

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

**BETWEEN**

**BENJAMIN JOHN DAY (APPLICANT/TENANT)**

**AND**

**PRATIMA KHADKA (RESPONDENT/LANDLORD)**

**FINAL AWARD**

**OF**

**ANDREW L CREASE FRICS FCIARB**

**DATED AUGUST 2023**

## **BACKGROUND**

1. The Applicant is the Tenant of Unit C, Basement, 141 – 143 Drummond Street, London NW1 2BB.
2. The Respondent is the Landlord of the above property.
3. The parties have been unable to agree the appropriate relief concerning rent arrears arising during the Coronavirus pandemic.
4. Notice of Intention to Arbitration was served by the Applicant, followed by an application to the Dispute Resolution Service of the RICS for the appointment of an Arbitrator.
5. I was approached by the RICS to act as Arbitrator under the Commercial Rent Coronavirus Act 2022 (CRCA) after conducting conflicts checks and indicating I would be able to accept the appointment.
6. I was appointed the Arbitrator on this matter on 2 December 2022.
7. I convened an initial meeting on my Teams.

**This is the Award of Andrew Lloyd Crease final in all regard and made this day in London, England.**

## **MATTERS IN AGREEMENT**

- i. Eligibility. The parties have agreed that the eligibility criteria met.
- ii. The parties have agreed to adopt procedure A under the RICS scheme.
- iii. The quantum of the protected rent debt is agreed at £xxxxxxx

## MATTERS IN DISPUTE

- iv. The appropriate relief and repayment.
- v. Costs

### The Appropriate Relief and Repayment

#### Final Proposals

8. The Applicants Final Proposal is that 20% of the protected rent debt of £xxxx is repaid over a 24-month period with the rest of the protected rent debt being written off.
9. The Respondent/Landlord proposes that 40% of the protected rent debt is written off with the remaining £xxxxx to be repaid over a period of 7 days.
10. There is much irrelevant material in the submissions between the parties put to me. I make no mention of these issues, as the CRCA and guidance notes are very clear as to how Arbitrators are to proceed in deciding these matters.
11. I must assess whether the offers are consistent with Section 15 of the Act. For ease of reference I quote the Section below:  
  
*Section 15 – Arbitrator's Principles*  
*The principles in this section are – 1) that any award should be aimed at i) preserving or ii) restoring and preserving a) the viability of the business of the tenant so far as is consistent with preserving the landlord's solvency and b) the tenant shall so far as is consistent with the principle in paragraph a) to do so and b) require to meet its obligations as regards to payment protecting rent in full without delay.*
12. Section 16 of the Act states that the Arbitrator must, as far as is known, have regard to the following matters, which I set out below.

- a) *the assets and liabilities of the tenant including any other tenancy to which the Tenant is a party,*
  - b) *the previous rental payments made under the business tenancy from the Landlord to the Tenant,*
  - c) *the impact of Coronavirus on the business of the Tenant and*
  - d) *any other information relating to the financial position of the Tenant that the Arbitrator considers appropriate.*
13. I have reached the conclusion that neither of the final offers in front of me is consistent with the aims of Section 15.
  14. The Applicant offers a repayment of 20% of the protected rent over 24 months, i.e., circa £100 per month repayment.
  15. Section 15 requires the Tenant to meet their contractual obligations as far as possible as long as viability is not impacted. While the turnover of the business is relatively small and profit levels pre-pandemic were in the region of £xxxx per year, I believe that the business is capable of repaying more than the 20% offered.
  16. In terms of the respondent's offer, whilst the 40% write off in isolation seems reasonable, the fact that payment in full is required in 7 days clearly impacts upon the viability of the Tenant's ongoing business.
  17. Having found that neither offer is consistent with the Arbitrator's principles in Section 15 of the Act, I am directed by the CRCA, under Section 14.(5) to make an Award on the basis of whatever I consider appropriate, applying the principles of Section 15 outlined above.
  18. It is clear from what the Applicant and the Respondent have submitted with their final offers that both have suffered during the pandemic.
  19. I have considered the statements made by both parties and concluded that the most appropriate Award is to split the protected rent debt between the

parties equally, i.e., to write of 50% of the protected rent debt so that the Tenant repays £xxxxx.

20. Given the Tenant's levels of profitability, I further Award that they have 24 months from the date of my Award to repay the outstanding sums of money.
21. I believe the above is entirely consistent with Section 15 principles.

### **Costs**

22. Section 19(5) of the Act sets out default provisions that I must make an Award requiring the Respondent to reimburse the Applicant for half of my fees unless I consider it appropriate to Award a different proportion. I see no reason to deviate from the default positions in this case.

### **THE AWARD**

I hereby Award and Direct as follows:

- i. The Applicant pays the Respondent the sum of £xxx in 24 monthly instalments of £xxx. The first payment being due 5 business days after the date of this Award, with the second and subsequent payments being on the same day of the month as the date of this Award.
- ii. The Respondent to repay the Applicant 50% of my fees and 50% of the RICS application fee within 14 days of the Applicant providing an invoice for such amounts.

**PUBLICATION PURSUANT TO THE CRCA SECTION 18**

23. This Award must be published. I intend to publish it on the RICS website. I attach a redacted copy of the Award which I will send to the RICS for publication unless I hear back from either of you that you require further redactions within the next 7 days.

**SEAT**

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

Signed



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

Date: .....

23/08/23