

First arbitral award under the Commercial Rent (Coronavirus) Act 2022



The first arbitral award made on 5 July 2022 by Gary Cowen QC confirms that in order to obtain relief on protected rent debt, tenants must show that a closure requirement affected the specific premises that they are seeking relief from rent on.

The arbitration arose as a result of a dispute between Signet Trading Limited (the tenant) and (1) Fprop Offices (Nominee) 4 Limited and (2) Fprop Offices (Nominee) 5 Limited (the landlord) over whether or not the tenant had been adversely affected by coronavirus.

The tenant is a large jewellery retailer that made a referral to Falcon Chambers Arbitration in May 2022 seeking relief from payment of protected rent pursuant to the Commercial Rent (Coronavirus) Act 2022 (the Act) in respect of its registered office premises which include office space.

It was not in dispute that the tenant's office was not required to close during the Pandemic, however, the tenant argued that relief from payment of protected rent debt should be granted on the basis that its tenancy was "adversely affected by the coronavirus" within the meaning of the Act because the tenant carries on business as a retailer and the office was ancillary to that business.

The landlord argued that relief should be denied on the basis that the tenant's offices were not required to close, that they were therefore not adversely affected by coronavirus for the purposes of the Act so the rent was not protected.

Section 3(1) of the Act provides that a "protected rent debt" is a debt under a business tenancy consisting of

unpaid protected debt. By Section 3(2) of the Act, rent due under the tenancy is only “protected rent” if

- The tenancy was adversely affected by coronavirus; and
- The rent is attributable to a period of occupation by the tenant for, or for a period within, the protected period of the tenancy”.

The arbitrator making the award, Gary Cowen QC, agreed with the landlord that the premises were not subject to a closure requirement and were therefore not adversely affected by coronavirus for the purposes of the Act. He confirmed that there was no “protected rent” in this case and dismissed the tenant’s reference with costs.

It remains to be seen whether this award will discourage other tenants from making speculative referrals to arbitration.

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