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 OF DIFC COURTS
BEFORE H.E. JUSTICE NASSIR AL NASSER

BETWEEN

LABACA

Claimant

and

LANDI

Defendant

Hearing : **30 May 2021**
Judgment : **2 June 2021**

JUDGMENT OF H.E. JUSTICE NASSIR AL NASSER

UPON this claim having been called for a hearing, the Claimant and the Defendant's representative attended the hearing;

AND UPON reading the submissions and evidence filed and recorded on the Court file;

IT IS HEREBY ORDERED THAT:

1. The Claimant's claim shall be dismissed.

2. Each party shall bear its own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 2 June 2021
At: 9am

THE REASONS

The Parties

1. The Claimant is Labaca (the "Defendant"), the tenant of Unit 00, , DIFC, Dubai, UAE (the "Unit").

2. The Defendant is Landip (the "Claimant"), the Landlord of the Unit.

Background and the Preceding History

3. The underlying dispute arises over a tenancy contract entered into between the parties dated 17 May 2020 for a tenancy period from 4 July 2020 to 3 July 2021 (the "Contract"). The Contract provided that the Claimant would rent the Unit for 1 year in return for AED 70,000 per year, to be paid over 4 instalments.

4. On 20 April 2021, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking payment in the sum of AED 80,000 which consists of damages, refund of the last instalment and to terminate the Contract without penalties.

5. On 16 May 2021, the Defendant filed an acknowledgment of service setting out its intention to defend all of the claim.

6. The parties met for a Consultation with SCT Judge Delvin Sumo on 19 May 2021 but were unable to reach a settlement.

7. In line with the processes and procedures of the Small Claims Tribunal (the "SCT") this matter was referred to me for determination pursuant to a Hearing scheduled before me on 30 May 2021. The Claimant and the Defendant's representative attended the Hearing.

The Claim

8. The Claimant's case is that she faced numerous maintenance issues with the Unit and therefore seeks the early termination of the lease. The Claimant submits that, beginning February 2021 until the date of filing the Claim, the floor in the Unit's kitchen has been leaking and submits that the Defendant is unable to fix the leaking or does not know where the leaking is coming from. The Claimant further submits that the smell in the Unit is unbearable, allegedly affecting the Claimant and her mother's health.

9. The Claimant therefore seeks an order for the early termination of the lease with a waiver of early termination penalties, in addition to claiming to leave the unit without an order for the compensation for damages and a refund of the fourth instalment of the rent amount paid. The total sum claimed by the Claimant amounts to AED 80,000.

The Defence

10. The Defendant denies the Claimant's allegations with regards to delay or failure to rectify the leakage in the unit.

11. The Defendant submits that the communication submitted by the Claimant demonstrates that the issue was raised on 28 February 2021 and it was attended by Liuni through its appointed facility management company immediately.

12. The Defendant further submits that the Claimant, through her submissions, admitted that the issue was attended, but also submits that the issue was reoccurring. The Defendant submits that this proves that the issue relates to the technical rectification and procedure, for which the Defendant should not be liable.

13. The Defendant submits that the issue was completely resolved by the end of April 2021, and relies on the confirmation received by the Facility Management Company on 9 May 2021 that sets out that the leakage stopped as of 28 April 2021.

Discussion

14. The relationship between the parties is governed by the Contract along with the DIFC Leasing Law No. 1 of 2020 ("DIFC Leasing Law").

15. The remedies sought by the Claimant were as follows:

a. The early termination of the lease with a waiver of all associated penalties;

b. Compensation for damages suffered as a result of the issues faced by the Claimant including moral damages; and

c. The refund of the last instalment paid by the Claimant to the Defendant.

16. I shall set out the Defendant's response to each of these claims and my findings below.

<u>The early termination of the lease</u>

17. The Defendant submits that there is no legal ground for this remedy. The Unit was under the Claimant's custody during the tenancy period, and the Defendant submits that the Claimant's rights to use the Unit were never interfered with, therefore the Defendant contends that there the Claimant has not provided any grounds by virtue of which the Court would order the waiver of any penalties.

18. The Claimant failed to provide sufficient justification to support this Claim and argues that the Defendant was in breach of the Contract in light of her position that the maintenance issues were not rectified by the Defendant in a timely fashion.

19. As per the email communication between the Claimant and the Defendant, it appears to the Court that the Defendant have attended to the Claimant's requests in a timely manner. However, in relation to the technical performance of the facility management service to the liability should fall upon the company that worked on rectifying the issues identified.

20. There is no evidence before the Courts that the Defendant was in breach of the Contract. Therefore, I dismiss the Claimant's claim for an order terminating the lease prematurely and ordering the waiver of the early termination penalties provided for in the Contract.

<u>Compensation for damages suffered, including moral damages</u>

21. The Defendant submits that the Claimant has not provided any details in relation to damages nor has she provided any measures of damages or any evidence of the damages that she has allegedly suffered.

22. The Defendant submits that in accordance with the DIFC Law of Obligation, Law no. 5 of 2005 and DIFC Law of damages and remedies, Law No. 7 of 2005 to request for any compensation for wrongful conduct, the Claimant is required - among other conditions - to prove:

a. The wrongful conduct;

b. Damages incurred by the Claimant; and

c. Causation relation be made up between the conduct and the loss/damages to justify that the loss is a reasonable result of that wrongful conduct.

23. The Claimant failed to provide evidence of her material or moral damages caused by the leakage. Therefore, I find that the Claimant is not entitled to any sums in the form of damages.

<u>Refund of the last instalment paid to the Defendant</u>

24. I rely on my findings above to determine that the Claimant has failed to provide sufficient grounds by virtue of which the Court would order the refund of the amounts already paid to the Defendant for the rent of the Unit.

25. Therefore, I dismiss this claim accordingly.

Conclusion

26. In conclusion, I find that the Claimant's claim shall be dismissed due to the Claimant's failure to sufficiently prove her claim or provide any supporting grounds.

27. Each party shall bear its own costs.