 50 % of what she considers to be the protected rent debt of £15,508.82 or £7,754.41 while the Respondent offers 25 % relief on £15,508.82 or £3,877.20. requesting interest on the residue of the debt. However, 50 % of the actual (as opposed to the parties assessment) protected rent debt is £3,877.20 while 25 % is £1,938.60.
10. This clearly poses me a problem as the calculated financial offers made by both parties are inconsistent with the percentage offers made on the true protected rent debt of £7,754.41. I have had further regard to this under paragraph 24 below “Relief From Payment – Decision”

11. Having regard to the level of the protected rent debt I proposed to the parties that the matter be dealt with under Procedure A. This was agreed by both parties.

12. I have sought from the parties the following;

- i. Financial information from the Applicant to satisfy myself that she remains solvent and to inform my decision on relief if any.
- ii. Confirmation from the Applicant of any grants or other assistance received
- iii. What, if any rental concessions the Respondent had allowed the tenant of the adjoining property which the Respondent also owns.

13. **Legal Framework and Eligibility**

14. The CRCA provides for relief from payment of Protected Rent debt provided;

- i. The property is occupied under a business tenancy as defined by the CRCA.
- ii. There is a protected rent debt consisting of unpaid protected rent.
- iii. The tenant's business is viable or if not would be if granted relief.

15. I am satisfied that the tenancy qualified as a business tenancy under the Act.

16. I am further satisfied that there is a protected rent debt which on the facts is £7,754.41

17. I am also satisfied from the information provided by the Applicant and her accountant (including filed accounts for the year to March 2021, management accounts for the year to March 2022 and management accounts for the period from March to June 2022) that the Applicants business is viable.

18. **Relief from payment**

19. I must decide if the Applicant should be given any relief from payment of the protected debt and in doing so the award which I am permitted to make under Section 14 (6) may comprise;

- i. Relief from payment by either writing off all or part of the debt including interest or giving the tenant time to pay the whole or part of the debt or a combination of these relief measures
- ii. Alternatively, I may determine that the Applicant is given no relief from payment

20. In making my award I must consider the proposals put forward to me by the parties and any ward should preserve or restore and preserve the viability of the business tenant

insofar that it is consistent with preserving the Landlords solvency. Equally the tenant should as far as it is consistent with the above principle be required to meet its obligations regarding the payment of protected rent in full and without delay.

21. Section 16 of the CRCA requires me to make my assessment having regard to;
 - i. The assets and liabilities of the tenant
 - ii. The previous rental payments made under the business tenancy from the tenant to the Landlord
 - iii. The impact of coronavirus on the business of the tenant
 - iv. Any other information relating to the financial position of the Tenant I consider appropriate
 - v. The financial position of the Respondent landlord
22. **Relief from Payment - Decision**
23. I have been provided with financial information by the Applicant including filed accounts for the year to March 2021, confirmation from the Applicant's accountant of a profit and loss account and balance sheet for the tax year to March 2022, yet to be filed and also management accounts for the period from March 2022 to June 2022. I have considered the Applicants financial position in respect of the tax year rather than on an annual basis as evidenced by the Applicant.
24. I note the turnover for the year to March 2020 confirms a turnover of £98,458, a gross profit of £85,786 and an operating profit before tax of £19,441.
25. For the following year to March 2021 turnover reduces substantial to £25,058 though the account shows an operating profit of £14,123 before tax due in large part to "other operating income" of £61,950.
26. I note that the Applicant received £40,286 in retail and hospitality grants from Wandsworth Council between April 2020 and a March 2021 which accounts in large part for "other operating income".
27. For the year to March 2022, turnover increased to £119,178.58 including £17,169.80 of other revenue which includes a restart grant from Wandsworth Borough Council of £12,000. The year to March 2022 shows an operating profit of £34,993. The Applicant received £20,500 in dividends.
28. The Applicant accepts in her proposal that the retail hospitality and leisure grants received enabled the payment of variable and fixed business costs during the closures as well as

enabling the Applicant to pay basic living expenses, though claims the grant payments were not sufficient to enable the full commercial rent to be paid.

29. The total amount of the protected debt for the years 2020 – 2021 is £15,508.82 compared to an operating profit for the year to March 2021 of £14,123 and an operating profit to the year March 2022 of £34,993, a total of £49,116.
30. The Applicants business remained in profit throughout the pandemic and had the full rental payments been made the tenant would have remained in profit for both tax years to March 2021 and March 2022.
31. In considering the dichotomy of the parties offers as between a percentage of an incorrectly assessed protected rent debt and a specific sum I have had regard to the latter in deciding this issue.
32. Having regard to the circumstances noted above I am not persuaded by the Applicants request for relief of £7,754.41 notwithstanding this has been incorrectly assessed as 50 % of the protected rent debt. In all the circumstances I consider the landlord's offer of £3,877.20, which I note has similarly been incorrectly assessed as a percentage of the protected rent debt to be reasonable.
33. **Arbitration Costs**
34. Section 19 (7) of the CRCA provides that each party must pay its own costs, though I must also make an Award requiring the Respondent to reimburse half of the arbitrator's fees paid by the Applicant unless it is considered more appropriate to offer a different proportion.
35. **The Award and Publication**
36. This award will be published by the RICS in an anonymised form.
37. I hereby award and direct as follows;
 - A. The Applicant will be granted relief of £3,877.20. The Applicant is therefore to pay to the Respondent the sum of £3,877.20. This sum is to be repaid in 3 monthly instalments of £1,292.40 commencing on the 1st November 2022. No interest on the protected rent debt is to be paid by the Applicant.

- B. The Respondent must reimburse the Applicant 50% of the Arbitration fee of £750 plus vat paid by the Applicant or £375 plus VAT. This sum is to be paid by the 1st November 2022.

- C. The Seat of the Arbitration is England & Wales and is made by me, MJ Crump on 14th October 2022.



Signed by

Date 14.10.2022

MICHAEL JOHN CRUMP BSc FRICS

ARBITRATOR