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
BEFORE SCT JUDGE DELVIN SUMO

BETWEEN

LEMMA

Claimant

and

LANCHO

Defendant

Hearing : **11 March 2022**
Further submission : **15 March 2022**
Judgment : **22 March 2022**

JUDGMENT OF SCT JUDGE DELVIN SUMO

UPON this Claim Form being filed on 31 January 2022

AND UPON a Hearing having been listed before SCT Judge Delvin Sumo on 11 March 2022 with the Claimant and the Defendant's representative in attendance

AND UPON reviewing all documents submitted on the Court file

IT IS HEREBY ORDERED THAT:

1. The Claim is dismissed.

2. Each party shall bear its own costs.

Issued by:
Hayley Norton
SCT Judge
Date of issue: 22 March 2022
At: XX

THE REASONS

The Parties

1. The Claimant is Lemma (the "Claimant"), an individual who rented unit 000, DIFC, Dubai, UAE (the "Unit").

2. The Defendant is Lancho (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 9 November 2019 for a tenancy period from 9 November 2019 until 8 November 2020 (the "Contract") which was extended until 8 January 2022.

4. On 31 January 2022, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking a refund of the security deposit in the sum of AED 5,000.

5. The matter was called for a Consultation before SCT Judge Maitha AlShehhi on 23 February 2022. Although both of the parties were in attendance, they failed to reach a settlement.

6. In accordance with the rules and the procedures of the SCT, the matter was referred to me for determination, pursuant to a hearing held on 11 March 2022 (the "Hearing"). After considering all documents and evidence submitted on the Court file, I give my judgment below.

The Claim

7. The Claimant submits that, on 8 January 2022, she concluded her tenancy Contract with the Defendant. On 6 January 2022, the parties had a joint inspection of the Unit, and the Claimant alleges that the Defendant showed no indication of dissatisfaction as to the condition of the Unit. The

Claimant submits that she returned the keys and agreed to meet with the Defendant the following day with copies of the final utility bills, and thereafter, the Defendant would refund the Claimant the security deposit in the amount of AED 5,000 (the "Deposit").

8. The Claimant alleges that, the following day, the Defendant carried out a second inspection of the Unit, without the knowledge of the Claimant. On 10 January 2022, the Defendant shared a detailed report of the alleged list of damages and defects found within the Unit (the "Condition Report"). The Claimant submits that the findings in the Condition Report should be attributed to pre-existing conditions and fair wear and tear. The Claimant has submitted various photographs during her stay in the Unit, which, she claims, would demonstrate the pre-existing condition of the Unit.

9. The Claimant submits that the parties signed a report at the time of moving into the Unit (the "Checklist"), however, the Claimant claims that this Checklist is merely a handover list of the items within the Unit, and it does not state the condition of the items listed within the Checklist. The Claimant further submits that, *in the absence of a condition report upon moving into the Unit to serve as a baseline, the Defendant has not accounted for pre-existing conditions and nether has he/she made allowance for fair wear and tear*.

10. Therefore, the Claimant alleges that she has handed over the Unit in its original condition and claims the refund of the Deposit.

The Defence

11. The Defendant, in short, objects to refund the Deposit and contends that the Claimant is therefore not entitled to her claim.

12. The Defendant submits, firstly, that the Claimant signed the Checklist which sets out a list of the inventory and the condition of items within the Unit. The Defendant submits that the Checklist demonstrates the Claimant's satisfaction as to the condition of the Unit at the time of the initial handover and her acceptance that no defects or areas of concern were present at the start of the Contract.

13. The Defendant further submits that the Claimant should have returned the Unit in its original condition, in accordance with clause 23 of the Contract which reads as follows:

> "The Tenant agrees to return the property in its' original condition at the end of the tenancy, fair wear and tear accepted and return all swipe cards, keys and parking cards which have been received. Prior to the release of the security deposit, a property inspection will be carried out. The cost of painting, repairs and damage deemed to be the responsibility of the Tenant and/or as a direct result of the tenancy occupancy shall be deducted from the security deposit in order to return the property in its original condition as handed over to the Tenant. At the time of vacating the property, the Tenant has to ensure that the Owner or his representative carry out the necessary inspection of the property prior to applying for the final DEWA bill or withdrawing the security deposit to ensure that the property is in good condition. The security deposit will be returned by the Owner to the Tenant within 5 working days of handover back to the Owner".

14. The Defendant further alleges that she did not accept or take over the Unit during the joint inspection on 6 January 2022. In fact, the Defendant alleges that she had expressed her dissatisfaction with the condition of the Unit during joint inspection.

15. Subsequently, the Defendant allowed a real estate expert to assess the condition of the Unit following which the Condition Report was issued with the alleged damages and defects found in the Unit. The Defendant claims to have repaired the damages and defects found in the Condition Report at her own expense, in the sum of AED 6,250 as the Claimant refused to acknowledge her liability.

16. Therefore, the Defendant argues that the damages and defects within the Condition Report are caused by the Claimant, and as such the Defendant is of the view that the Claimant should not be entitled to the refund of the Deposit and that the Claim should be dismissed in its entirety.

Findings

17. In essence, the disagreement between the parties pertains to whether the Claimant should be refunded the Deposit by the Defendant pursuant to the Contract.

18. Firstly, I note that, even though the Defendant carried out a second inspection without the knowledge and presence of the Claimant, this inspection was in accordance with clause 23 of the Contract which states that *`at the time of vacating the property, the Tenant has to ensure that the Owner or his representative carry out the necessary inspection of the property prior to applying for the final DEWA bill or withdrawing the security deposit to ensure that the property is in good condition'*. Furthermore, no written document was produced by the parties to record a formal hand over of the Unit during the joint inspection.

19. The Claimant has rightfully submitted that the Checklist does not specify the condition of the items within the Unit, however, clause 23 of the Contract states clearly that *`the Tenant agrees to return the property in its original condition at the end of the tenancy, fair wear and tear accepted'*.

20. Clause 7 of the Contract states the following in relation to maintenance:

> "Major maintenance is the sole responsibility of the Landlord. Major maintenance is described as maintenance on the structure of the building and include, but not exhausted by work required to the roof, drainage major plumping, electrical, including maintenance for private swimming pool pumping equipment where present. Minor maintenance is the responsibility of the Tenant. Minor maintenance is described as maintenance on leaking faucets and exposed pipes in the kitchen, laundry, and toilets, faulty locks and fused light globes..".

21. Furthermore, pursuant to clause 23 of the Contract, *`the cost of painting, repairs and damage deemed to be the responsibility of the Tenant and/or as a direct result of the tenancy occupancy shall be deducted from the security deposit in order to return the property in its original condition as handed over to the Tenant'*.

22. In the event a Unit is being rented, it is generally expected that the walls may not be in its original condition at the end of the Contract.

Therefore, it is reasonable that the Defendant expected that the Claimant would repaint the walls. Even in the event that some patchwork or stains were present on the wall before the Claimant moved into the Unit, the Claimant was obligated to cover and repaint the remaining areas on the walls which were caused during her stay within the Unit. I am of the view that the repainting of the walls falls within the remit of clause 23 of the Contract.

23. Reasonable wear and tear is permissible in accordance with the Contract, however, I find that the remaining damages and defects found within the Unit, such as scratches, (oil) stains on the marble floor and stains on the marble counters in the kitchen and bathrooms are to be attributed to minor maintenance as described in clause 7 of the Contract.

24. In review of the submissions made by both parties, I find that the Claimant was obligated to maintain the condition of the Unit during her stay in order to return it in its original condition upon vacating the Unit in accordance with clause 23 of the Contract.

25. In light of the aforementioned, I find that this Claim shall be dismissed.

Conclusion

26. The Claimant's Claim shall be dismissed.

27. Each party shall bear its own costs.