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

GAMILA

Claimant

and

GAEL

Defendant

Hearing: **2 August 2016**

Judgment: **7 August 2016**

JUDGMENT OF SCT JUDGE NATASHA BAKIRCI

UPON hearing the Claimant and the Defendant's representative

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant AED 5,000 in full and final settlement of the Claim.

2. Additionally, the Defendant shall pay the Claimant AED 367.50 in reimbursement of the DIFC Courts' fee.

THE REASONS

Parties

3. The Claimant is Gamila, the former tenant of Unit of Tower in the DIFC (the "Premises").

4. The Defendant is Gael, the owner of the Premises and the Claimant's former landlord.

Background and the Preceding History

5. The Claimant and Defendant entered into a "Tenancy Contract" for the period of 25 May 2013 until 24 May 2014 with a rental amount of AED 100,000 for the year. The parties then entered into a "Renewed Tenancy Contract" for the period of 25 May 2014 until 24 May 2015 with a rental amount of AED 105,000 for the year. The Renewed Tenancy Contract followed the same provisions as the Tenancy Contract.

6. The Tenancy Contract incorporates a document entitled "Addendums" which states in Section 9 that the Claimant will pay a 5% deposit to the Defendant "which will be returned to the tenant providing the property is in good condition upon departure." Section 7 of the Addendums states that the "Landlord shall, during validity of contract, be liable for handling major maintenance of property ,and shall rectify any defects or faults that affect tenant's use of the premises" [sic]. Section 2 of the Addendums states that the "Tenant shall be obliged, upon expiry of tenancy, to return the premises to landlord in the same condition as handed over to the Tenant (s)at the time of contracting except, normal wear and tear" [sic].

7. Upon expiration of the Renewed Tenancy Contract, the parties could not agree on a new rental amount for the following year. Ultimately, the dispute as to the renewed rental amount came before the DIFC Courts Small Claims Tribunal with the landlord (the Defendant in this case) suing the tenant (the Claimant in this case) for eviction and overstay rent. This dispute ultimately resulted in a Judgment on the matter, issued by H.E. Justice Shamlan Al Sawalehi on 3 March 2016 ("Previous SCT Judgment"). The Previous SCT Judgment required that the tenant (the Claimant in this case) move out of the Premises and pay pro rata rent for his overstay period.

8. Furthermore, the Previous SCT Judgment, at Paragraph 4, required that the landlord (the Defendant in this case) "return the appropriate security

deposit amount upon documented inspection of the property within thirty days of the tenant's departure." The Previous SCT Judgment elaborates at Paragraph 41, stating that "with regard to the security deposit of AED 5,000 which the [tenant] paid to the [landlord], the [landlord] shall be responsible to return the appropriate amount upon documented inspection of the Premises after the [tenant] has departed. If there are any damages or expenses appropriately deducted from the security deposit, the [landlord] can deduct them before reimbursing the [tenant]. Such reimbursement must occur within thirty days of the [tenant's] departure from the Premises."

9. The Claimant vacated the Premises by 6 March 2016, in compliance with the Previous SCT Judgment. The Defendant did communicate with the Claimant regarding the security deposit within the thirty day period outlined in the Previous SCT Judgment as detailed by a 23 March 2016 email from Real Estate attaching the quotation for items to be repaired. The Claimant contends that this communication was outside the required method of communication which was for the Defendant to copy the SCT Registry.

10. On 19 April 2016 the Claimant emailed the Defendant and the SCT Registry, alleging the Defendant's failure to comply with the Previous SCT Judgment as regards the security deposit. The Defendant responded by forwarding a quotation for repairs to show the repair work done on the Premises after the Claimant vacated.

11. The SCT Registry, in an email dated 24 April 2016, directed the parties to submit any communication between them regarding the security deposit including the inspection report documenting the required repairs to the Premises. The Defendant forwarded communications with Real Estate copying the same quotation already submitted.

12. On 26 April 2016, the SCT Registry informed the parties that any unsatisfied party could file an Enforcement Proceeding in order to compel compliance with a DIFC Courts Judgment.

13. No further communication was received by the SCT Registry until 22 June 2016, when the Claimant attempted to settle the dispute without further legal action. The Defendant claimed that the damage repaired in the Premises was beyond "wear and tear" and thus refused to settle.

14. The Claimant then filed a claim with the DIFC Courts Small Claims Tribunal on 7 July 2016 seeking reimbursement of his full AED 5,000 security deposit as well as reimbursement of his Court Fees.

15. The parties attended a Consultation before SCT Officer Mahika Hart on 21 July 2016 but were unable to reach a settlement. Thus, a Hearing was scheduled before SCT Judge Natasha Bakirci on 2 August 2016.

16. Prior to the Hearing, the Defendant further submitted the sales invoice and bank transfer slip from Maintenance LLC for the initial work done amounting to AED 5,365 along with the invoices and account statement from another maintenance company for additional work amounting to AED 2,225.

Particulars and Defence

17. The Claimant argues that the Defendant failed to comply with Paragraphs 4 and 41 of the Previous SCT Judgment and furthermore that he is not required to pay for the listed repairs pursuant to the Tenancy Contract and Addendums.

18. First, the Claimant maintains that the Defendant did not properly communicate regarding the security deposit within the thirty day period required by the Previous SCT Judgment. Moreover, even when communication was finally received, it did not include proof of a "documented inspection" detailing the work necessary. Instead, all that was provided was an invoice and quotation without further proof that such work was necessary and beyond normal wear and tear.

19. Second, the Claimant argues that the work charged in the sales invoice and quotation constitutes "normal wear and tear" as per Section 2 of the Addendums to the Tenancy Contract. Therefore, the landlord is responsible to pay for these repairs.

20. In sum, the Claimant contends that the Defendant's failure to comply with the Previous SCT Judgment caused him to forfeit his right to keep any part of the security deposit. Further, the Claimant argues that the items charged against the security deposit fall within the scope of "normal wear and tear" and should therefore be covered by the Defendant as the landlord.

21. The Defendant argues that he has paid substantially more than AED 5,000 in repair of the Premises and therefore is not required to reimburse the Claimant for any of the deposit. The Defendant did not address his failure to comply with the timeline and documentation requirements of the Previous SCT Judgment.

22. In support of his arguments, the Defendant has submitted a "Sales - Quote" provided by Maintenance LLC for AED 5,365 as regards Unit of Tower. The Defendant also provided a "Sales - Invoice" detailing the same charges and proof of payment of AED 5,365 to Maintenance LLC for maintenance work in Unit of Tower. The Defendant further provided a "Statement of Account" from Real Estate showing further repairs costing AED 2,225 for Unit. This Statement of Account is supported by further invoices for washing machine repair, hood repair and cleaning.

23. The initial "Sales - Quote" is dated 6 March 2016, the same day that the Claimant moved out of the Premises, and the "Sales - Invoice" is dated 22 March 2016, within the thirty day period required by the Previous SCT Judgment. The other documentation submitted by the Defendant is all dated after 19 April 2016, the date on which the Claimant emailed the Defendant and the SCT Registry alleging the Defendant's failure to comply with the Previous SCT Judgment.

Finding

24. First and foremost, the relevant Tenancy Contract falls under DIFC Courts' jurisdiction as it concerns the Premises which are located within the DIFC. While the Addendums at Section 2 state that disputes shall be referred to the "Renal Committee," such a provision does not preclude DIFC Courts' jurisdiction regarding property within the DIFC. 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.

25. There is just one issue in this dispute, the Claimant's security deposit and the repairs which the Defendant can and cannot deduct against that deposit. This same issue has recently been the subject of another SCT Judgment, *Gottlieb LLC v Graca* issued on 26 May 2016.

26. In *Gottlieb LLC v Graca*, the landlord/claimant sued the tenant/defendant for overstay rent and for certain charges for repairs against the defendant's security deposit. The relevant tenancy agreement stated that "[i]f the Unit(s) is not returned to the Landlord in the same condition that it was received by the Tenant on the Commencement Date, including the garden and landscaping, save and except for reasonable wear and tear, the Managing Agent and/or Landlord has the right to deduct the necessary amount from the Security Deposit" (*Gottlieb LLC v Graca*, Paragraph 32, emphasis in original).

27. In *Gottlieb LLC v Graca* a key issue was which repairs could be claimed under the scope of "reasonable wear and tear." The defendant had argued that many of the charges were outside of the "reasonable wear and tear" standard while the claimant contended that all the charged repairs were appropriate. The Judgment stated that in a security deposit dispute of this nature, "the Court is tasked with reviewing the evidence provided to determine whether the charges being made against the security deposit are repairs that lie within or outside of `reasonable wear and tear'" (*Gottlieb LLC v Graca*, Paragraph 34).

28.The Judgment in *Gottlieb LLC v Graca* goes on to state that the "Claimant, as the applicant in this case, bears the burden of proving that each repair is within its right to deduct. This means that the Claimant must both prove that the item is damaged, requiring repair, and that the damage lies outside of `reasonable wear and tear.' It is for the Court to assess whether the Claimant has met this burden of proof on each deduction from the security deposit" (*Gottlieb LLC v Graca*, Paragraph 34).

29. In this case, the Claimant is the tenant rather than the landlord. The burden of proof typically lies with the Claimant to prove his case in concordance with the applicable legal standard. However, in this case, there is a Previous SCT Judgment requiring that the Defendant provide "documented inspection of the property" in order to make appropriate deductions from the security deposit. This requirement effectively shifts the burden of proof from the Claimant to the Defendant to prove that each charge deducted against the security deposit is appropriate. Furthermore, as is typical in landlord/tenant disputes, the landlord is in a position of power with regard to documenting any repairs charged against the security deposit and may therefore be required to prove such charges are appropriate.

30. In support of the charges against the security deposit, the Defendant has provided some sales quotes, invoices and proof of payment detailing items that were repaired. While there is no allegation that such documentation is false, there has been no further submission from the Defendant containing the "documented inspection" as required by the Previous SCT Judgment, in spite of numerous reminders from the SCT Registry to submit such documentation. Typically, such reports include photographs from the premises to prove damage beyond normal wear and tear.

31. Thus, as the burden of proof has been effectively shifted from the Claimant to the Defendant pursuant to the Previous SCT Judgment and the circumstances at hand, the Defendant is required to prove that any repairs charged against the security deposit fall outside of "normal wear and tear."

32. Therefore, as in the case of *Gottlieb LLC v Graca*, the Court is required to assess each charge in order to determine whether the burden of proof has been met.

33. First, I will address the second set of charges detailed in the Statement of Account provided from Real Estate. This statement details charges for "Washing Machine Repair," "Hood Filter Replacement," "Apartment Cleaning," and "Access Card" totalling AED 2,225. The statement was issued on 31 July 2016 and the items listed are dated 18 May 2016. As these dates are both well outside of the thirty day period allowed for in the Previous SCT Judgment, they cannot be deducted from the Claimant's security deposit. As the Claimant vacated the premises on 6 March 2016, all documentation of the repair charges were to be collected and submitted by 6 April 2016. The further supporting invoices provided by the Defendant to document these charges are dated 9 May 2016, 26 May 2016 and 19 May 2016, similarly outside of the time period allowed. Therefore, none of the charges listed on the Statement of Account provided by the Defendant can be deducted against the Claimant's security deposit.

34. Next, I will address the remaining items listed in the Sales - Quote and Sales - Invoice. These two documents list the same repairs and there is no question that the Defendant did in fact pay Maintenance LLC for the repairs in Unit of Tower, as detailed in the bank transfer documents submitted by the Defendant. Moreover, these two documents were issued on 6 March 2016 and 22 March 2016 respectively, well within the period allowed for in the Previous SCT Judgment. However, the Defendant has failed to provide the "documented inspection" as required by the Previous SCT Judgment. The Defendant has not provided detailed descriptions of the damage listed nor photographic evidence as would be expected from any landlord. Instead, the Sales - Quote and Sales - Invoice are the only two documents evidencing what was repaired in the Premises.

35. Therefore, the Defendant has failed to establish that the repairs listed fall outside of "normal wear and tear," especially considering that the Claimant lived in the apartment for nearly three years and some damage is to be expected. In fact, some of the listed items seem, on their face, to fall within "normal wear and tear" such as repainting, which was found to lie within the expected scope of normal wear and tear as per the judgment in *Gottlieb LLC v Graca*, Paragraph 37-38, unless further proof of the extent of damage to the walls is shown by the landlord.

36. Therefore, the Defendant has not documented his inspection of the Premises and has failed to comply with the timeline provided for in the Previous SCT Judgment. Furthermore, the Defendant was given numerous opportunities to submit "documented inspection" in advance of the Hearing. Thus, it is not appropriate for the Defendant to deduct the listed expenses from the Claimant's security deposit. The Defendant must return the full AED 5,000 security deposit to the Claimant.

37. The Defendant shall also pay the Claimant AED 367.50 as reimbursement of the Claimant's court fee.





Issued by:

Natasha Bakirci

SCT Judge

Date of issue: 7 August 2016

At: 5 pm