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

LAXT

Claimant

and

**(1) LOGTI
(2) LYNTIN
(3) LASTI**

Defendants

Hearing : **12 September 2022**
Judgment : **16 September 2022**

JUDGMENT OF H.E. JUSTICE NASSIR AL NASSER

UPON this Claim being filed on 6 July 2022

AND UPON the Third Defendant filing an Acknowledgment of Service intending to defend all of this Claim dated 12 July 2022

AND UPON a Consultation being held before SCT Judge Maitha Alshehhi on 17 August 2022

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

AND UPON a hearing having been listed before H.E Justice Nassir Al Nasser on 12 September 2022, with the Claimant and the Third Defendant attending (the "Hearing")

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

IT IS HEREBY ORDERED THAT:

(1) The First Defendant shall pay the Claimant unpaid rent in the sum of AED 52,500 plus 10% interest per annum until the date of full payment.

(2) The First Defendant shall pay the Claimant the sum of AED 1,000 as penalty for the bounced cheques.

(3) The Lease Agreement shall be terminated.

(4) The First and Third Defendants shall evict the Premises immediately.

(5) The security deposit of AED 4,500 shall be forfeited to the Claimant.

(6) The Third Defendant shall clear all outstanding charges towards DEWA, District Cooling until the date of the eviction and provide the Claimant with confirmation of the final payment.

(7) The First Defendant shall pay the Claimant the amount of AED 2,900, being the filing fee to register the Claim.

Issued by:
Hayley Norton
SCT Judge
Date of issue: 16 September 2022
At: 9am

The Parties

1. The Claimant is Laxt (the "Claimant"), the Landlord of unit 00 Sky Gardens Building (the "Premises").

2. The First Defendant is Logti a holiday home company located in the DIFC (the "First Defendant").

3. The Second Defendant is Lyntin, the Manager of the First Defendant (the "Second Defendant").

4. The Third Defendant is Lasti, an individual leasing the Premises (the "Third Defendant").

Background and the Preceding History

5. On 30 October 2021, the Claimant and First Defendant entered into an agreement to lease the Claimant's Premises for one year (the "Lease Agreement"), starting 30 October 2021 to 29 October 2022.

6. The rental amount agreed between the Claimant and the First Defendant was AED 70,000, to be paid in 4 cheques in the sum of AED 17,500 for each cheque, plus a security deposit of AED 4,500.

7. The First Defendant failed to pay the second and third instalment to the Claimant despite the latter having sent various reminders and notices requesting the First Defendant to settle the amounts.

8. The Claimant submits that it came to their attention that the Premises is illegally occupied by the Third Defendant as clause 1 of the Lease Agreement signed between the Claimant and the First Defendant provides that *"the tenant undertakes not to transfer this Tenancy Contract or sublet the premise to anyone else under any circumstances."*

9. On 4 July 2022, the Claimant sent the First Defendant a notice of termination.

10. On 6 July 2022, the Claimant filed a Claim Form with the Small Claims Tribunal (the "SCT"), seeking an order that the Defendants jointly and severally pay the total amount of AED 61,942.62 plus 10 % legal Interest from due date till full payment of amount as per Clause (12) of the Lease Agreement, as follows:

(a) AED 40,753.50 in respect of the pending rent amount from 30 January 2022 to 29 August 2022, plus any upcoming amount till date of actual evacuation;

(b) AED 17,500 as liquidated damages as per Clause 11 of the First Lease Agreement;

(c) AED 1,000 as penalty for bounced cheques dated 30 January 2022 and 30 April 2022 as per clause 22 of the Lease Agreement; and

(d) The Defendants to clear the amount of AED 2,689.12 for outstanding charges towards DEWA, District Cooling and any other service charges until the date of evacuation.

11. The Claimant also sought an order for the following terms:

(a) An order terminating the Lease Agreement;

(b) An order that the security deposit of AED 4,500 be forfeited by the First Defendant in favour of the Claimant as liquidated damages as per Clause 11 of the Lease Agreement; and

(c) For the Defendants to pay all legal costs associated with filing this claim.

12. The Claimant and the Third Defendant met for a Consultation with SCT Judge Maitha Alshehhi on 17 August 2022 but were unable to reach a settlement.

13. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 12 September 2022, with the Claimant and the Third Defendant in attendance. The First and Second Defendant's representative was absent although served with notice of the Claim.

14. RDC 53.61 of the Rules of the DIFC Courts stipulates that *"if a defendant does not attend the hearing and the claimant does attend the hearing, the SCT may decide the claim on basis of the evidence of the Claimant only"*.

The Claim

15. The Claimant's case is that they entered into the Lease Agreement with the First Defendant for a 1-year period, from 30 October 2021 to 29 October 2022, for AED 70,000 to be paid over 4 cheques.

16. The Claimant is alleging that the First Defendant had breached the terms and conditions of the Lease Agreement, and that the First Defendant had breached clause 1 of the Lease Agreement by failing to pay any amount towards the rent of the Premises.

17. The second and third cheques that had been provided by the First Defendant to the Claimant as payment for the remaining rent were returned due to insufficient funds.

18. The Claimant sent several notices to the First Defendant, requesting that they pay all outstanding rent. However, no payment was received. The Claimant also found that the First Defendant breached the Lease Agreement by subletting the Premises to the Third Defendant without the Claimant's consent. Therefore, the Claimant proceeded to terminate the Lease Agreement and file its Claim with the SCT. I shall elaborate on each of the Claimant's claims in the discussion below.

19. The total sum claimed by the Claimant as set out in the Claim Form is the sum of AED 61,942.62, in addition to legal costs associated with the filing of this Claim. The Claimant also seeks penalties as stated within the Lease Agreement.

Discussion

20. First and foremost, the relevant Lease Agreement is in relation to a unit 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 Lease 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 SCT.

21. In relation to the Third Defendant, I find that the Claimant has no contractual relationship with the Third Defendant. The Third Defendant rented the Premises from the First Defendant pursuant to a Lease Agreement dated 29 August 2021. However, at the Hearing, the Claimant confirmed that the First Defendant is in breach of the Lease Agreement by subleasing the Premises without consent.

22. There is no evidence before the Courts that the First Defendant had the Claimant's consent to sublease therefore, I find that the First Defendant is in breach of the Lease Agreement. In addition, the First Defendant was also in breach of the Lease Agreement by failing to settle the rent. Clause 10(a) and (c) of the Lease Agreement provides that;

> "the Landlord has the right to terminate this tenancy contract and evict the tenant from the premise immediately in any of the following case:
>
> (a) If the tenant assign, transfer, underlet, sublet or otherwise put the possession of the premise or any part thereof, or to share possession/occupancy of the premise with any other company, organization or individual, unless he has prior written approval of the landlord;
>
> .
>
> (c) if the Tenant doesn't settle the rental amount on due time or in case of any bounced cheque and doesn't rectify this fault within thirty (30) days from the due date."

23. Due to the breach of the Lease Agreement by the First Defendant, I find that the First Defendant shall immediately vacate the Premises and pay the Claimant the outstanding rent.

24. Since I have found that the First Defendant illegally sub-leased the Premises, the Third Defendant shall immediately vacate the Premises and shall only be liable to pay the DEWA and Empower bills for the period of his stay from 4 October 2021 to the date he vacates the Premises.

25. The Court will first review the calculation of the outstanding rent, and then discuss whether any penalties shall apply, and lastly determine the First Defendant's financial obligation towards the Claimant.

Unpaid Rent

26. The Claimant submits that the First Defendant failed to pay the second and the third cheques towards the Lease Agreement, as such, I find that the First Defendant is liable to pay the amount of AED 40,753.50 in respect of the pending rent amount from 30 January 2022 to 29 August 2022, plus any upcoming amount until the date of actual evacuation, as contractually agreed by virtue of the Lease Agreement signed between the parties.

Penalties

27. The Claimant drew the Courts' attention to a number of clauses within the Lease Agreement, each of which are set out below:

28. Clause 12 reads as follows:

> "12. without prejudice to the rights and remedies of the Landlord under this Tenancy Contract or under applicable law if the Tenant fails to make any payments to the landlord of the rent or any sums whatsoever due to the Landlord under this Tenancy at the time or times or within the periods specified in this tenancy contract, the Landlord may charge the Tenant a penalty thereon in addition to the owed amount calculated at a rate of ten percent (10%) per annuum on which the payment is due in accordance with this tenancy contract until the date of full payment as mutual agreed compensation."

29. In review of Clause 12, The Court is of view that such a penalty shall apply on the outstanding rent that falls due under the Lease Agreement, as such 10% of AED 40,753.50 from 30 January 2022 to 29 August 2022, plus any upcoming amount till date of actual evacuation.

30. Clause 11 of the Lease Agreement reads as follows:

> "Consequent to the termination of this Tenancy Contract based on the above-mentioned clause, the Tenant's right to use the premises for the rest of the Tenancy Period shall be ceased and terminated, and the remainder of the Rent Amount or an amount equal to (Three) 3 months' rent , whichever is more, shall be paid to Landlord in addition, the security Deposit as mentioned in clause (G) of above mentioned particular shall be forfeited in favor of the Landlord as liquidated damages."

31. Upon reviewing Clause 11, I find that there are two parts. The first deals with the penalty in the form of rent, and the second deals with the security deposit.

32. I note that the Claimant is given two options as penalty and they cannot be used at the same time, hence the word (or) that is used in the clause, set out below:

> "and the remainder of the Rent Amount or an amount equal to (Three) 3 months' rent whichever is more, shall be paid to Landlord"

33. Since the Court has granted the Claimant the remainder of the rent as mentioned above, AED 5,753.50, which is part of the remainder of the rent, I shall deduct this amount from the total remainder as it was granted above. Therefore, the payment shall be AED 11,746.50.

34. In relation to the security deposit, I am satisfied that since the Claimant terminated the Lease Agreement, the security deposit shall be forfeited in favor of the Claimant as liquidated damages. Accordingly, I find that the Security Deposit of AED 4,500 shall be forfeited by the First Defendant in favour of the Claimant as liquidated damages as per Clause 11 of the First Lease Agreement.

35. Clause 22 of the Lease Agreement reads as follows:

> "In the event any cheque is bounced by the bank for any reason whatsoever, the tenant shall be bound to pay AED 500 (five hundred dirhams) as mutual agreed fixed compensation."

36. The Claimant claims the sum of AED 1,000 for the cheques bounced on 30 January 2022 and 30 April 2022 which, I find the First Defendant is liable to pay

Dewa and District cooling bills

37. As the Third Defendant is currently occupying the Premises, he shall be responsible to pay any outstanding DEWA and district cooling bills and provide the Claimant with confirmation of the final payment.

The Second Defendant

38. The Claimant brought a claim against the Second Defendant who was the Manager of the First Defendant in his personal capacity. I find that there is no contractual relationship between the Claimant and the Second Defendant. Accordingly, I shall dismiss the claims against the Second Defendant.

Conclusion

39. In light of the aforementioned, I find that the First Defendant is liable to pay the Claimant unpaid rent in the sum of AED 52,500 plus 10% interest per annum until the date of full payment.

40. The First Defendant shall pay the Claimant the sum of AED 1,000 as penalty for the bounced cheques.

41. The Lease Agreement shall be terminated.

42. The First and Third Defendant shall evict the Premises immediately.

43. The security deposit of AED 4,500 shall be forfeited to the Claimant.

44. The Third Defendant shall clear all outstanding charges towards DEWA, District Cooling until the date of the eviction and provide the Claimant with confirmation of the final payment.

45. The First Defendant shall pay the Claimant the amount of AED 2,900, being the filing fee to register the Claim.