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 NASSIR AL NASSER

BETWEEN

JABILO

Claimant

and

JEDOUN

Defendant

Hearing:**15 April 2019**

Second Hearing:**9 May 2019**

Judgment:**13 June 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON the Claim Form being filed on 19 March 2019;

UPON the Defendant acknowledging service of the Claim Form and intending to defend the whole claim on 25 March 2019;

AND UPON the parties failing to reach a settlement on 3 April 2019 before SCT Judge Ayesha Bin Kalban;

AND UPON a final hearing having been held before SCT Judge Nassir Al Nasser on 9 May 2019, with the Claimant and the Defendant in attendance;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the amount of AED 792.55 being the remainder of the security deposit.

2. Each party shall bear its own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 13 June 2019

At: 2pm

THE REASONS

Parties

1. The Claimant is Jabilo, a former tenant of unit 1234 DIFC, Dubai, UAE (the "Premises").

2. The Defendant is Jedoun, owner of Unit 1234 DIFC, Dubai, UAE.

Background and Hearing

3. On 17 February 2018, the Claimant and the Defendant entered into a tenancy contract (the "Lease Agreement") for the period of 1 year from 17 March 2018 to 16 March 2019 for the amount of AED 102,000. The Claimant was a tenant of the Defendant since 2016.

4. The Claimant evacuated the apartment in 14 March 2019 after a dual inspection to the premises and requested that the Defendant return his security deposit in the amount of AED 5,500. However, maintenance works were necessary for the purposes of renting out the property again.

5. On 19 March 2019, the Defendant sent the Claimant an email setting out the issues in the premises, deducting the sum of AED 4,200 of the deposit.

6. The Claimant filed his claim on 19 March 2019, seeking refund of his security deposit in the sum of AED 5,500.

7. No settlement was reached by the parties at the end of the consultation and, consequently, the case was set for a Hearing before me. On 15 April 2019 and 9 May 2019, I heard submissions of both the Claimant and the Defendant.

The Claim

8. The Claimant alleges that upon the inspection of the Premises along with the Defendant, the Defendant charged unreasonable and overestimated costs deducting an amount of AED 4,200 from the security deposit for maintenance.

9. The Defendant in his defence provided a list of replacements and maintenance in the Premises in the sum of AED 11,174. However, he only claimed the sum of AED 5,500, but reserved his right to file a counterclaim.

10. The Claimant argues that the amount charged by the Defendant is unreasonable and an over-estimation. Therefore, the Courts provided the parties with the chance to provide a quotation for the maintenance of the Premises.

11. The Defendant at the Second hearing dated 9 May 2019 provided a list of items that required maintenance and some which he already conducted

Nos.

Descriptions

Total Cost

1

Complete painting and cleaning

1,800. AED

2

Replacement of drawer's mechanism

800. AED

3

Replacement of 4 leather chairs

1,800. AED

4

Replace the Sofa

1,950. AED

5

Replacement of swivel chair

700. AED

6

Replacement of window mechanism

1,625. AED



Total: (eight thousand six hundred and seventy-five only)

8,675. AED



12. In response to the Defendant's list, the Claimant makes the following arguments, set out below.

    a. Damaged Window Mechanism: The Claimant argues that the window mechanism was part of the major maintenance and it is related to the age of the building and not from the usage of the tenant.

    b. Damaged 4 full leather chairs: The Claimant argues that the Defendant provided a quotation from chattel and more for AED 6,048. However, the Defendant claimed the sum of AED 450 for each chair which calculates to the sum of AED 1,800. The Claimant also argues that the chairs were locally manufactured and not brand chairs with genuine leather (in which the Claimant attached photos of similar chairs from other flats, available at the basement of the building).

    c. Replacement of drawer mechanism: The Claimant argues that the amount charged by the Defendant is high, and he has provided a quotation from online stores and Ikea in which the price ranges from AED 30 to AED 120. However, the Defendant argues that he had repaired and replaced the drawers' mechanism which cost him the sum of AED 800.

    d. Complete painting and cleaning: The Claimant argues that the premises was not newly painted when the tenancy started, the Claimant also argues that the Defendant provided different prices of repaint during their email correspondence. The Defendant provided an invoice of the paint job and cleaning which is in the sum of AED 1,800.

    e. Replacement of Sofa: The Defendant alleges that there were stains that cannot be removed from the sofa. The Claimant provided a quotation to clean the sofa for the sum of AED 157.50. However, the Defendant refused to allow anyone to enter the premises.

    f. Replacement of swivel chair: The Claimant argues that the chair was in the same condition as when the tenancy started. The Defendant argues that he did not provide a quotation for the swivel chair. However, he estimated, in his first submission, that it cost AED 3,000 when he bought the premises, but he will only charge AED 700.

Findings

13. First and foremost, the relevant Tenancy Agreement is in relation to an apartment in the DIFC, therefore by default any agreement shall be governed by the prevailing law of the DIFC, United Arab Emirates and that upon failure to resolve any disputes connected to the Tenancy Agreement, the dispute shall be referred to the DIFC Courts. Therefore, it is clear and undisputed that the DIFC Courts have jurisdiction to decide this matter. As the claim value is less than AED 500,000, this claim is properly before the Small Claims Tribunal of the DIFC Courts.

14. In this case the burden of proof lies in some respects upon the Claimant and in other respects upon the Defendant to prove what items needed replacing in the apartment, and since there are photos submitted by the Defendant as evidence of the apartment before and after evacuation, the Court is left with the parties' submissions and photos to assess and to decide who is liable for the items.

15. Clause 8 of the terms and conditions of the Lease Agreement states the following:

> "at the time of vacating, the tenant and landlord shall carry out a joint inspection of the premises to asses to its condition. The tenant must handover the premises in a condition acceptable to the landlord. If any damages are found or any repair, painting or cleaning works are required, the landlord reserves the right to deduct the cost of such expenses from the tenant's security deposit."

16. The Claimant is liable for the painting and cleaning in the sum of AED 1,800, replacing and fixing the drawers' mechanism in the sum of AED 800 (the Defendant provided the invoice for the painting, cleaning and fixing the drawers' mechanism in the sum of AED 2,730 including the 5% VAT). The cost of the drawers' mechanism in the sum of AED 177.45 as per the invoice provided by the Defendant, the replacement of the 4 leather chair in the sum of AED 1,800 and the swivel chair in the sum of AED 700.

17. In relation to the 4 leather chairs, the Defendant claimed the sum of AED 450 for each chair arguing that the chairs cost more but failed to provide the brand of the chair and the price of the chair. On the other hand, the Claimant argues that the chairs were locally manufactured and not brand chairs with genuine leather (I note that the Claimant attached photos of similar chairs from other flats, available at the basement of the building). The highest quotation the Claimant provided for 4 leather chairs is the sum of USD 140 which is equivalent to the sum of AED 514.50. However, the Defendant refused to accept any quotations from the internet as the price does not include shipping charges, custom charges and VAT. Therefore, in the absence of the Claimant providing any quotations from within the UAE and not requiring delivery charges, I find that the reasonable price to be paid for the 4 leather chairs is the sum claimed by the Defendant in the amount of AED 450 each, equaling AED 1,800 in total.

18. In relation to the replacement of the sofa, the Claimant provided a quotation of a cleaning company to carry out the cleaning for the sofa, however, the Defendant refused to permit anyone inside the Premises. Therefore, I find that the Claimant's offer to clean was reasonable in this regard and that the Defendant should be liable to replace the sofa, if required.

19. In relation to the swivel chair, the Claimant argues that the chair was in this condition since the beginning of the tenancy, however, I note that the Claimant failed to provide any evidence of his argument. I have seen photos of before and after the tenancy as provided by the Defendant, which does reflect a change in the condition of the chair. However, the Defendant failed to provide any quotations suggesting a price to repair the chair, therefore, in the absence of any evidence of the price, I must find that the Claimant is not liable for the repair of the swivel chair.

20. With regards to the window mechanism repaired by the Defendant in the sum of AED 1,625, the Claimant argues that the mechanism was damaged due to the age of the premises and not the act of the tenant. From considering the photos before this Court, I do agree with the Claimant's argument. Therefore, regarding repair or replacement this is the Defendant's responsibility.

21. For the reasons set out above, the Claimant is liable to pay the Defendant the amount of AED 4,707.45 for the maintenance work carried out on the Premises. Since the Defendant already holds the security deposit in the sum of AED 5,500, the Defendant shall refund the Claimant the sum of AED 792.55.

22. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 13 May 2019

At: 2pm