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 SCT JUDGE NATASHA BAKIRCI

BETWEEN

GENIE PJSC

Claimant

and

GELLERT

Defendant

Hearing: **4 May 2016**

Judgment:**22 May 2016**

JUDGMENT OF SCT JUDGE NATASHA BAKIRCI

UPON hearing the Claimant's representative 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 has paid the Claimant AED 669.40 in full and final settlement of the Defendant's rent for the period of 8 April 2015 through 7 April 2016.

2. The Claimant's claim as to the Defendant's payment of his utility bills is dismissed.

3. The Claimant's claim seeking eviction of the Defendant is dismissed.

4. Each party shall bear their own costs.

THE REASONS

Parties

5. The Claimant, Genie PJSC, is a landlord, renting apartments in the Building in the DIFC.

6. The Defendant, Gellert, is the tenant in xxxx of the Building in the DIFC.

Background and the Preceding History

7. The Defendant entered into a Tenancy Agreement to rent xxxx of the Building from the Claimant for a period commencing on 8 April 2015. The Agreement listed the Landlord as SAM and listed the Managing Agent as Genie PJSC with xxxx LLC acting as their agent.

8. The amount of rent for the 12-month lease agreement was listed as AED 96,900 payable by three cheques given in advance to the Managing Agent. The Defendant provided the Managing Agent with three cheques as follows:

a. Cheque 1 for AED 16,150 dated 8 April 2015.

b. Cheque 2 for AED 40,375 dated 8 June 2015.

c. Cheque 3 for AED 40,375 dated 8 November 2015.

9. The Defendant's first two cheques were deposited and cleared without issue. When the Claimant attempted to deposit the third cheque, it was returned. The Claimant sent the Defendant a cheque bounce letter on 16 November 2015 notifying of AED 40,375 outstanding owed in rent and an additional AED 1,000 owed as a penalty charge and administration fee. Thus, the Claimant informed the Defendant that he owed AED 41,375

which must be paid in forty-eight hours.

10. The Claimant alleges numerous further phone calls and emails with the Defendant attempting to receive payment. On 6 December 2016, LLC filed a police case against the Defendant.

11. The Defendant paid an amount of AED 20,875 towards his outstanding rent on 20 December 2015. The Defendant allegedly agreed to clear the remaining balance later that week. When the Defendant did not clear the balance, the Claimant sent an eviction notice dated 26 January 2016 giving the Defendant until 2 February 2016 to clear the outstanding rent.

12. On 3 February 2016, the Defendant cleared an additional AED 10,000 towards his overdue rent.

13. On 20 March 2016 the Claimant filed a case in the DIFC Courts' Small Claims Tribunal. The claim sought payment from the Defendant of the remaining AED 10,500 of outstanding rent, eviction of the Defendant and settlement of the utility bills.

14. The Defendant responded to the claim alleging an ongoing issue with the water heater in his apartment which accounted for the rental payment discrepancy.

15. At this time, the Claimant informed that the remaining outstanding rent was actually AED 1,550 as the Defendant had made a subsequent payment of AED 8,950 on 3 March 2016 which was not reflected in the Claim Form.

16. The Claimant and the Defendant attended a Consultation on 7 April 2016 before Judicial Officer Maha Al Mehairi. The parties were unable to reach a settlement and were further unable to reach a settlement after the Consultation. The parties did inform the SCT that they wished to enter into a new Tenancy Agreement to cover the period of 8 April 2016 to 7 April 2017 but the Claimant sought an additional undertaking from the Defendant that he would not bounce any further rent cheques.

17. As the parties could not reach a settlement, they were called for a Hearing before me, SCT Judge Natasha Bakirci, on 4 May 2016, at which time I heard submissions of the Claimant and the Defendant.

Particulars and Defence

18. The Claimant argues that the Defendant still owes AED 1,550 outstanding rent which has not been cleared. The Claimant had, by the time of the hearing, dropped its claim to have the Defendant evicted as the parties had allegedly signed a new Tenancy Agreement by this time. The Claimant further sought for the Defendant to clear his utility bills, specifically the district cooling bills and for the Claimant to sign an undertaking to prevent future bounced cheques.

19. The Defendant argued that the reason he has not cleared the AED 1,550 owed, comprising AED 1,050 of overdue rent and AED 500 of penalty charge, was due to his out-of-pocket expenses to fix the water heater in his apartment after the Claimant refused to fix it in a timely fashion. The Defendant submitted an invoice reflecting AED 1,050 paid for the repair.

20. While the Claimant acknowledges the work paid for by the Defendant in order to fix his apartment's water heater, the Claimant contends that, as the water heater repair was not an emergency, the Claimant had a right to withhold repairs until the outstanding rent was paid. The Claimant initially argued that it would not cover the cost of repairing the water heater as it was not done in accordance with their building standards but the Claimant later agreed to cover the cost of the water heater repair upon their own inspection and evaluation of the value of the repair.

21. The parties have apparently agreed and signed a new Tenancy Agreement valid from 8 April 2016 to 7 April 2017. The Defendant claims that he already signed such an agreement and provided his rental cheques but has not been provided a copy of his new Tenancy Agreement. The Claimant seems to argue that unless the Defendant signs an undertaking promising not to bounce any further cheques, they will not enter into a new Tenancy Agreement with the Defendant. But, the Claimant also confirmed on 11 April 2016 in an email to the SCT Registry that the Defendant already completed the renewal process, signed the Tenancy Agreement and provided the payment cheques. In response, the Defendant has claimed that as the Tenancy Agreement already includes multiple provisions to protect the Claimant in the event of unpaid rent, a further undertaking is unnecessary and he has refused to sign the undertaking as such.

22. The Claimant made arguments that the Defendant should be required to clear his district cooling bill, which is due to Company Utility. As of 7 April 2016, the Company Utility bill for Unit 510 of the Building was AED 4,561.92 and the Claimant seeks for the Defendant to pay this bill. The Claimant argues that in the event that the Defendant does not clear this bill, the Claimant may become responsible for it as the Landlord of the unit in respect of which the charges accrued.

23. The Defendant argues that the Company Utility bill is not the concern of the Claimant and instead is subject to a separate dispute between the Defendant and Company Utility. The Defendant claims that the dispute between him and Company Utility arose when Company Utility asked him to sign new terms and conditions to use their online payment programme and he refused to sign the new terms. He claims that due to this failure, his district cooling was disconnected in September 2015. He has still been charged a capacity fee each month since this time but claims that he is in contact with Company Utility to resolve this dispute.

24. The Claimant contends that the district cooling was actually disconnected due to the Defendant's failure to pay his Company Utility bill in a timely fashion. The Claimant further contends that they are a party to the dispute between the Defendant and Company Utility as they will become liable for the charges if the Defendant fails to pay.

Finding

25. There are three questions in this case. First, there is the issue of the outstanding amount of AED 1,550 and the dispute over the water heater repair. This issue has been resolved by the parties as detailed below. Second, there is the question of the claim for eviction, the new Tenancy Agreement to apply for the period from 8 April 2016 to 7 April 2017 and the undertaking sought by the Claimant. Finally, there is the question of

whether the Defendant should be required to clear his Company Utility bill as the Claimant seeks.

26. First and foremost, the relevant Tenancy Agreement states at Clause 9.1 that the "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.

27. The issue of the overdue rental amount of AED 1,050, the penalty charge of AED 500 and water heater repair has already had a simple resolution. It is undisputed that the Defendant owed to the Claimant a total of AED 96,900 for the rental period of 8 April 2015 to 7 April 2016. He paid AED 16,150 and AED 40,375 towards that amount in a timely fashion but his final cheque for AED 40,375, dated 8 November 2015, was returned when the Claimant tried to deposit it. This cheque return resulted in an additional fee of AED 500 as a penalty charge and AED 500 as an administration fee, bringing the amount owed to AED 41,375.

28. It is also undisputed that the Defendant subsequently made payments in the amounts of AED 20,875 on 20 December 2015, AED 10,000 on 3 February 2016, and AED 8,950 on 3 March 2016. After deducting these undisputed payments, the total outstanding amount owed was AED 1,550 including AED 1,050 for outstanding rent and AED 500 penalty fee. Neither the Claimant nor the Defendant sought to dispute this calculation.

29.The Defendant argued that he should be allowed to deduct from that AED 1,550 a further AED 1,050 that he paid to repair his water heater. While the Claimant initially disputed this amount, the Claimant agreed at the hearing on 4 May 2016 to have the water heater repair evaluated by its maintenance company and agreed further to cover the value of the repair based on their quotation and thus deduct that amount from the remaining overdue amount.

30. On 9 May 2016, the Claimant provided the SCT Registry and the Defendant with a quotation assessing the value of the water heater repair at AED 880.60. The Claimant agreed to deduct this cost against the remaining outstanding amount of AED 1,550 leaving AED 669.40 owed to the Claimant by the Defendant for rent.

31. On 12 May 2016, the Defendant provided the SCT Registry and the Claimant with proof of his subsequent payment of the AED 669.40 balance in order to resolve the claim in respect of overdue rent and penalty charges. Thus, there is no further dispute to resolve on this issue as the Claimant has accepted the Defendant's payment as full and final settlement of the rent and penalty charge due pursuant to the relevant Tenancy Agreement between the parties.

32. Next, there is the issue of the new Tenancy Agreement. It is clear from the submissions before the SCT that the parties have already entered into a new Tenancy Agreement for the period 8 April 2016 to 7 April 2017 although they have not provided the agreement itself to the SCT Registry. This is apparent from the Claimant's email of 11 April 2016 and from statements made by the Defendant at the Hearing. The Claimant now contends that it does not wish to continue with this Tenancy Agreement without an additional undertaking from the Defendant. The Claimant's initial submission to have the Defendant evicted was based upon his failure to pay rent, not on his failure to sign an additional undertaking promising not to bounce any additional payments. While the Claimant may have had a right to evict the Defendant when his rent was overdue, this is no longer the case. In fact, the Defendant has paid all previously charged rent and provided cheques to the Claimant for the new rental period starting 8 April 2016 and ending 7 April 2017. Thus, the Defendant is now in compliance with his Tenancy Agreement and should not be evicted unnecessarily.

33. Furthermore, although the Claimant contends that it wishes to only continue the tenancy relationship upon the Defendant signing an additional undertaking, the Defendant clearly signed his new Tenancy Agreement without this requested undertaking. Thus, the parties are in a binding contractual relationship, which either party is free to terminate according to the provisions of the Tenancy Agreement. The SCT is not in a position to require the Defendant to sign an additional undertaking, as he rightly points out that the Tenancy Agreement between the parties fully accounts for any circumstances that may occur between the parties. Furthermore, as confirmed by the Claimant via email to the SCT Registry, the Claimant has already provided his post-dated cheques reflecting payment of the new rental terms.

34. The SCT is also not in a position to order the eviction of the Defendant under these circumstances as the Defendant is not now in breach of his Tenancy Agreement. The Claimant's additional request to require the Defendant to sign an additional undertaking relevant to the new lease period is also dismissed.

35. The claim regarding the Defendant's payment of Company Utility bills is more difficult to resolve. The Defendant is adamant that the unpaid Company Utility bills are really a dispute between himself and Company Utility as the district cooling provider. He states that the Claimant has nothing to do with the matter. The Claimant alleges that it will be responsible for the payment if and when the Defendant does not pay and thus the Defendant should be ordered to pay the overdue amount.

36. The Tenancy Agreement does state under Clauses 3.7 and 3.8 that the Tenant undertakes to "pay all charges for water, electricity, telephone, internet, air-condition, and district cooling capacity and consumption charges and the related third party billing fees" and that the Tenant undertakes to "[p]ay the district cooling bills on time and without delay." Further, Clause 3.8 states that the "Tenant acknowledges and agrees that the district cooling billing will be prepared and collected by a third party company, and in that regard the Tenant undertakes to settle in full all charges and fees related to capacity, consumption, third party district cooling billing services including fees, fines and charges (if any)."

37. While the Defendant is certainly responsible under the Tenancy Agreement to pay his utility bills, the Tenancy Agreement specifically states that the district cooling bill is prepared by and collected by a third party. The Defendant agreed in his Tenancy Agreement to "settle in full all charges" with that third party and has not, as yet, violated this agreement. The Defendant is in discussion to settle the bill with Company Utility with emails back and forth submitted to the SCT with dates as recent as 3 March 2016.

38. Furthermore, the Claimant has made no allegation that it has actually paid the Defendant's outstanding Company Utility bills, only that it may become responsible for the bill if the Defendant fails to pay. Furthermore, there is some disagreement between the parties, as reflected in the

documentation as to why the Defendant's district cooling was disconnected and what would be the appropriate resolution of the matter.

39. The Defendant claims that he was asked by Company Utility to sign a new contract when he already had one in place. The Claimant contends that the Defendant failed to pay his bill on time and his service was disconnected. The few submitted emails between the Defendant and Company Utility suggest that the district cooling disconnection was due to a transfer of the building contract from Pure Company Group to Company Utility and the failure of the Defendant to confirm this contract change. Resolution of this factual issue is not before the SCT at this time as Company Utility has not made a claim for this unpaid bill.

40. Unless and until Company Utility demands payment from the Claimant and the Claimant pays the bill to avoid further dispute, this claim is not ripe to be heard by the SCT. At this time the Claimant is not responsible to pay any of the Defendant's district cooling bill and instead, the Defendant is engaged in ongoing discussions with Company Utility to attempt to resolve the disputed bill between them. The Defendant cannot be ordered by this Court to pay this bill to Company Utility, who have not made a claim before this Court, or to pay the outstanding amount to the Claimant, who is not owed this money at this juncture. Thus, the Claimant's request to require the Defendant to clear his Company Utility bill is dismissed.

41. Each party shall bear their own costs.

Issued by:

Mark Beer

Senior Registrar

Date of issue: 22 May 2016

At: 3 pm