Claim No: SCT 340/2018

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL

BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

INKIE

Claimant

and

IVINK INVESTMENT LIMITED C/O IOV REAL ESTATE

Defendant

Hearing:**27 November 2018**

Further Submissions:**5 December 2018**

Judgment: **24 December 2018**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 24 October 2018;

UPON the Defendant acknowledging service of the Claim Form and intending to defend the whole claim on 31 October 2018;

AND UPON the parties failing to reach a settlement on 11 November 2018 before SCT Judge Nassir Al Nasser;

AND UPON a hearing having been held before SCT Judge Maha Al Mehairi on 27 November 2018, 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 2,232.75 being the remainder of the security deposit.

2.The Defendant shall pay the Claimant AED 367.50 towards the court filing fee.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 24 December 2018

At: 4pm

THE REASONS

Parties

1.The Claimant is Inkie, was a tenant of Unit 1000, DIFC (the "Premises").

2. The Defendant is Ivink Investment Limited c/o Iov Real Estate, the agent handling the Premises.

Background and Hearing

3. On 28 November 2016, the Claimant and the Defendant entered into a tenancy contract (the "Lease Agreement") for the period of 1 year for the amount of AED 110,000. The Claimant renewed the Lease Agreement for another year being a tenant of the Defendant for approximately 2 years. The Claimant paid AED 5,500 as a security deposit for the Premises.

4. On 30 June 2018, the Claimant provided notice to the Defendant stating that she was intending to vacate the Premises, and as per the Lease Agreement, she was required to give 2 months' notice prior to evacuation. The Claimant ensured that the apartment was cleaned and returned to the Defendant in the same condition that it was received.

5. On 30 August 2018, an inspection ("First Inspection") was conducted at the Apartment, with both the Claimant and a representative of the Defendant present, and the keys were handed over to the Defendant. Later, a further inspection was conducted, at which the Claimant was not present ("Second Inspection"). Following the Second Inspection, the Defendant notified the Claimant that a few items needed fixing before the Defendant would hand over the security deposit and the remainder of the rent amount.

6. The Defendant provided the list of items in an email, which is set out below:

Item	Area in Apartment Unit	Cost of Repair Work in AED
1	Change sink stopper	150
2	Tightening towel holder	50
3	Fixing two (2) doors magnet	100
4	Replacement of one (1) spotlight	35
5	Remove curtain holder	50
6	Replacement of two (2) pin light in the kitchen hood	70
7	Fixing the wood door of the fridge with paint	100
8	Fixing the door cabinet with paint	100
9	Paint the entrance, internet box, and the heater room	900
10	Oven full deep cleaning	105
11	Replacement of new stove unit	1,900
	VAT	77.75
	Total charged to tenant	3,637.75

7. The Claimant agreed to fix the following items; change the sink stopper; replace the spotlight and the two pin lights; and remove the curtain holder, all of which totaled the amount of AED 305 (the "First Payment"). During the First Inspection, the Defendant was happy to accept that the wooden doors in the kitchen could be fixed with paint. The Claimant states that she did not cause any malicious damage to the kitchen cupboards and cleaned them thoroughly before she left. It is asserted by the Claimant that this is normal wear and tear which was further aggravated when appliances were repaired and/or replaced by the landlord during her time in the apartment and that the maintenance company (appointed by the landlord) consistently removed and re-installed the cupboard doors.

8. The Claimant adds that she cleaned all the walls and left them as they were given when she first rented the Premises. She further asserts that she cleared all the small marks which could be considered wear and tear as per Clause 21 of the Addendum to the Lease Agreement and that the colour of the walls remained the same. The Claimant asserted that the heater and internet room were not even painted when she moved in and as such the Defendant should not be charging her with the painting expense.

9. With regard to the replacement of the stove, the Defendant claims that there is a small water mark on the stove, however, the Claimant confirmed that the stove is 100% clean and in working condition. The Claimant suggests that the water mark is caused by the aging of the glass plate and should be treated as `normal wear and tear'. The Claimant confirmed that she caused no malicious damage to the stove and used it within the normal and fair expected use.

10. Beyond the items agreed as per the First Payment, the parties failed to reach an agreement with the rest of the items on the list and the Claimant proceeded with filing a claim on 23 October 2018, seeking a refund of her full security deposit in the amount of AED 5,500.

11. 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 27 November 2018. At the Hearing, I heard submissions from both the Claimant and the Defendant's representative.

Defence and Hearing

12. As part of their defence, the Defendant explained that the security deposit will be released based on the property handover, with any costs of maintenance being deducted against the Claimant's account. The Claimant was advised on two occasions that if she did not agree with the quotes presented by the Defendant's contractor, that she could appoint her own contractor, specifically in relation to the quotes sent on 27 September 2018.

13. Following the property inspection, the Claimant was not charged for full wall painting and was only charged with re-painting the walls with marks on them, as referenced in the Addendum of the Lease Agreement, under Clause No. 22, which states that

> "The Tenant agrees to return the property and appliances (fridge/freezer, cooker, hob, dishwasher/dryer) in their original condition at the end of the tenancy, fair wear and tear accepted. Prior to the release of the security deposit a property inspection will be carried out. The cost of painting, repairs and damage deemed to be the responsibility of the Tenant and/or as a direct result of the tenant occupancy shall be deducted from the security deposit in order to return the property in its original condition as handed over to the tenant. At the time of vacating the property, the tenant has to ensure that the landlord or his representative carry out the necessary inspection of the property and the white goods prior to applying for the final DEWA bill or withdrawing the security deposit to ensure that the equipment is in working conditions. If the tenant fails to do so and gets DEWA disconnected, then the Landlord has the right to hold the security deposit until a new tenant occupies the property to ensures the equipment is in working condition."

14. The Claimant was expected to maintain the property in the same condition that it was handed over to her, with full wall painting and cleaning being mandatory. The Claimant was advised by the Defendant to remove all the ceiling lights as any labour cost associated with its removal would also be charged against her. The Defendant asserted that the Property was handed over to her in a perfect condition and it was expected that she would return it the same.

15. At the Hearing, the Claimant reiterated the points raised in her Claim Form and added that, during the First Inspection, the loose towel holder, the magnets on the kitchen door and the paint issues were not raised and were only raised at the Second Inspection that was conducted by the Defendant's representative.

16. The Defendant's representative attending the hearing did not comment on the Second Inspection process because she was not present at the time of the Second Inspection, but she did comment that the company would bear the cost of deep cleaning the oven in the amount of AED 105 and she also retracted the Defendant's submissions regarding this issue as stated in their defence.

17. The Defendant submitted a letter dated 16 September 2018, stating that the amount of AED 1,862.25 had been returned to the Claimant.

18. At the end of the Hearing, the parties agreed that the following items were still under dispute and requested that the Court resolve the matter:

Item	Area in Apartment Unit	Cost of Repair Work in AED
1	Tightening towel holder	50
2	Fixing two (2) doors magnet	100
3	Fixing the wood door of the fridge with paint	100
4	Fixing the door cabinet with paint	100
5	Paint the entrance, internet box, and the heater room	900
6	Replacement of new stove unit	1,900
���	Total Charged to tenant	3,150

Findings

19. 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.

20. The Court requested that the parties provide picture evidence for all of the items that were replaced or that needed maintenance. The Defendant provided pictures of the walls that needed painting, and, in addition, the Court will rely on the parties' submission in the file and as heard at the Hearing.

21. The Court is satisfied that the Claimant is not liable for any of the items that were included in the second inspection, these being; the loose towel holder and the magnets on the kitchen door, due to the fact that the Claimant was not there to inspect the items with the Defendant. In addition, the Court is of the opinion that the Claimant is not liable for the replacement of the stove, as the damage claimed falls under `wear and tear' due to the fact the stove is working perfectly, and no damage has occurred with regard to its function.

22. The Court is satisfied that the Claimant is liable for the painting that was carried out in the Premises and in accordance with the Addendum to the Lease Agreement, painting of the Premises falls under the responsibility of the Tenant. The pictures provided by the Defendant show that the wall had been left with a black mark possibly caused from moving the furniture out of the Premises. The Claimant is also liable for fixing the wooden door of the fridge and painting the cabinet door as the Claimant failed to clean these items to their original state from when she moved into the apartment. It ought to be noted that the Claimant suggested the prices for the repair work were overrated and high, however, she failed to present anything to the Court to prove that the alleged prices differed from any other contractor nor did she suggest fixing them by herself.

23. As such, the Claimant is liable to pay the Defendant the amount of AED 1,405 which includes the First Payment in the sum of AED 305, and payment for the re-painting work that was carried out in the Premises in the amount of AED 1,100.

24. In sum, the Claimant paid the sum of AED 5,500 as the Security Deposit. Both parties confirm that the Defendant reimbursed the Claimant the amount of AED 1,862.25. Therefore, the outstanding security deposit stands in the sum of AED 3,637.75. In my judgment, I have found that the Claimant is liable to pay the Defendant the amount of AED 1,405. Therefore, the amount of AED 1,405 shall be offset against the outstanding Security Deposit, and the Defendant is liable to pay the Claimant the amount of AED 2,232.75.

25. The Defendant shall pay the Claimant the amount of AED 367.50 towards the court filing fee.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 24 December 2018

At: 4pm