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

HASIA

Claimant

and

HOWIE

Defendant

Hearing: **31 October 2017**

Judgment: **6 November 2017**

JUDGMENT OF SCT JUDGE MARIAM DEEN

UPON the Claim Form being filed on 7 September 2017

AND 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

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

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 the Claimant's rent for July 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 3,000 with respect to the security deposit.

Issued by:

Nassir Al Nasser

SCT Judge and Registrar

Date of Issue: 6 November 2017

At: 11am

THE REASONS

Parties

1. The Claimant is Hasia (the "Claimant"), an Iraqi National and tenant of the Defendant.

2. The Defendant is Howie (the "Defendant"), an Iranian National and the owner and landlord of Retail Unit 234 DIFC, DUBAI, UAE ("the premises")

Background

3. 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.

4. 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.

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

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

7. A Hearing before me was scheduled on 31 October 2017. The Claimant's authorised representative Henny 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."

8. I proceeded to hear submissions from the Claimant's authorized representative and considered the Defendant's earlier written submissions before the case was reserved for judgment.

The Claim

9. The Claimant's case is that he 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.

10. 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"

11. 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"

12. 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.

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

"Dear Howie,

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."

14. 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."

15. 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 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 by virtue of the bounced cheque, however he was not seeking any additional damages.

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

The Defence

17. The Defendant failed to attend the Hearing, however, I shall consider her earlier written submissions in which she essentially argued that the Contract could only be terminated by mutual consent and that she refused to terminate it upon the Claimant's request.

18. Several references were also made to Articles of the UAE's Rent Law and the fact that Clause 22 of the Additional Conditions to the Contract provided that:

"The Landlord and Tenant agree that the Law regulating Relationship between landlords and Tenants in the Emirate of Dubai shall apply to this Addendum"

Discussion

19. Although jurisdiction has not been formally contested, it's important that it be considered in light of the Defendant's reliance on the UAE law and Clause 22 of the Additional Conditions to the Contract.

20. The jurisdiction of the DIFC Courts is determined by Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended, which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, which are, as relevant:

"(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;

(b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract;

(c) Civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities; .

(e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations.

(2) .civil or commercial claims or actions where the parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

21. As the premises are located within the DIFC, I am satisfied that there is sufficient nexus between the Claim and the DIFC for the DIFC Courts to have jurisdiction to hear and determine this Claim and for the laws of the DIFC to be applied.

22. 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.

23. 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. Therefore, the Claimant has discharged his duty in accordance with Clause 16 of the `Additional Conditions' and forfeit 60 days' worth of rent as a result of his intention to terminate the Contract.

24. Accordingly, I find that the Claimant did terminate the Contract pursuant to the terms of the Contract and is entitled to be reimbursed for the rent relating to July and August 2017, which amounts to AED 10,000.

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

26. In relation to the security deposit, Clause 17 of the Contract provides:

"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."

27. In the absence of any evidence to the contrary, I am inclined to accept the Claimant's submission that he is entitled to recover the AED 3,000 security deposit as the premises were in the same condition as they were when he entered into the Contract.

Conclusion

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

- reimburse the Claimant AED 10,000 as rent for July and August 2017;
- return the rental cheque of AED 30,000, dated 1 September 2017; and
- refund the security deposit of AED 3,000.



Issued by:

Nassir Al Nasser

SCT Judge and Registrar

Date of Issue: 6 November 2017

At: 11am

