

**COMMERCIAL RENT (CORONAVIRUS) ACT 2022**

Between

\*\*\*\*\*

**(APPLICANT TENANT)**

and

\*\*\*\*\*

**(RESPONDENT LANDLORD)**

In respect of

\*\*\*\*\* , LONDON, SW3 3DH

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

## 1.0 PRELIMINARY

- 1.1 The Applicant, \*\*\*\*\*, is a tenant of premises at \*\*\*\*\*, London, SW3 and is represented in this matter by \*\*\*\*\*.
- 1.2 The Respondent, \*\*\*\*\*, is the landlord of said premises and is represented by \*\*\*\*\*.
- 1.3 By way of an underlease dated 1 August 2013 and Licence to Assign dated 17 February 2016, the property was demised to the applicant tenant for a term of 10 years. I am advised that the rent passing at the date of this case was £91,200 per annum.
- 1.4 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 D.
- 1.5 The party’s representatives attended an online meeting on 23 January 2023 at which time I was advised that further submissions were not required and that I was to proceed on the basis of the documents before me. My fee was agreed and the RICS confirmed on 13/03/2023 that it had been paid.
- 1.6 I have received and considered the following documents: -
  - Formal Proposal with Appendices 23/09/2022
  - Formal Response 21/10/2022
- 1.7 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, as a hair salon, the subject property fell into this category.

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 Applicant – \*\*\*\*\*

The lease is held in the name of \*\*\*\* but the day to day operations in the salon are operated by \*\*\*\*\*. As a hairdressing and beauty salon the property was subject to closure requirements, for the protected period of 21 March 2020 to 12 April 2021.

The tenant made no rental payments during this period and the "protected rent debt" is £90,441.01 (this figure is agreed by the landlord).

The tenant served a Notice of Intention on 25 August 2022, which included an offer to settle the PRD in the sum of £27,295. The landlord responded on 8 September 2022 offering to accept 75% of the PRD in the sum of £67,830.76.

I am advised that the salon remained non-operational during the shorter periods when restrictions were lifted, and even post April 2021 the salon did not open for some time due primarily to staffing issues.

Between February 2016 and the start of the pandemic the salon had established a healthy clientele and had received a number of high ratings and accolades.

Annex 14 provides a spreadsheet of monthly sales which indicates a healthy business up to March 2020, subsequent to which sales fell. Post pandemic sales are somewhat lower, presumably due to the staffing and training issues.

The landlord forfeited the subject lease on 19 July 2022 - I understand rent for the non-protected period was paid and at the date of their proposal the tenant was in discussion with the landlord for relief from forfeiture by consent. The deposit (£38,000 – rent deposit deed dated 17/02/2016) has been drawn down by the landlord.

The tenant has provided the last 3 years accounts for the landlord company, from which they have concluded the landlord is solvent.

The tenant makes an offer of 25% of the PRD in the sum of £22,610.25 – this is lower than the offer made in their Notice of Intention.

### 3.2 Respondent – \*\*\*\*\*

The landlord's response to the Notice of Intention is dated 8 September 2022 with a reply to the tenant's proposal dated 21 October 2022.

In their letter dated 8 September 2022 \*\*\*\*\* advise that the tenant was in rent arrears in excess of those for the "protected period", although I understand from subsequent correspondence that this has now been paid (following forfeiture of the lease in July 2022).

The landlord advises that they have reached concessionary agreements with other tenants in their holding, as a result of dialogue, although comment that limited communication was forthcoming from the current tenant and hence no agreement was reached.

The "protected rent debt" is agreed at £90,441.01 and the landlord indicates a willingness to accept 75% of this figure in full and final settlement.

In the formal response dated 21 October 2022, the landlord rejects the tenant's proposal to pay 25% of the "protected rent debt" (being less than their previous offer at £27,295) and reiterates its willingness to accept 75%, being £67,830.76.

It is also confirmed that the landlord has drawn down the rental deposit and considers this permitted and lawful.

Email correspondence between \*\*\*\*\* of \*\*\*\*\* and \*\*\*\*\* of \*\*\*\*\* is attached to the formal proposal, relating to attempts to reach an agreement in relation to the arrears.

#### **4.0 PROTECTED RENT DEBT**

4.1 The protected rent debt is agreed at £90,441.01.

#### **5.0 ELIGIBILITY OF THE CLAIM**

5.1 At the pre-arbitration stage it is necessary for the parties to follow certain requirements set down in the 2022 Act – I have received the documents referred to in section 1.6 of this Award and there is no dispute regarding compliance the requirements of the Act.

5.2 This referral relates to a business tenancy.

5.3 “Protected rent debt” is defined in S.3 of the 2022 Act, which states that the rent will be “protected rent” if –

- a) The tenancy was adversely affected by coronavirus, and
- b) The rent relates to a protected period.

5.4 Issue (a) is dealt with in S.4 of the 2022 Act and I am satisfied the business at the property was subject to a closure requirement. Issue (b) has been dealt with earlier in this Award.

5.5 In assessing the viability of the tenant, I have considered the financial information provided by the Applicant, together with the information provided regarding the ultimate forfeiture of the lease.

5.6 Annex 14 of the formal proposal includes a schedule of monthly sales between March 2019 and July 2022 (I have disregarded August 2022 as the lease was forfeited on 19 July 2022). It is apparent that during 2019 the business was achieving monthly sales of circa £18,600, and these fell significantly post covid and, indeed, up until the lease was forfeited.

5.7 As a result, the tenant accrued significant rent arrears (outside of the protected period), which subsequently resulted in the landlord forfeiting the lease. However, I have seen \*\*\*\*\* email dated 28/10/2022 to Ms Payne of RICS confirming that an agreement had been reached in relation to these arrears and a consent order completed – paragraph 6.2 of the formal proposal dated 23/09/2022 refers to payment of £147,681.36.

5.8 Pre-covid the business was viable, and the tenant has shown commitment to continuing with this business by settlement of these arrears, rather than liquidating the company. The contents of Annex 13 indicate that the business was successful and received numerous good reviews and awards.

- 5.9 From the information to hand, I do believe the business will be viable going forward with the turnover figures for June and July 2022 indicating an improving business post-covid.
- 5.10 I must also consider the solvency of the landlord. \*\*\*\*\* letter dated 08/09/2022 advises that the property is subject to a charge, and they have had to service the loan without rental income during the pandemic.
- 5.11 In Annex 19 of their formal proposal the tenant has supplied copies of company accounts for \*\*\*\*\* Limited for the years ending December 2019, 2020 and 2021.
- 5.12 It is evident from the company accounts, that the business was adversely affected by the pandemic, although the company appears to remain healthy. The accounts for the year ending 12/2021 state that "...the business showed strong resilience and performed robustly" and they had received a letter of support from the immediate parent company, \*\*\*\*\* PLC.
- 5.13 I consider the landlord to be solvent.

**6.0 RELIEF FROM PAYMENT**

- 6.1 The "protected rent debt" for the period 21 March 2020 to 12 April 2021 is agreed at £90,441.01.
- 6.2 As a hair salon the subject property was subject to a closure requirement. The hair and beauty business was hit particularly hard during covid due to closure requirements and restrictions even when they were allowed to open.
- 6.3 The proposals before me are as follows; -

	Percentage Relief	£ to pay
Applicant Tenant	75%	£22,610.25
Respondent Landlord	25%	£67,830.76

- 6.4 I have been provided with limited financial information regarding the Applicants business and am unaware of the gross and net profit for the relevant period. The sales figures do provide a limited picture of the success of the business but not the profit.
- 6.5 The unaudited financial statements for \*\*\*\*\* at Annex 18 detail assets for 2021 of £411,804 but there is little further financial information provided.
- 6.6 Having considered the offers put forward by the parties I am of the view that they are consistent with the section 15 principles of the 2022 Act, and I must decide which of these is the most consistent.

- 6.7 The business has been hit hard by the pandemic but by the tenants own admission there were periods when the salon did not open, even when permitted to do so by the regulations. They also accrued significant arrears outside of the protected period, and only paid these (by way of a single payment) when the landlord forfeited the lease.
- 6.8 The latest figures for June and July 2022 indicate the business is re-establishing itself and there is nothing to indicate that it will not return to its pre-pandemic success.
- 6.9 Having considered the information before me I have concluded that the Respondents final offer is more consistent with the section 15 principles.
- 6.10 I consider it reasonable to allow the tenant time to pay the debt and have concluded that this should be paid over a period of 6 months by equal instalments.
- 6.11 I have been asked by the Applicant to deal with the issue of the deposit drawdown. However, this is beyond my remit although the 2022 Act does provide that an amount drawn down by the landlord to meet all or part of a protected rent debt is treated as unpaid rent.

## 7.0 COSTS

- 7.1 Section 19 of the Act provides that each party must pay its own costs and half of the Arbitration fees and expenses. The Arbitration fees are defined as the Arbitrator's fees and expenses and the fees and expenses of any approved arbitration body.
- 7.2 Under procedure D, my fee has been agreed at £3,000 plus VAT and this has been paid to the RICS. The application fee was £450 plus VAT.
- 7.3 I have received no proposals regarding the Arbitration fees and expenses and have therefore followed the guidance of the 2022 Act that each party should bear equal responsibility for these costs.

## 8.0 AWARD

- 8.1 I hereby Award and Direct as follows; -
- A. The Applicant is to pay 75% of the protected rent debt to the Respondent.
  - B. This sum to be paid in 6 monthly instalments commencing on 7<sup>th</sup> April 2023.
  - C. No interest on the protected rent debt is to be paid by the Applicant.
  - D. The Respondent pays the Applicant half of my fees and one half of the RICS application fee.
- 8.2 An anonymised copy of this Award will be published by the RICS.

8.3 The seat of the Arbitration is England and Wales.

8.4 This Final Award is made and published this 30<sup>th</sup> day of March 2023.



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**IAIN COXON BSc MRICS ACI Arb**

**ARBITRATOR**

**Dated – 30<sup>th</sup> March 2023**

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