

Harvika v Haji [2017] SCT 237

DECEMBER 21, 2017 SCT - JUDGMENTS AND ORDERS

Claim No. SCT 237/2017

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammed Bin Rashid Al Maktoum,

Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL

BEFORE SCT JUDGE MARIAM DEEN

BETWEEN

HARVIKA

Claimant

and

HAJI

Defendant

Hearing: 28 November 2017

Final submissions: **4 December 2017**

Judgment: **5 December 2017**

JUDGMENT OF SCT JUDGE MARIAM DEEN

UPON the Claim Form being filed on 7 September 2017

UPON the parties being called on 12 October 2017 for a Consultation with SCT Officer Ayesha Bin Kalban and the parties not having reached settlement

UPON a Hearing having been held before SCT [Judge](#) Mariam Deen on 31 October 2017, with the Claimant's authorised representative participating via telephone and the Defendant's written submissions being considered in her absence

UPON the Judgment of SCT Judge Mariam Deen being issued in favour of the Claimant on 6 November 2017 (the "Judgment")

UPON the Defendant's application to [set aside](#) the Judgment on 12 November 2017 being granted by Order of SCT Judge Mariam Deen on 20 November 2017

UPON a second Hearing having been held before SCT Judge Mariam Deen on 28 November 2017, with the Claimant's authorised representative and the Defendant both participating via telephone

AND UPON reviewing the documents and evidence submitted in the [Court](#) file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall reimburse the Claimant AED 10,000 with respect to unused rent for July 2017 and August 2017.
2. The Defendant shall return the Claimant's cheque for AED 30,000 dated 1 September 2017.

3. The Defendant shall reimburse the Claimant AED 2,689 with respect to the security deposit.

Issued by:

Nassir Al Nasser

SCT Judge & Registrar

Date of issue: 5 December 2017

At: 1pm

THE REASONS

Parties

4. The Claimant is Hanvika (the “Claimant”), an Iraqi National and tenant of the Defendant.

5. The Defendant is Haji (the “Defendant”), an Iranian National and the owner and landlord of Retail Unit 42 [DIFC](#), DUBAI, [UAE](#) (“the premises”)

Background

6. The underlying dispute arises over the tenancy contract between the parties dated 21 February 2017 (the “Contract”). The Contract provided that the Claimant would rent the premises for a year in return for AED 60,000 in two cheques.

7. On 7 September 2017, the Claimant filed a claim in the [DIFC Courts’ Small Claims Tribunal](#) (the “SCT”) for the repayment of unused rent and the return of a second rental cheque in the amount of AED 30,000 as well as a security deposit of AED 3,000.

8. The Defendant responded to the claim on 25 September 2017, indicating her intention to defend the claim and providing written submissions.

9. The parties met for a Consultation with SCT Officer Ayesha Bin Kalban on 12 October 2017, but were unable to reach a settlement.

10. A Hearing before me was scheduled on 31 October 2017. The Claimant's authorised representative Hadriel attended via telephone, however the Defendant failed to attend and did not provide any good reason for her inability to attend the Hearing. I therefore proceeded to hear the Claimant's submissions with a view to deciding the claim on the basis of the evidence of the Claimant, pursuant to Rule 53.61 of the Rules of the DIFC Courts ("RDC"):

"If a defendant does not attend the hearing and the claimant does attend the hearing, the SCT may decide the claim on the basis of the evidence of the claimant alone."

11. I also considered the Defendant's earlier written submissions before the case was reserved for judgment, which was ultimately issued in favour of the Claimant on 20 November 2017 (the "Judgment").

12. The Defendant subsequently made an application to set aside the Judgment on 12 November 2017, which was granted on 20 November 2017. A second Hearing of the Claim took place before me on 28 November 2017, with both the Claimant's representative and the Defendant attending via telephone.

The Claim

13. The Claimant's case was reiterated in the same way that it had been at the first Hearing, namely that he had entered into the Contract with the intention of starting a laundry business from the premises. The annual rent amounted to AED 60,000 and the Claimant provided the Defendant with two cheques of AED 30,000 each.

14. However, due to difficulty in securing a residency visa, the Claimant sought to terminate the Contract and notified the Defendant of his position via whatsapp message on 15 April 2017, in part of the Claimant's message he states:

"In conclusion, I have reached to a fact that I won't be able to get my residence visa to be approved and thus unable to run the laundry shop although I have tried many other second options.

I kindly ask to discuss moving out from the laundry shop due to my situation above hoping for your understanding and consideration in this matter"

15. The Defendant replied on 16 April 2017:

"Hi, I am really sorry regarding your visa problem but as I know u can apply again after 2 months and I am currently in the usa and because of your situation I forced to pay 21,000/- AED which I didn't want to pay all amount.

As u know we can't break the contract only I will accept if you can find other tenant and we change the name of the contract"

16. At the Hearing, the Claimant denied that the Defendant was forced to pay AED 21,000 on the Claimant's behalf and states that this amount was the maintenance fee which was payable by the landlord to the developer.

17. The Claimant responded the following to the Defendant on 22 April 2017:

"Dear Haji,

I have submitted three times for my residence visa but unfortunately all three of them were declined.

As regards to payment re- settlement, I understand and to be fair that I must not ask for complete return of rent payment.

What I meant, is that I paid from 01/03/2017 to 01/09/2017, which means for six months. And according to break contract rule is that I have to pay you two months rent as a penalty for breaking the contract. Therefore, I am only asking to refund the month of July and Aug. as all previous rent I shall bear due to breaking the contract. And this is according to contractual terms and conditions on the back side of our contract clause number 16..."

18. At the Hearing, the Claimant reiterated that he was relying on Clause 16 of the 'Additional Conditions' to the Contract, which states:

"In case of lease break tenant has to give payment of 60 days rent as penalty or 60 days advance notice, before leaving the property and any unused rental should be refunded to the tenant."

19. Accordingly, the Claimant asserts that he gave advance notice of his intention to terminate the Contract in April 2017 and is willing to forego the rent for May and June 2017 as the 60 days penalty amount. He confirmed at the Hearing that he is only seeking to recover the unused rent for the months of July and August which amounts to AED 10,000 and to have the AED 30,000 rental cheque dated 1 September 2017 returned to him. The Claimant expressed that he was disappointed that the Defendant had attempted to cash the cheque, which subsequently bounced, as this was what he had been seeking to avoid by giving prior notice of his intention to terminate the Contract. He also stated that he had incurred a fine from his bank and damage to his reputation due to the bounced cheque, however he was not seeking any additional damages.

20. In addition, the Claimant submitted that he was entitled to recover his AED 3,000 security deposit as the premises were in the same condition as they were when he entered into the Contract.

The Defence

21. The Defendant's response to the Claim was that she had incurred expenses in readying the premises for the Claimant's laundry business; which included the payment of AED 20,000 as the maintenance fee to the developer of the premises. However, no counterclaim was formally filed and, therefore, any submissions amounting to a counterclaim shall not be considered for the purposes of this Judgment. Furthermore, no defence was forwarded in relation to the Claimant's alleged attempt to terminate the Contract and recover the unused rent and rental cheque.

22. The Defendant made submissions in relation to unpaid utility bills and was provided additional time to produce evidence in support of her allegations that the billed amounts should be recoverable from the Claimant. This additional evidence was received on 29 November 2017 and consisted of an Empower bill for the year 2017, amounting to AED 930.

Discussion

23. My discussion is largely in keeping with my Judgment in this case dated 6 November 2017, as most of the facts remain the same.

24. Clause 16 of the 'Additional Conditions' to the Contract clearly provides for what is to occur in the event of a 'lease break' - namely, that the tenant is to pay for 60 days' worth of rent or give 60 days' advance notice.

25. From the Whatsapp message screenshots provided, it is clear that the Claimant notified the Defendant of his intention to vacate the premises in April 2017. Although the Claimant first mentioned the issue on 15 April 2017, he is only asking to be reimbursed for rent paid with respect to July and August 2017 (not for half of June). The Defendant has made no arguments in relation to when notice to terminate the Contract or vacate the premises was provided but upon seeing the progression of the Whatsapp conversation between the parties, I am of the view that adequate notice was provided during April 2017 and by the end of April 2017 at the very latest.

26. Accordingly, and in the absence of any defence, I find that the Claimant discharged his duty in accordance with Clause 16 of the 'Additional Conditions' of the Contract. The Contract was terminated pursuant to its terms and the Claimant has forfeit 60 days' worth of rent as a result and is entitled to be reimbursed for the unused rent relating to July and August 2017, which amounts to AED 10,000.

27. It follows that the rental cheque for AED 30,000 dated 1 September 2017, relating to rent for the months of September 2017 to February 2018 inclusively, should be returned to the Claimant.

28. In relation to the security deposit, the following Clauses of the Contract are relevant:

“12. All occupants shall be individually responsible for the DEWA/EMPOWER Security Deposit and settlement of accounts for all utilities. ...

17. By signing this contract, the Tenant confirms that he/she received the property and its attachment in a good condition to be confirmed at the property handover and undertakes that upon expiry of the period of tenancy to deliver up the leased property the Landlord/Agent in the same condition. The tenant undertakes to paint and clean the above premises, in the event he/she vacates the same.

18. Refundable Security Deposit held by the Landlord, will be refunded at the end of the contract. Upon vacating the unit Tenant has to submit DEWA/EMPOWER Final bill & receipt, DU/Etisalat settled bills, & hand-over key/s to landlord or agency. The Deposit will be refunded within 5 working days of receiving the handover of the retail and all the above.”

29. There has been no evidence to suggest that the premises are not in the same condition they were at the commencement of the Contract, in fact, the Claimant asserted at the Hearing that he had not entered or used the property due to the above-mentioned difficulty in obtaining a visa. I have determined that the unused rent for the months of July 2017 and August 2017 should be returned to the Claimant, however, he remained responsible for the premises for the period that the Contract remained active, which is from March to April 2017 and then the 60 day notice period from May to June 2017 (the “Relevant Months”). Therefore, it is reasonable for the Claimant to have expected to also be responsible for any utility bills which became payable during the Relevant Months. Non-payment of these could result in a deduction being made from the security deposit amount to effectively restore the premises to the “same condition” as they were at the time of the Contract being signed, pursuant to Clause 17 and 18 of the Contract.

30. There was some debate during the Hearing as to whether the keys to the premises had been returned to the Defendant. The Claimant had asserted that he never had access to the premises as the key was not provided to him, and the Defendant claimed that the key had been provided to an intermediary acting as an agent. Neither party produced evidence with respect to the location of the key and in the circumstances, I do not find their alleged absence to be a valid reason to withhold the return of the security deposit.

31. The Defendant’s Empower bill shows a total of AED 930 to be outstanding and it appears that bills were issued in three-month intervals in respect of demand and meter maintenance charges. During the Relevant Months, a bill was issued on 30 March 2017 for AED 308, however, this relates to usage during January and February 2017, which the Defendant has not shown that the Claimant is responsible for. Another bill was issued for AED 311 on 22 June 2017, this falls squarely within the Relevant Months and I am satisfied that the Claimant ought to have reasonably expected to be responsible for this bill. The Claimant has submitted that the premises are in the same condition as they were when the Claimant entered into the Contract, therefore, I am of the view that the Claimant is entitled to recover the AED 3,000 security deposit, less the value of the Empower bill issued on 22 June 2017 for AED 311. The total amount of the security deposit to be returned to the Claimant is, therefore, AED 2,689 (AED 3,000 – AED

311).

Conclusion

32. In conclusion, I find that the Defendant shall:

- (i) reimburse the Claimant AED 10,000 as rent for July and August 2017;
- (ii) return the rental cheque of AED 30,000, dated 1 September 2017; and
- (iii) refund AED 2,689 of the security deposit.

Issued by:

Nassir Al Nasser

SCT Judge & Registrar

Date of issue: 5 December 2017

At: 1pm