Claim No: xxxx

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 H.E. JUSTICE SHAMLAN AL SAWALEHI

BETWEEN

Gael

Claimant

And

Gamila

Defendant

Hearing: **24 February 2016**

Judgment: **3 March 2016**

JUDGMENT OF H.E. JUSTICE SHAMLAN AL SAWALEHI

UPON hearing the Claimant and the Defendant

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

IT IS HEREBY ORDERED THAT:

1. The Defendant pay the Claimant AED 82,250 as rent due for the period of 25 May 2015 through 6 March 2016.

2. The Defendant vacate the property by 6 March 2016, at which point the apartment will be vacant and the Claimant can retake possession of the property. If the Defendant does not vacate the apartment by this date, the Defendant shall pay the Claimant AED 288 per day until the apartment is vacated.

3. The Defendant's counterclaim for reimbursement of parking expenses is denied.

4. The Claimant return the appropriate security deposit amount upon documented inspection of the property within thirty days of the tenant's departure.

5. The Defendant pay the Claimant's court fee of AED 3,505.

THE REASONS

Parties

6. The Claimant is Gael, owner of residential xxxx, DIFC (the "Premises").

7. The Defendant is Gamila, the tenant and resident in the Premises since May 2013.

Background and the Preceding History

8. On 13 May 2013, the Claimant and the Defendant entered into a tenancy contract (the "Original Lease Agreement") for the period of 25 May 2013 through 24 May 2014. The rent agreed was AED 100,000 for the year.

9. Clause 2 of the Original Lease Agreement states that the renewal of the tenancy is at the discretion of the landlord. It continues that if the tenant does not renew the agreement by the expiration date, he will be responsible to pay the rent as demanded.

10. Clause 3 continues that the agreement is valid up until the end of the specified period, after which it is considered null and void.

11. Clause 6 states that if the tenant acts against any of the conditions made in the agreement, the landlord has the right to eject the tenant and the tenant loses his rights in the contract.

12. Furthermore, the Addendums to the Original Lease Agreement include part 8, which states that the landlord may evict the tenant if the tenant

fails to pay rent within thirty days of the landlord's notification for payment. Finally, the Addendum also states in part 9 that the tenant pay a 5% deposit to the landlord which will be returned to the tenant providing the property is in good condition upon departure.

13. Upon expiration of the Original Lease Agreement, the parties agreed to a Renewed Lease Agreement for the period from 25 May 2014 through 24 May 2015 with a rental cost of AED 105,000 for the year (the "Renewed Lease Agreement"). The Claimant did initially ask the Defendant to pay AED 120,000 but the parties were able to agree upon and sign a renewed lease for AED 105,000. The Defendant did have some issue with building and parking access at this time but such problem was subsequently resolved.

14. When the Renewed Lease Agreement expired on 24 May 2015, the parties had not come to an agreement. Upon the Defendant's inquiry into a second renewal, the Claimant informed the Defendant that they were unwilling to renew for the same amount of AED 105,000 and instead would like to prepare a contract for AED 120,000. The Defendant then informed that he was unwilling to concede an increase in price. As of the expiration date of the Renewed Lease Agreement, the parties were not in agreement and no new contract was signed.

15. The Respondent sent the Claimant a number of messages seeking an update regarding the renewal but the Respondent did not reply. In December 2015 the parties again spoke regarding attempts to reach an agreement but again did not agree on a settlement amount or terms.

16. On 4 January 2016, the Claimant sent a legal notice to the Defendant which demanded payment of AED 105,000 and stated that the Original Lease Agreement was renewed for a further period of one year from 25 May 2015 through 24 May 2016. Further, the notice identified the Claimant's intent to terminate the contract as of 24 May 2016 at which point the Defendant must vacate the Premises. The notice goes on to state that if the Defendant did not respond within fourteen days, the Claimant would initiate the appropriate legal proceedings to redress the claims.

17. The Defendant responded to this legal notice with an extensive explanation of the history of correspondence, seeking an agreeable settlement in the amount of AED 84,000 with the tenancy expiring on 25 May 2016.

18. The Claimant then filed this claim on 24 January 2016 seeking immediate eviction of the Defendant, pro rata rent payments, and interest.

19. No settlement was reached by the parties at the end of the consultation and, consequently, the case was sent for adjudication. On 24 February 2016 I heard submissions of the Claimant and the Defendant.

Particulars and Defence

20. The Claimant argues that according to the Original Lease Agreement under Clause 2, the agreement renews at the sole discretion of the Claimant. Under Clause 3, if the Agreement is not renewed, it would be considered null and void. Furthermore, the Claimant argues that under Clause 8, the Agreement could be terminated if the tenant failed to pay rent.

21. The Claimant contends that the Original Lease Agreement was renewed impliedly on the same terms for the period of 25 May 2014 through 24 May 2015. The rent due under this renewal of the Original Lease Agreement was AED 105,000.

22. The Claimant then argues that after expiration of the Renewed Lease Agreement on 24 May 2015, the Defendant continued to reside in the Premises without paying any rent. The Claimant alleges that the Defendant has paid no rent for the period running since 25 May 2015.

23. The Claimant concludes that since the Defendant continued to reside in the Premises without a further renewal of the Lease Agreement, either explicitly or impliedly by the Claimant, the Renewed Lease Agreement terminated on 24 May 2015. Thus, the Defendant's continued occupancy of the Premises is illegal and warrants legal action.

24. The Claimant seeks immediate eviction of the Defendant, payment of pro rata rent due since 24 May 2015, interest on the payment, court costs and any further appropriate relief.

25. The Defendant argues that he proactively contacted the Claimant to renew the Original Lease Agreement on 20 May 2014. This resulted in a renewed lease in the amount of AED 105,000. The Defendant contends that the Renewed Lease Agreement was signed between the parties but that no addendum was signed for this renewed lease.

26. The Defendant claims that he again proactively contacted the Claimant to renew the lease in April 2015. The Defendant claims that the Claimant sought an increase in rent of AED 15,000 at this time and that such an increase would be in violation of Decree No. 43 of 2013, which provides a schedule of permissible rental increases for renewed lease agreements in the DIFC. The Defendant thus refused such an increase and informed the Claimant that he was ready and able to pay AED 105,000 for the renewal period. The Defendant claims that he did not receive a response back from the Claimant.

27. Further, the Defendant claims that the Original Lease Agreement was, in fact, renewed a second time for the period of 25 May 2015 through 24 May 2016 as stated in the Claimant's Legal Notice of 4 January 2016 and the Defendant's reply to that notice.

28. The Defendant goes on to claim that since the Original Lease Agreement has been renewed again, the Claimant is in breach of the agreement by withholding basic benefits due to the Defendant, specifically not providing building access and parking benefits.

29. The Defendant also claims that he made several attempts to pay rent and to settle the rent amount. The Defendant states that he told the Claimant in June 2015 that he had the cheque for AED 105,000 ready for payment. This communication was prompted by the Defendant being denied access to the building and parking due to failure to have a renewed lease agreement on file.

30. The Defendant states that he was informed that "Driven Properties," the company managing the building, does not collect rent or have to do with the landlord. The Defendant thus further contacted the Claimant asking for reinstatement of access to the building.

31. The Defendant alleges that he made numerous attempts to contact the Claimant through phone, text and whatsapp messages and the Claimant did not reply. The Defendant also made attempts to reinstate access to the building and parking through other means. He alleges that the Claimant

did not respond until December 2015, through the Claimant's lawyer.

32. The Defendant seeks reimbursement for lost parking and access benefits in the amount of AED 2,000 for 9 months as well as the AED 5,000 security deposit. Thus, assuming the rental amount of AED 105,000 for the period of 25 May 2015 through 24 May 2016, the Defendant agrees to pay the Claimant an amount of AED 82,000 but also demands immediate reinstatement of access and parking benefits and the right to remain in the Premises until 24 May 2016.

Finding

33. It is clear that the parties were unable to come to an agreement regarding a new or renewed lease agreement for the Premises as of 25 May 2015. Therefore, the parties did not have an agreement regarding the rental of the Premises in effect from 25 May 2015 onwards. The Renewed Lease Agreement of 25 May 2014 through 24 May 2015 became null and void as of 25 May 2015, according to Clause 3 of that agreement.

34. While it is quite possible that Decree No. 43 of 2013 could apply in a similar circumstance, it would only come into effect upon the parties actually making an agreement to continue or renew the lease agreement. In this case, the parties did not come to an agreement and as of 25 May 2015 there was no valid lease in place and thus no violation of Decree No. 43 of 2013.

35. Furthermore, the Renewed Lease Agreement contained no notice requirements for the Claimant to inform the Defendant of an intent to terminate the rental relationship. Instead, Clause 3 determined that the agreement was null and void upon expiration. While the Defendant claims that certain notice periods must apply to the Claimant, he makes no reference to specific laws. Furthermore, the law requiring certain notice periods for rental relationships, Dubai Law No. 26 of 2007 as amended by Dubai Law No. 33 of 2008, does not specifically apply to the DIFC and thus is inapplicable in this case.

36. Therefore, the Defendant has overstayed in the Premises beyond his lease agreement. There is no implied lease renewal as the Renewed Lease Agreement specifically terminates upon expiration. There is no provision in the contract or law to account for an implied lease renewal in this case, regardless of the statements of either party contrary to this fact.

37. While the parties did attempt to settle on terms or amounts after the expiration of the Renewed Lease Agreement, they were unsuccessful in coming to an agreement. Therefore, any time spent on the Premises subsequent to the Renewed Lease Agreement's expiration was illegal and must be reimbursed to the Claimant. The reimbursement will be calculated upon the assumption of the prior rental agreement amount of AED 105,000.

38. Furthermore, the Claimant has a right to evict the Defendant immediately, as there is no agreement in place and no relevant notice period required. As the Claimant has sought immediate eviction, it shall be granted. The Defendant must vacate the Premises by 6 March 2016.

39. Therefore, with the departure date of 6 March 2016, the Defendant owes to the Claimant a rental reimbursement in the amount of AED 82,250 for a total of 9 months and 12 days for the period of 25 May 2015 through 6 March 2016. If the Defendant does not vacate the apartment by this date, the Defendant shall pay the Claimant AED 288 per day until the apartment is vacated.

40. With regard to the Defendant's attempted counterclaims for reimbursement of parking and access expenses, such expenses are not the responsibility of the Claimant seeing as there was no rental agreement in place at the time. These claims are therefore denied.

41. Finally, with regard to the security deposit of AED 5,000 which the Defendant paid to the Claimant, the Claimant shall be responsible to return the appropriate amount upon documented inspection of the Premises after the Defendant has departed. If there are any damages or expenses appropriately deducted from the security deposit, the Claimant can deduct them before reimbursing the Defendant. Such reimbursement must occur within thirty days of the Defendant's departure from the Premises.

42. In addition, the Defendant is ordered to pay the Claimant's court fees in the amount of AED 3,505.



Issued by:

Maha Al Mehairi

Judicial Officer

Date of issue: 3 March 2016

At: 10am