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 LEASING TRIBUNAL OF DIFC COURTS

BEFORE H.E. JUSTICE NASSIR AL NASSER

BETWEEN

MATIAS

Claimant

and

MYA

Defendant

Hearing : **20 January 2022**
Judgment : **28 January 2022**

JUDGMENT OF H.E. JUSTICE NASSIR AL NASSER

UPON this claim having been called for a hearing with the Claimant and the Defendant in attendance

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 total sum of AED 6,666.60.

2. The Defendant shall pay the Claimant the Court fees in the sum of AED 333.33.

Issued by:
Nassir Al Nasser
SCT Registrar
Date of issue: 28 January 2022
At: 11am

THE REASONS

The Parties

1. The Claimant is Matias (the "Claimant"), a tenant of Unit 001, , DIFC, Dubai, UAE (the "Unit").

2. The Defendant is Mya (the "Defendant"), the owner of the Unit.

Background and the Preceding History

3. The underlying dispute arises over a tenancy contract entered into between the parties dated 7 October 2021 with a tenancy period of 1 November 2021 to 31 October 2022 (the "Contract"). The Contract provided that the Claimant would rent the Unit for 1 year in return for AED 120,000, to be paid in one cheque.

4. On 28 November 2021, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking compensation in the sum of AED 34,000 which consists of damages for the breach of the Contract in the sum of AED 14,000 and compensation for breach of Contract in the sum of AED 20,000, equal to two months' rent.

5. On 16 December 2021, the Defendant filed an acknowledgment of Service with the intention to defend all of the claim.

6. The parties met for a Consultation on 27 December 2021 but were unable to reach a settlement.

7. In line with the processes and procedures of the Small Claims Tribunal (the "SCT"), this matter was referred to me for determination pursuant to a Hearing scheduled before me on 20 January 2022

The Claim

8. The Claimant alleges that the Defendant breached the Contract six days prior to the contractual move in date with no legal basis for termination which provided the Claimant with short notice to find alternative accommodation.

9. The Claimant submits that the parties signed the Contract on 7 October 2021 with a commencement date on 1 November 2021. However, between 25 to 27 October 2021, the Defendant sought to terminate the Contract.

10. Therefore, the Claimant seeks an order for payment of the sum of AED 34,000 which comprises damages for the breach of the Contract in the sum of AED 14,000 and compensation for breach of Contract in the sum of AED 20,000, equal to two months' rent.

11. In response, the Defendant alleges that she was at the final stage of a property transfer from a seller which unforeseeably became delayed because of legal requirements by the authorities and the bank.

12. The Defendant adds that the Unit was the primary and only residence of the Defendant and the Defendant was scheduled to travel on 5 November 2021 for a period of three weeks, therefore, she requested a 4 day postponement to finalise the transfer to move out in return for one-week free rent.

13. The Defendant adds that the Claimant was living at a hotel during that period when she requested for a delay in exchange of one-week free rent, and the Claimant rejected the Defendant's offer.

14. The Defendant adds that the Unit was furnished, and the Claimant only had to move her possessions into the apartment which would not delay or effect the Claimant's stay at the Unit. Furthermore, the Defendant argues that she had requested for a 4-day delay and not 21 days which would have avoided any inconvenience and costs.

15. The Defendant argues that when the negotiations were failing to prove successful, she decided to terminate the Contract.

16. Therefore, the Defendant requests that the Court dismiss the Claimant's claim.

Discussion

17. The relationship between the parties is governed by the Contract along with the DIFC Leasing Law No. 1 of 2020 (the "DIFC Leasing Law").

18. I find that the parties have executed a tenancy contract on 7 October 2021 with a move in date on 1 November 2021. However, between 25 - 27 October 2021 the Contract was terminated by the Defendant prior to the move in date without notice.

19. The Claimant argues that Defendant's action of terminating the Contract without notice is in breach of the contractual terms and she should pay damages and compensation to the Claimant.

20. The Claimant claimed the sum of AED 34,000 which consists of damages for breach of Contract in the sum of AED 14,000 and compensation for breach of Contract in the sum of AED 20,000, equal to two months' rent.

21. I find that the Defendant has breach the Contract by terminating the Contract without providing the Claimant with a notice period.

22. As per clause 5 of the addendum attached to the Contract, it states that *"in the event of the tenancy being terminated by the tenant before the expiry of the tenancy period, the tenant shall be liable to pay 2 months' rent as penalty for such termination. The tenant shall give notice of not less than 2 months' indicating his intention to terminate the tenancy. Tenant is also required to pay DIFC cancellation fees and pulse charges for this purpose."*

23. However, the Contract does not mention the consequences if the landlord terminates the Contract without notice before the expiry date of the Contract. Therefore, I shall assess the damages and compensation pursuant to the DIFC Contract Law.

24. Article 109 of the DIFC Contract Law states that *"Any non-performance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except where the non-performance is excused under this Law"*.

25. Article 110 of the DIFC Contract Law states that *"the aggrieved party is entitled to a full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss which is suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm."*

26. The remedies sought by the Claimant were as follows:

(a) Damages for breach of Contract in the sum of AED 14,000; and

(b) Compensation for breach of Contract in the sum of AED 20,000 equating to two months' rent.

27. Due to the Defendant's termination of the Contract a couple of days prior to the move in date, the Claimant argues that she had no choice but to extend her stay at alternative accommodation, namely, a hotel (the Hotel in DIFC) for a further 3 weeks in order to find a suitable long-term accommodation. The Claimant provided a receipt of her stay at the hotel in the sum of AED 14,000 from 30 October 2021.

28. As per the Contract, the parties have agreed to a rent amount of AED 120,000 per annum. Therefore, AED 120,000/12 months = AED 10,000 per month / 30 days = AED 333.33 per day.

29. I believe that the damages shall be calculated to the sum of AED 333.33 per day as this was the daily rental amount. However, the Claimant has claimed the sum of AED 700 per day which I determine to be unreasonable. I am of the view that it was the Claimant's choice and the Defendant is only entitled to compensate the Claimant based on the actual rent amount. Therefore, I find that the Defendant shall pay the Claimant the period of 20 days as claimed by the Claimant on the daily rate of the unit rental amount which is the sum of AED 333.33 which equates to the total sum of AED 6,666.60.

30. In relation to the Claimant's claim for compensation in the sum of AED 20,000 (equal to two months' rent). The Claimant is suggesting that clause 5 of the addendum applies to the landlord (the Defendant in this case) however, this clause only applies to the tenant which is the Claimant in this case.

31. There is no reference in the Contract that the landlord shall be liable to pay two months' rent upon terminating the Contract prior to the expiry date. The Law is silent in this regard. Therefore, I find that the Claimant's claim has no basis and the Defendant is not liable to compensate the Claimant for two months' rent in the sum of AED 20,000.

Conclusion

32. In conclusion, I find the Defendant shall pay the Claimant the total sum of AED 6,666.60.

33. The Defendant shall pay the Claimant the Court fees AED 333.33.