Claim No. SCT 332/2018

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 SCT JUDGE NASSIR AL NASSER

BETWEEN

IMAN

Claimant

and

INSUAF

Defendant

Hearing:**14 November 2018**

Judgment: **22 November 2018**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

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

AND UPON hearing the parties' submissions at the hearing;

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 the sum of AED 59,500 being the deposit, the first cheque and the agent fee.

2. The Claimant shall vacate the office unitDIFC, Dubai, UAE

3. The Defendant shall pay the Claimant the Court Fees in the sum of AED 2,975.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 22 November 2018

At: 9am

THE REASONS

The Parties

1. The Claimant is Imann (herein "the Claimant"), a tenant of the Defendant at Office Unit , , DIFC, Dubai, UAE.

2. The Defendant is Insauf, Irati LLC of Office Unit 678, DIFC, Dubai, UAE. Represented by Iser in the DIFC Courts Small Claimant Tribunal claim (herein "the Defendant").

Background and the Preceding History

3. The underlying dispute arises over a Tenancy Agreement (the "Agreement") between the parties regarding office unit DIFC, Dubai, UAE (herein the "Unit"), with the tenancy start date of 29 March 2018 and end date of 28 March 2019 for the sum of AED 140,000 to be paid in four cheques.

4. The annual rent of AED 140,000 consisted of four cheques as per the following:

(a) AED 35,000 dated 29 March 2018.

(b) AED 35,000 dated 29 June 2018.

(c) AED 35,000 dated 29 September 2018.

(d) AED 35,000 dated 29 December 2018.

5. On 19 October 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming a refund of the security deposit, that the first cheque be paid and the agency fee in the sum of AED 59,500.

6. The Defendant responded to the claim on 22 October 2018, indicating its intention to defend all of the claim.

7. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 1 November 2018 but were unable to reach a settlement.

8. A Hearing was scheduled before me on 14 November 2018. The Claimant and the Defendant's representative attended the hearing.

The Claim

9. The Claimant's case is that she was in the process of setting up a business in the DIFC and was going through licensing with the DFSA. One of the requirements was to have office space within the DIFC.

10. The Claimant found the Unit. On 21 February 2018, the Claimant paid 10% security deposit in the sum of AED 14,000. On 25 March 2018, the Claimant paid the first cheque in the sum of AED 35,000. On 5 May 2018, the Claimant also paid the agency fee in the sum of AED 10,500.

11. The Claimant alleges that she was not able to use the office as there was a fault in the air conditioning ("AC"). The Claimant also alleges that she chased the landlord and his representative to fix the AC on numerous occasions, namely, 4 May 2018, 15 May 2018, 16 May 2018, 20 May 2018 and 4 July 2018, thus, she was unable to use the office as it was not functional nor fit for purpose, although, she alleges that she was pressurised to make further payments.

12. Furthermore, the Claimant alleges that she did not sign the Tenancy Contract as she was still waiting for the DFSA license.

13. Therefore, the Claimant filed a claim in the DIFC Courts Small Claims Tribunal for a refund of the paid sums in the amount of AED 59,500 as she was unable to use the Unit.

The Defence

14. The Defendant acknowledged the claim with the intention to defend all of the claim.

15. The Defendant asserts that the Claimant contacted the Defendant requesting to view both residential and office spaces in the DIFC. The Defendant alleges that she have mentioned that, in order to rent an office in the DIFC, the tenant is required to hold a DIFC Company license or license in principle.

16. The Defendant alleges that on 13 February 2018, the Claimant accepted the Unit.

17. On 21 February 2018, the Claimant paid a deposit of 10% of the rent amount, namely, the sum of AED 14,000. In which the Defendant alleges that she declined all prospective tenants who were interested in the same Unit.

18. It is asserted that, on 11 March 2018, the Defendant contacted the Claimant to check on the progress of the DIFC license progress. The Defendant also adds that on the same day the Claimant confirmed that the license application was under process, and that the Claimant was willing to sign the Tenancy Contract.

19. On 13 March 2018, the Claimant requested to change the start date to 29 March 2018 and the Defendant asserts that the Landlord accepted.

20. The Defendant alleges that the first payment of the sum of AED 35,000 being the first cheque was collected by the Defendant.

21. On 7 April 2018, the Defendant alleges that she was unable to let the tenant sign the Tenancy Contract as the DIFC license was not yet issued.

22. The Defendant also asserts that on 9 April 2018 the Claimant inspected the Unit to confirm any fixing requirements other than the landlord's inspection report.

23. The Defendant also asserts that the Claimant failed to provide any post-dated cheques as the Claimant did not have a bank account in the UAE.

24. The Defendant alleges that on 16 May 2018 she met the Claimant to deliver the key, access card as well as to settle the agency fees.

25. The Defendant also alleges that on 20 May 2018 the Claimant complained about the AC in the Unit. On 21 May 2018, the Defendant appointed contractors to fix the AC.

26. The Defendant asserts that on 4 July 2018, the Claimant reported to the Landlord issues with the AC and no water. On 7 July 2018, the Defendant responded that after 3 contractors checking the Unit, the landlord paid money for the repair work. However, the AC continued to still not work. The Defendant alleges that the she suspected that the problem was linked with the DEWA bill. The Defendant alleges that the Unit must

be registered in the name of the tenant before DEWA can activate the power.

27. The Defendant asserts that the Claimant confirmed she would pay the second rental payment upon the fixing of the AC, and again, the Defendant reiterated the need for a DIFC license for the office.

28. On 15 August 2018, the Defendant alleges that the AC was fully functional. On 17 August 2018, the Defendant asserts that she requested to meet with the Claimant as the landlord paid for the utility on their behalf but did not receive the second rental payment after 28 June 2018.

29. On 19 August 2018, the Defendant asserts that the Claimant confirmed to withdraw from the lease and requested for a full refund of all previous payments.

Discussion

30. The Claimant claimed a refund in the amount of AED 59,500, being the first cheque in the sum of AED 35,000, the deposit in the sum of AED 14,000 and the Agent fees in the sum of AED 10,500, as the Unit rented was unusable.

31. The Claimant and the Defendant did not enter into a Tenancy Contract due to the requirement of a company registration in the DIFC. If a party enters into a Tenancy Contract and fails to provide a company registration within 28 days, a penalty of USD 1,000 will be imposed. Therefore, the parties did not sign a Tenancy Contract.

32. The Claimant argues that on 14 February 2018 she received an email form the Defendant informing her that *"As the Unit will be ready much sooner before 27 March, if you want to use it earlier, it is ok. As soon as we receive your first cash payment, we will release the key, access card and car access card etc. Please show us a transfer proof of 10% security deposit. We will begin the refurbishment."*

33. Therefore, I am satisfied that although the parties failed to enter into a signed Tenancy Contract, their conduct is sufficient to establish that the parties were actually in agreement pursuant to the unsigned Tenancy Contract dated 29 March 2018 to 28 March 2019.

34. On 21 February 2018, the Claimant transferred the sum of AED 14,000 which was considered the 10% deposit. The Claimant argued that the Defendant did not at any stage mention that it is illegal to move in, however, the Defendant only mentioned that a penalty of USD 1,000 might be applied if the office was not registered after 28 days of the Tenancy Contract being signed. The Claimant paid the deposit as per the advice of the Defendant's Agent which suggested that it was fine to use the Unit.

35. On 25 March 2018, the Claimant paid the Defendant the first rent cheque in the sum of AED 35,000.

36. On 3 May 2018, the Defendant asked for the remining post-dated cheques, and for the sum of AED 10,500 for the Agency fee + 5% VAT. On 5 May 2018, the Claimant argues that the post-dated cheques were posted (the parties agreed on post-dated cheques from the Claimant's foreign bank account).

37. The Claimant's argument is that the Unit rented was inhabitable during the period of the paid rent from 29 March 2018 although the Defendant's agent informed her that the Unit will be ready, and it is ok to move in without referring to the DIFC penalty at that point of time. The Claimant moved in as per the advice of the Defendant.

38. Although the Claimant had made the payment of the deposit, the first cheque and the Agency fees, the Defendant failed to hand the keys as suggested until 16 May 2018, as per the correspondence below:

(a) On 15 May 2018, the Defendant informed the Claimant that they had only obtained permission from the building management to do the refurbishment on 14 May 2018. The Claimant argues that the Claimant took the first payment before the office was ready.

(b)On 16 May 2018, the Defendant contacted the Claimant informing her that the Unit was refurbished without referring to the AC in the office.

39.On 20 May 2018, the Claimant made the first complaint about the AC in the office and the water. On 21 May 2018, the Defendant appointed her contractor to fix the AC.

40. On 28 May 2018, the Defendant contacted the Claimant about the AC issue, following which, the Claimant responded that the AC was not yet fixed and that the Claimant would be working from home.

41. On 2 June 2018, the Defendant again contacted the Claimant to check on the AC, following which the Claimant confirmed that it was not yet fixed and that she will be working from home.

42. 5 June 2018, the Defendant contacted the Claimant informing her that the management team used another contractor named Iqbal. He confirmed that he went to the Unit before and knew the problem.

43. On 10 June 2018, the Claimant again informed the Defendant that she had been working from home due to the hot temperature in the office. Following which the Defendant responded *"your frustration is understandable. If it lasts longer, the landlord should offer you compensation"*.

44. On 14 June 2018, the Defendant informed the Claimant that they were still investigating the matter with the property management and landlord. On the same date the Claimant contacted the Agent with concerns about paying the rent whilst the landlord disputes with his contractors. She also mentioned that she should not be responsible if the Unit is uninhabitable.

45. On 21 June 2018, the Defendant contacted the Claimant informing her that they were also working on the drainage pile lying underneath the office floor. Following which the Claimant argues that the Defendant informed her that everything was fixed before handing the keys and after

receiving all the payments.

46. The Claimant's argument is that on numerous occasions they contacted the Defendant complaining about the AC. However, the Defendant argues that the Claimant was unable to use the AC due to the failure of registration of the office Unit with DEWA.

47. The Claimant argues that the Defendant did not inform the Claimant about DEWA until July 2018 and, before handing the keys, the Defendant assured the Claimant on 14 February 2018 that the Unit would be ready for use. Then, on 16 May 2018, the Defendant informed the Claimant that the Unit was now ready for use. Furthermore, the Claimant argues that if there was an AC fault why would the Defendant inform the Claimant that the Unit is ready for use? If the issue is related to DEWA and registration, why would the Defendant send contractors to fix the fault? Why did the AC work on 15 August 2018, while the DEWA registration was not yet completed by the Claimant?

48. I am satisfied that the Claimant was paying for an inhabitable Unit due to the numerous complaints made. I am also satisfied that the Defendant failed to solve the issue until 15 August 2018.

49. I am not satisfied with the Defendant's argument that the issue was related to DEWA and registration because, on 15 August 2018, the issue was resolved and yet the Claimant did not register with DEWA.

50. I find that the Claimant did not benefit from the Unit during the period of 21 February 2018 up to 15 August 2018. I also find that, by a way of an email on 19 August 2018, the Claimant decided not to continue with the rent of the Unit.

51. I also find that the Defendant was in breach of Clause 14 of the Appendix attached to the Agreement, which states that:

> **"**The Landlord agrees to complete all maintenance before the start date of the contract including: plumbing, electric wiring, AC, deep cleaning and pest control."

52. The Defendant did not fulfil its obligations and hand the Unit to the Claimant after completing all maintenance. In fact, the Claimant paid the first rent on 25 March 2018 and the Agreement only started on 29 March 2018, however, the Claimant received the Unit on 16 May 2018 and was ensured that the Unit was maintained and ready for use.

53. On 20 May 2018, numerous complaints started about the AC up until 15 August 2018, at which point, the AC was fixed. On 19 August 2018, the Claimant decided to vacate the Unit.

54. The Claimant admits that only the first cheque was paid and that the second payment was not made due to the fault in the Unit.

55. Therefore, I find that the Claimant is entitled to compensation of the total amount paid in the sum of AED 59,500, which consists of the deposit, the first cheque and the Agent Fees, as the Defendant was in breach of Clause 14 of the Appendix attached to the Agreement. The Claimant shall also vacate the Unit.

Conclusion

56. In conclusion, I find that the Defendant shall pay the Claimant the sum of AED 59,500 which consists of the deposit in the sum of AED 14,000, the first cheque in the sum of AED 35,000 and the Agent Fees in the sum of AED 10,500.

57. The Claimant shall vacate the Unit.

58. The Defendant shall also pay the Claimant the Court fees in the sum of AED 2,975.



Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 22 November 2018

At: 9am