Claim No: SCT 188/2020 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 OF DIFC COURTS BEFORE SCT JUDGE NASSIR AL NASSER BETWEEN LEROY Claimant and (1) LORETTA (2) LANEN Defendants Hearing : 14 July 2020 Judgment

Claim No: SCT 188/2020

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 OF DIFC COURTS
BEFORE SCT JUDGE NASSIR AL NASSER

BETWEEN

LEROY

Claimant

and

(1) LORETTA
(2) LANEN

Defendants

Hearing **: 14 July 2020**
Judgment **: 21 July 2020**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON this Claim being filed on 7 June 2020

AND UPON the Defendant's Acknowledgment of Service and Counterclaim being filed on 14 June 2020

AND UPON the Claimant's Response being filed on 21 June 2020

AND UPON a Consultation being held before SCT Judge Maha Al Mehairi on 25 June 2020

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON a Hearing having been listed before SCT Judge Nassir Al Nasser on 14 July 2020 with the Claimant's and Defendant's representatives in attendance

AND UPON reviewing all documents and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendants shall pay the Claimant an amount of AED 17,760.75.

2. The Defendants shall return the Second Cheque to the Claimant.

3. The Defendants shall provide the Claimant all NOCs and forms required in order for the Claimant to collect the security deposits.

4. The Claimant's claim for the real estate agent fee in the amount of AED 5,250 is dismissed

5. The Claimant is ordered to repair, replace and complete the damages set out in the List within 14 days from the date of this judgment and return the key of the Unit to the Defendants.

6. In the event that the Claimant fails to comply with paragraph 5 above, the Claimant shall pay the Defendants compensation in the sum of AED 5,195.50, in addition to the costs of replacing the key.

7. The parties shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 21 July 2020
At: 3pm

THE REASONS

Parties

1. The Claimant is Mr Leroy (the "Claimant"), the tenant of Unit 213 DIFC, Dubai, UAE.

2. The First Defendant is Loretta, a resident of Dubai, UAE, appointed by way of a Power of Attorney to represent the Second Defendant (the "First Defendant"). Any reference to the First Defendant in this Judgment shall be considered in her capacity as the legal representative of the Second Defendant.

3. The Second Defendant is Mr Lanen, (the "Second Defendant"), represented by the First Defendant. (The First and Second Defendants are referred to hereinafter as the "Defendants").

Background and Procedural History

4. The underlying dispute arises over a tenancy contract between the parties dated 1 March 2020 to 28 February 2021 (the "Contract"). The Contract provided that the Claimant would rent Unit 213, DIFC, Dubai, UAE (the "Unit") for 1 year in return for the amount of AED 100,000 by way of 2 cheques.

5. On 7 June 2020, the Claimant filed a claim with the DIFC Courts' Small Claims Tribunal (the "SCT") seeking the following: an amount of AED 50,000 paid for the first 6 months' rent, the return of the second rent cheque, the real estate agency fee in the amount of AED 5,250, and Empower fees in the amount of AED 389.55 and AED 1,750.13.

6. On 14 June 2020, the First Defendant filed a counterclaim seeking payment of the rent in the amount of AED 50,000 and compensation for the alleged damages found within the apartment in the amount of AED 7,558.

7. The parties met for a Consultation before SCT Judge Maha Al Mehairi on 25 June 2020 but were unable to reach a settlement. In line with the Rules and Procedures of the SCT, this matter was referred to me for determination, pursuant to a hearing held on 14 June 2020 (the "Hearing"). After reviewing all documents and evidence submitted on the Court file, I give my judgment below.

The Claim

8. The Claimant's account of events is as follows. The parties entered into the Contract dated 1 March 2020 to 28 February 2021 for the rent of the Unit for 1 year in return for AED 100,000 per year consisting of 2 cheques.

9. Relying upon Clause 3 of the Contract, the Claimant contends that he was not provided a report which stated the condition of the Unit at the time of the handover (the "Condition Report") and claims that the Unit was faulty and not ready to move in.

10. The Claimant alleges that the central air conditioner and the washing machine in the Unit were defective, and that the Unit was handed over without installing basic appliances in the kitchen.

11. The Claimant claims that, for the above-stated reasons, he did not visit the Unit again after 8 March 2020 nor did he move into the Unit. On 1 April 2020, the Claimant sent an email to the First Defendant, providing his notice to terminate the Contract.

12. Based on these events, the Claimant filed a claim with the SCT claiming from the Defendants an amount of AED 57,389.68 consisting of AED 50,000 paid to the Defendants for the first 6 months' rent, the real estate agency fee in the amount of AED 5,250, and Empower fees in the amount of AED 389.55 and AED 1,750.13. Further details with regards to the Claim are set out in paragraph 19 of this judgment.

The Defence and Counterclaim

13. The First Defendant filed a counterclaim on 14 July 2020 alleging that the Defendants have incurred losses due to the early termination of the Contract. The Defendants deny all of the claims made by the Claimant and counterclaims an amount of AED 57,558 consisting of the rent from March to August 2020 in the sum of AED 50,000 and additional expenses in the sum of AED 7,588. The Defendants further claim that the Claimant must produce an apology for his false accusations, poor attitude and behaviour directed to the First Defendant.

14. The Defendants contend that, in short, the Claimant failed to deliver the Unit in the same condition as it was delivered and to return the keys pursuant to Clauses 16 and 17 of the Contract. The Defendants claim that the Unit is still legally under the responsibility of the Claimant and denies the allegation that they refused to receive the keys of the Unit from the Claimant.

15. The Claimant's response to this Counterclaim, as well as all other documentation on the Court file submitted by the parties has been considered, but in the interest of brevity have not been replicated here.

DISCUSSION

Jurisdiction

16. Article 5(2) of the Judicial Authority Law, Dubai Law No. 12 of 2004, as amended (the "JAL") provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, which are:

(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. . .

(f) . . . 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."

17. Therefore, pursuant to Article (5)(2) of the JAL, I find that the DIFC Courts may exercise its discretion to hear and determine this claim as the Unit is located in the DIFC.

18. In my judgment, I shall deal with the Claim first, then the Counterclaim.

The main claim

19. In essence, the disagreement between the parties pertains to the early termination of the Contract and the subsequent losses and damages. The Claimant is claiming the following:

i) The sum of AED 50,000 paid to the Defendants as (6) six months' rent in advance towards the Unit (the "First Cheque");

ii) To return the second cheque in the amount of AED 50,000 as another (6) six months' rent in advance for the months of September 2020 - February 2021 (the "Second Cheque");

iii) The sum of AED 5,250 paid by the Claimant as commission to the real estate agent;

iv) The sum of AED 1,750.13 paid by the Claimant for the Chiller/CAC bill for the months of March - June 2020;

v) The sum of AED 389.55 paid by the Claimant towards the Defendants' previous unpaid Empower bill;

vi) An official NOC from the Defendants to allow the Claimant to inactivate the Empower account in order to collect the security deposits from Empower and the DIFC Registrar (the "NOC");

vii) A signed lease surrender form to terminate the Contract as required by DIFC Registrar (the "Form"); and

viii) A written apology from the First Defendant absolving him of any wrongdoing, by copying all of the parties that were emailed by the First Defendant alleging the Claimant of "attacking" her.

20. Firstly, I wish to address the issue of the early termination which is dealt with at Clause 25 of the Contract, which states the following:

"If the Tenant wishes to Terminate the Tenancy Contract Prior to the Expiration Date The Tenant shall provide Thirty (30) days written notice to the Owner of their intention to terminate and pay two (2) month's rent from the date of vacating as a penalty and to return the Leased Unit(s) to the Owner in the same condition as recorded in the condition report at the time of contracting except for normal wear and tear or for reasons beyond control".

21. On 1 April 2020, the Claimant sent an email to the Defendants, providing his notice to terminate the Contract, which states the following (the "Notice"):

"As also discussed over whatsapp conversation that we have not moved to your apartment yet due to current situation as everything is closed in Dubai now and its unsafe for us to move with our baby right now and we don't know when this situation will settle down. Also our current landlord is asking us to confirm if we are renewing our current contract or not. So, due to this situation I want to request you to please cancel our tenancy contract with you. I would appreciate if you please refund us the rent amount and waive or reduce the termination penalty".

22. Upon review of the email submitted by the Claimant, it appears that the Claimant did not move into the Unit due to the circumstances around COVID-19 at that time. I note that the reasons addressed by the Claimant in paragraph 9 to 10 of this Judgment which led to him allegedly not moving into the Unit, were not raised in the Notice.

23. Moreover, the handover of the Unit took place on 27 February 2020 with both of the parties being present. I note that the Claimant should have been aware of the condition of the Unit and therefore, has accepted the same condition upon the handover being finalised. Furthermore, the unofficial Condition Report supported by pictures, which was provided by the Claimant on 21 June 2020, clarifies the state of the Unit at the time of the handover and the Claimant should have been aware of any missing items on this list during the handover. The Defendants also submitted several invoices supported by pictures showing that various maintenance works were completed in the Unit immediately prior to the Claimant renting the Unit.

24. Nonetheless, the Claimant has the right to terminate the Contract, however, as set out within the Contract, the Claimant is obliged to provide the 30 days' notice and the Defendant is entitled to two (2) months' rent from the date of vacating as a penalty.

25. Now that the termination is found to have been provided on 1 April 2020, I will consider the notice period to be from 1 April to 30 April 2020. Subsequently, the two months' rent as a penalty would apply and therefore, the Claimant is entitled to recover 2 months' rent from the First Cheque in the amount of AED 16,666.65.

26. As the termination has been considered valid, the Defendants must therefore return the Second Cheque to the Claimant. The Defendants shall also provide all NOCs and Forms required in order for the Claimant to collect the security deposits.

27. The Claimant's claim for AED 5,250 shall be dismissed as the Claimant accepted to rent the Unit and agreed to pay the real estate agent fee.

28. The Claimant also claims an amount of AED 389.55 paid towards the Defendant's previous Empower bill and AED 1,750.13 for the utility (Empower) bills from March until June 2020.

29. Clause 7 of the Contract sets out the position in respect of utility bills throughout the course of the tenancy period, and states as follows:

> "The Tenant undertakes to pay all utility charges including DEWA, housing fees, telephone, internet, gas charges, air conditioning, and district cooling and any other utility connected to the Unit(s) unless agreed otherwise."

30. Therefore, the Claimant's claim for AED 389.55 is granted as the Defendants are responsible for any outstanding utility bills prior to the rent of the Unit to the Claimant. The Claimant has supported this claim by submitting a receipt of the payment.

31. As established in paragraph 25 hereabove, the Claimant is considered as the lessee of the Unit until at least 30 April 2020 and is consequently also responsible for any utility bills related to the Unit until that period. Therefore, the Claimant's claim for AED 872.55 for the Empower bill for March and April 2020 is dismissed. For any period thereafter, I must establish the final date of the handover between the parties. The outstanding amount of utility bills for May and June 2020 is AED 877.58.

32. In reply to the Notice of the Claimant, the First Defendant acknowledged the Notice by emails dated 2 and 4 April 2020, and responded that a proper handover must take place, however due to the COVID-19 situation and the lockdown, an immediate face to face appointment cannot be arranged.

33. On 13 May 2020, the parties met at the Unit to arrange a final handover (the "First Meeting"). At this meeting, the parties entered into several discussions and were unable to agree on the damages observed in the Unit. During the same meeting, the Defendant obtained the access card from the Claimant, however, the Unit key was not handed over to the Defendants.

34. Following the Consultation on 25 June 2020 and the directions of the SCT Judge Maha Al Mehairi, the parties met on 29 June 2020 to initiate a possible handover and agree upon a list of damages in the Unit (the "Second Meeting"). Again, the parties failed to finalise the handover, however a mutually agreed list of damages observed in the Unit was submitted to the Court on 29 June 2020 (the "List"). The First Defendant submitted in her email dated 29 June 2020 the following:

> "Please find the attached the damages list with accompanying photos as of June 29th, 2020. Unfortunately, both people refused to acknowledge the damages on a list with their signature today, however; tried to force the apartment key on my Lawyer and I, which we could not accept because we were not sure who these people are and they refused to sign the list with the damages".

35. Based on the abovementioned events, it appears that the parties made several attempts to initiate a final handover, however, due to disagreements on the damages, the handover has not been completed to date. The state of events of the First Meeting, as submitted by the parties, appear to be contradictory. The Claimant argues that the damages observed during the meeting are not his responsibility as he did not move into the Unit. On the other hand, the Defendants argue that the final handover was not completed as the Claimant refused to acknowledge the damages and the keys of the Unit were not handed over by the Claimant.

36. During the Second Meeting, the parties successfully agreed on the List, however the keys were not accepted by the Defendants for the reasons stated in paragraph 34 of this judgment. The List contained the following items:

> "i) Master bathroom - ceiling damaged;
>
> ii) Master bathroom - floor damaged;
>
> iii) Second bedroom - floor damaged;
>
> iv) Maid's room - very dirty floor; and
>
> v) All apartment - needs a deep cleaning with polish as was done for handover 29.02.2020 (with Lilan's agent)"

37. It is evident to note that although the Claimant did not actually move into the Unit, this does not remove his responsibility for the state or the payment of the utility bills of the Unit (as mentioned in paragraph 29 of this judgment). Below, I will refer to certain Clauses in the Contract in order to support my decision.

Clause 14 of the Contract states the following:

> "The Tenant shall be responsible for any minor maintenance of the Unit(s) as needed as a result of `wear and tear'. For clarity minor maintenance means repair and replacement of items such as cooker hood filters, fly screens, flexible pipes / hoses, sink plugs, bulbs, damage to electrical sockets and such other items considered minor, however associated with day to day usage of the contents of the Property by Tenant".

Clause 16 of the Contract states the following:

> "The Tenant shall be obliged, upon expiry of the tenancy contract, to return the Leased Unit(s) to the Owner in the same condition as recorded in the condition report at the time of contracting except for normal wear and tear or for reasons beyond his control".

Clause 17 of the Contract states the following:

> "The Tenant must return all keys, access cards, remote controls etc to the Owner upon terminating or expiration of the Tenancy Contract. In the event the Tenant fails to comply with this clause, such amounts necessary in replacing the above items will be deducted from the Security Deposits without further notice".

38. Pursuant to Clause 17 of the Contract, it is the Claimant's responsibility to return the keys of the Unit to the Defendants. The Clause is not clear in how the exchange of the keys should take place. Therefore, I am of the view that the Claimant had the option to courier the keys at any given time after the Notice or to leave the keys in the Unit during the First and Second Meeting. On the other hand, the final handover should not have depended on the exchange of the keys as the Defendants had the option to expense the Claimant for the keys pursuant to Clause 17 of the Contract.

39. Considering the above-mentioned Clauses of the Contract and the conduct of the parties, I am of the view that the parties failed in executing a proper exchange of the keys and the handover. Therefore, I will consider the final handover date between the parties to be 13 May 2020, being the date of the First Meeting.

40. Therefore, I find that the Claimant is responsible for the payment of any utility bill up and until 13 May 2020. The total amount for utility bills for May and June amounts to the sum of AED 877.58. The Claimant is responsible to pay for 13 days in May 2020, which amounts to AED 173.03. Therefore, the Defendants shall pay the Claimant the remaining amount for May and June 2020 in the sum of AED 704.55, and will be responsible for any period thereafter upon the Claimant providing the payment receipts to the Defendants.

The Counterclaim

41. The Defendants argue that the Claimant failed to agree to a proper handover after the Notice even though the parties met on two occasions for this purpose. The Defendants further claim that there are damages caused in the Unit and that the Claimant is responsible for these damages.

42. The Defendants claim an amount of AED 57,558 consisting of the rent from March to August 2020 in the sum of AED 50,000 (which the Defendants have already received by encashing the First Cheque) and additional expenses in the sum of AED 7,588.

43. The Defendants' claim in the amount of AED 50,000 is dismissed considering my decision in paragraph 24 and 25 of this judgment. I have also determined in paragraph 39 of this judgment that the official handover date is considered to be 13 May 2020. It is evident to note that this amount is already in the possession of the Defendant and pursuant to paragraph 25 of this judgment, the Defendant must return to the Claimant the amount of AED 16,666.65.

44. The Defendants further claim an amount of AED 7,558 for additional works and damages in the Unit. The Defendants have supported this claim by submitting a quotation for the repair of the air-conditioning unit (the "AC") in the amount of AED 2,362.50. However, pursuant to Clause 20 of the Contract, the Defendants are responsible for major maintenance of the Unit, including maintaining, supplying, and repairing the AC I am of the view that the AC unit falls under this Clause and the Defendants are therefore responsible for the repair and the expenses in the amount of AED 2,362.50 of the AC unit.

45. The Defendants failed to submit further supporting documents for the remaining amount of AED 5,195.50. The additional third-party invoices for maintenance provided by the Defendants are dated prior to the date of the Contract, therefore, I will consider these expenses to be the responsibility of the Defendants. No further clear clarification was provided either for this Claim when the First Defendant was asked at the Hearing.

46. However, given the above-mentioned account of events and considering my views in paragraph 37 to 40 of this judgment and Clause 14 and 16 of the Contract, I am satisfied that the Claimant is responsible for the damages set out on the List. These damages can be considered as minor maintenance work and the Claimant must repair them and handover the Unit in a good condition as stated in Clause 16 of the Contract.

47. As the Claimant relies on the Condition Report for the state of the Unit, I note that the damaged items on the List were not recorded in the Condition Report. Furthermore, the List appears to be similar to the damaged items observed during the First Meeting between the parties, which is also considered as the final handover date.

48. Therefore, the Claimant is ordered to repair, replace and complete the damages set out in the List within 14 days from the date of this judgment and return the key of the Unit to the Defendants. Where necessary, the Defendants shall provide the Claimant with proper access to the Unit in order to carry out the Order in this paragraph.

49. As identified in paragraph 48 above, I have directed that the Claimant repair, replace and complete the damages set out in the List. Therefore, this Counterclaim in the amount of AED 5,195.50 shall only fall relevant and be triggered in the event that the Claimant fails to carry out my Order as rendered in paragraph 48 above.

50. All other Claims and Counterclaims are dismissed.

Conclusion

51. The Defendants shall pay the Claimant an amount of AED 17,760.75.

52. The Defendants shall return the Second Cheque to the Claimant.

53. The Defendants shall provide the Claimant all NOCs and forms required in order for the Claimant to collect the security deposits.

54. The Claimant's claim for the real estate agent fee in the amount of AED 5,250 is dismissed

55. The Claimant is ordered to repair, replace and complete the damages set out in the List within 14 days from the date of this judgment and return the key of the Unit to the Defendants.

56. In the event the Claimant fails to comply with paragraph 55 above, the Claimant shall pay the Defendants compensation in the sum of AED 5,195.50, plus the costs for the key.

57. The parties shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 21 July 2020
At: 3pm