

COMMERCIAL RENT (CORONAVIRUS) ACT 2022

Between

(APPLICANT TENANT)

and

(RESPONDENT LANDLORD)

In respect of

*******, LONDON, E7**

Iain Coxon BSc MRICS ACIArb
IC Retail Property Limited
262-264 Regent Street
London
W1B 3AQ

1.0 PRELIMINARY

- 1.1 The Applicant, *****, was a tenant of premises at ***** E7.
- 1.2 The Respondent, *****, is the landlord of the above premises.
- 1.3 By way of a lease dated 1st February 2016 the property was demised for a term from 19th January 2016 to 31 July 2025 at an initial rent of £31,650 per annum. The lease provided for open market rent reviews on 1st August 2017 and 4 yearly thereafter. I am advised that the rent passing at the date of this case was £32,000 per annum.
- 1.4 The lease for the premises was forfeited on 5 April 2022, although the premises were occupied for the purposes of a business (sale of clothing) for the purposes of this referral.
- 1.5 The Applicants 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 2 December 2022. The application was made under procedure B.
- 1.6 The applicant tenant is representing herself and the respondent landlord is represented by *****.
- 1.7 I have received and considered the following documents: -
 - Notice of Intention 24/08/2022
 - Application to RICS 20/09/2022
 - Response to reference 23/11/2022
 - Various email correspondence
- 1.8 The above documents have been copied to both parties.

2.0 LEGAL FRAMEWORK

- 2.1 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".
- 2.2 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)).
- 2.3 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. There is no

dispute that the subject property was subject to a closure requirement, although the parties dispute the period of closure.

2.4 Section 13 of the 2022 Act sets out the main issues which the Arbitrator must decide, as follows: -

- Is the tenancy a business tenancy, and is there a protected rent debt as defined by the Act?
- Is the tenant's business viable, or would it be viable if rent relief were given?
- If so, should the tenant be given relief and, if so, what form should it take?

2.5 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.

2.6 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.

2.7 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.

3.0 SUBMISSIONS OF THE PARTIES

3.1 The business at the subject property was originally run under the name of ***** trading as *****. Following a change in her personal circumstances, Ms ***** converted the business to a limited company (**** Limited) in October 2019, whilst still trading from the subject property. The actual trade of the business (designing and fashioning wedding dresses and formal wear) continued in the same format.

3.2 The turnover figures provided by Ms ***** indicate that the business was successful pre-covid. However, due to the limitations on weddings and formal events, the pandemic significantly impacted on demand for attire for such events and as a result the turnover fell to much lower levels. Post lockdown the landlord forfeited the lease in April 2022 due to non-payment of rent outside the protected rent period. I am advised that the tenant now trades from her home.

3.3 The parties do not agree the level of protected rent debt. The tenant contends a total figure of £42,752.55, whilst the landlord suggests it is £34,483.47. The difference appears to be due to two primary reasons.

1. **The period of protection** – the tenant has assumed closure from 21 March 2020 until 18 July 2021 whereas the landlord suggests non-essential retail was permitted to re-open on 12 April 2021. As the subject business is classed as non-essential retail, I have concluded that the relevant date for the purposes of this referral is 12 April 2021.
2. **The amount paid by the tenant** - The tenant contends that she made a payment of £10,800 whereas the landlord suggests payments totalling £15,346.23, as supported on pages 8 and 17 of their response. I am inclined to follow the detailed evidence submitted by the landlord.

3.4 As the shop was allowed to re-open on 12 April 2021, and as I favour the evidence provided by the landlord as to the payments made, I have concluded that the protected rent debt is £19,137.24. I don't believe the landlord would indicate higher payments were made by the tenant if this were not the case.

3.5 The tenant has proposed a payment of £5,000 in full and final settlement of the protected rent debt (albeit this was based on her understanding that the debt was £32,512.09) whilst the landlord has proposed that there is no relief, and the protected rent should be paid in full.

4.0 RELIEF FROM PAYMENT

4.1 I have been provided with limited financial information by the applicant, primarily the annual turnover figures provided as an appendix to her application. The information provided indicates the following annual turnover figures; -

2010 to 2017	Circa £345k to £379k
2018	£295,205
2019	£293,426
2020	£131,720
2021	£205,774
2022	£238,509 (9 months)

4.2 It is apparent from these figures that the turnover in 2020 was significantly lower than previous years, with a lesser impact in 2021. The 2022 turnover indicates the business is recovering.

4.3 For the majority of this time the business was run under the tenant's personal name, and I am advised no accounts are available. The limited company was incorporated on 10th September 2019 and the tenant advises that due to coronavirus, accounts do not have to be submitted to HMRC until 2023.

4.4 The above turnover figures have been contested by the landlord's representative in his email dated 24 January 2023, where he has provided figures that were used by the tenant in previous litigation. However, I am concerned with the lockdown

period set out in the Act and am satisfied that the business was adversely impacted by the pandemic.

4.5 Turnover in 2020 was significantly impacted, not only by the closure of non-essential retail, but also by the restrictions imposed on formal events and weddings. The tenant has confirmed that during this period she was able to secure £16,139.22 from ***** Council, which will have mitigated her losses. The timing of the transfer of the business to a limited company may have impacted on the receipt of further grants.

4.6 In May 2020 the tenant received two bounce back loans in the sum of £25,000 from Barclays Bank and £15,000 from Lloyds Bank.

4.7 Notwithstanding the significantly reduced turnover in 2020 and 2021 (although less severe in the latter year) I believe the business to be viable. It has been trading for many years and has paid the rent throughout this period, albeit with intermittent litigation. With no restrictions on weddings or formal functions, it would appear that during 2021 and 2022 (part year) the business has improved, as evidenced by the turnover figures provided. In addition, the forfeiture of the lease on the subject property, and the transfer of the business to the tenant's home address will have undoubtedly saved annual rent and rates costs.

4.8 I am advised that the landlord lives in the flat above the shop, and that the shop was her only source of income. In April 2022 the lease on the ground floor shop was forfeited and I understand the shop is available to let in the open market. I understand the tenant was in arrears of rent (outside the protected period) but am unclear as to why the lease was forfeited, rather than pursue the arrears. The landlord continues to live in the flat and retains ownership of the asset, so, on balance, it would appear that she remains solvent.

4.9 In summary, it is evident that the tenant's business was adversely affected by Coronavirus and the restrictions imposed as a result thereof. I am therefore minded granting them some relief.

4.10 The parties will appreciate that I have been provided with very limited certified financial information to assess the viability of the tenant or the solvency of the landlord. No accounts have been provided, nor details of the losses (if any) actually incurred. It is therefore difficult for me to make an informed decision as to the level of the protected debt to be written off.

4.11 I do not believe that either party's proposal is consistent with the principles set out in section 15 of the Act, and I have therefore concluded that the most consistent approach would be grant relief from 50% of the protected debt of £19,137.24.

4.12 The Applicant is therefore to pay £9,568.62 to the Respondent.

5.0 AWARD

5.1 I hereby Award and Direct as follows; -

- A. The Applicant will be granted relief of £9,568.62 and is therefore to pay to the Respondent the sum of £9,568.62.
- B. This sum to be paid in 3 monthly instalments commencing on 6th March 2023.
- C. No interest on the protected rent debt is to be paid by the Applicant.

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

6.0 COSTS

6.1 Section 19 of the Act provides that each party must pay its own costs and half of the Arbitration fees and expenses.

6.2 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, these amount to £1,500 and £250 respectively (plus VAT).

6.3 I therefore additionally Award that the Respondent is to reimburse the Applicant, 50% of the Arbitration fees totalling £1,750 plus VAT i.e. £1,050.

6.4 The seat of this Arbitration is England and Wales.

6.5 This Final Award is made and published this 27th day of February 2023.



IAIN COXON BSc MRICS ACIArb

ARBITRATOR

Dated – 27th February 2023

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