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 MAHA AL MEHAIRI

BETWEEN

LEON

Claimant

and

LEXIE

Defendant

Hearing : **31 August 2020**
Judgment : **29 September 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 26 July 2020

AND UPON the Defendant filing a Counterclaim on 27 July 2020

AND UPON a Second hearing having been listed before SCT Judge Maha AlMehairi on 31 August 2020 with the Claimant and the Defendant's representative in attendance

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

IT IS HEREBY ORDERED THAT:

1. The Claimant shall pay the Defendant the amount of AED 17,984.45 being the remainder of the notice period.

2. The Claimant shall pay the Defendant the Court fee in the sum of AED 899.22.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 29 September 2020
At: 2pm

THE REASONS

The Parties

1. The Claimant is LEON (the "Claimant"), an individual leasing an apartment situated in Index Tower, the DIFC (the "Premises")

2. The Defendant is LEXIE (the "Defendant"), owner of the Premises.

Background and the Preceding History

3. On 19 October 2017, the Claimant and the Defendant entered into a tenancy contract (the "Lease Agreement") for the period of 1 year for the amount of AED 185,000. The Claimant paid AED 9,250 as a security deposit for the Premises.

4. On 15 July 2018, the parties were in negotiations in regard to the renewal of the Lease agreement, the outcome of which was not successful. On 12 September 2018, the Claimant provided notice to the Defendant stating that he was intending to vacate the Premises.

5. In reply to the Claimant's notice, the Defendant reminded the Claimant that, as per the Lease Agreement, he was required to give 3 months' notice prior to evacuation and that 1 month is not acceptable to the Defendant, and further added that the Claimant would have to pay the remainder of the 2 months.

6. On 24 September 2018, the Defendant sent an email to the Claimant requesting that he issue a cheque of AED 23,821.95 for the period from 26 October 2018 to 11 December 2018, being the remainder of the notice period.

7. The Claimant agreed in that period to allow potential tenants to come and view the apartment for leasing.

8. On 25 October 2018, the Claimant vacated the apartment without a no-objection certificate ("NOC") and requested the assistance of the police to move his belongings to his new apartment located in the same building, and proceeded to handover the keys to the Defendant. On the same day, an email was sent from the Defendant reminding the Claimant that a NOC will only be issued upon clearance of the remainder of the notice period.

9. On 15 November 2018, an inspection was conducted at the Premises which was attended by a representative of the Defendant, without the Claimant's presence. Following the Inspection, the Defendant provided a list of items that needed fixing before the Defendant would be able to rent the Premises to another tenant. The Claimant denies receiving this list.

10. The Claimant contends that there was communication with the Defendant through telephone and email regarding the return of the security deposit, but nothing was provided in the evidence between the parties.

11. On 26 July 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming a refund of his full security deposit in the amount of AED 9,250 and incurred costs for the delayed NOC, and additional movers fee in the amount of AED 4,000.

12. On 31 March 2020, the Defendant filed a defence and counterclaim, denying the Claimant's claim in its entirety. In the Counterclaim, the Defendant claims the remainder of the notice period up to 11 December 2018, in the amount of AED 23,821.95

13. The parties met for a Consultation with SCT Judge Nassir Al Nasser on 6 August 2020 but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Second Hearing held on 31 August 2020.

The Claim

14. The Claimant's case is that he vacated the Premises on the expiry date of the Tenancy Contract. As provided above, parties were in negotiations in relation to the tenancy in July 2018 which indicated that he was not intending to renew the Tenancy Contract with the same price.

15. The Claimant, pursuant to his notice in September 2018, submits that he had sought to agree on the terms of vacating the Premises but alleges that the Defendant gave him a hard time during the process. The Defendant declined to refund of the security amount and therefore the Claimant proceeded to file his Claim with the SCT. Each of the Claimant's Claims are set out in the Discussion below.

16. The total sum claimed by the Claimant as set out in the Claim Form is AED 13,250, in addition to Court fees.

The Defence and Counterclaim

17. The Defendant confirms that it had engaged in discussions with the Claimant in regards to the rent amount upon the renewal of the Lease Agreement, and submits that upon the parties' failure to reach an Agreement, the Claimant should have given notice to the Defendant, in accordance with the Lease Agreement.

18. The Defendant, in response to the Claim, had filed a Counterclaim requesting the remainder of the notice period. There were no discussions in relation to the maintenance list that was provided by the Defendant, as the Claimant denied receiving the list.

19. The Defendant's defence to each of the Claimant's claims are set out in the Discussion below.

Discussion

20. First and foremost, the relevant Lease Agreement is in relation to an apartment 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. I shall set out below each of the Claimant's claims, the Defendant's defence to each Claim, and accordingly, the Court's reasoning and finding.

3 months' notice period

22. The Claimant submits that the Lease Agreement is a fixed-term contract, and states that pursuant to the fact that he was terminating the Lease Agreement after the original period, he should not be responsible for the notice period.

23. The Claimant also submits that he started negotiations about rent in July 2018 which gave an indication that he will not be renewing unless the agreed rent would be found suitable to him.

24. In response to this claim, the Defendant submits that the Lease Agreement had a clear clause in relation to the notice period which provides a 3 months' notice period in the situation that the tenant does not want to renew the Agreement, in accordance with Addendum Index Apartment which reads as follows:

> "3. Three months' notice in writing should be given to the Landlord if the Tenant wishes to vacate on expiry of the lease."

25. In review of the Addendum of the Lease Agreement, I note that the duration of the Contract was set out to be for 1 year from the date of commencement, which, as provided above, was set out within the Lease Agreement. The Clause stipulates that on the expiry of the Lease Agreement the Claimant should have given 3 months' notice that he intends to not renew the Lease Agreement, or the lease would be renewed automatically on a yearly basis for one year at a time with the same price unless they negotiate a different price, and the way to prevent the lease from renewing on an automatic basis would be for one party to notify the other party of its intention to break the Lease Agreement.

26. In light of this, I have determined that the Claimant should have given clear written notice that he would not be renewing the lease, and engaging

in a negotiation about the amount of rent cannot be considered to be a formal notice. Therefore, I accept the Defendant's claim for the remainder of the 3 months' notice period.

27. As the Claimant gave Notice on 12 September 2018 that he intends to vacate the Premises giving the Defendant 43 days' notice only, when he should have given the Defendant another 47 days' notice, in accordance with the Lease Agreement. The rent for 1 year is AED 185,000, and the Claimant's daily rent is AED 506.85.

47 days x 506.85 = 23,821.95

28. I determine that the Claimant shall pay the Defendant the amount of AED 23,821.95 for the 47 days that are the remaining unpaid days of notice, in accordance with the Lease Agreement.

The maintenance list provided by the Defendant.

29. The Defendant submitted a list of items that he replaced or fixed after the departure of the Claimant in the amount of AED 4,000, the Defendant argues that this list was sent to the Claimant, and therefore states that the Defendant is entitled to deduct that amount from the security deposit.

30. The Claimant claims that he never received the list of items and was never consulted before the Defendant commenced the maintenance for the Premises. The Claimant accepts some of the items but submits that other items fall under wear and tear of the Premises.

31. The Court requested from the Defendant to provide an itemised list of the maintenance schedule for examination. The Court is of the view that some items fall under wear and tear, and other items are the responsibility of the Claimant. Items that fall under the responsibility of the Claimant include replacing lights, installing new fridge door wooden panel, and the painting of the ceiling and apartment in the amount of AED 3,412.5 plus vat. As the items have already gone through the process of maintenance or replacing, the Claimant cannot bargain a cheaper price to fix them, as such, I find that the Claimant is responsible to pay the amount of AED 3,412.50 for maintenance.

32. The Defendant shall pay the remainder of the security deposit back to the Claimant deducting the maintenance amount, returning AED 5,837.50 back to the Claimant.

The Movers' invoice

33. The Court also requested the Claimant to present the movers' invoice for the delay the Defendant has caused during the process of moving to his new apartment, which the Claimant failed to present. As there is no evidence to support this Claim, the Court shall dismiss it.

Conclusion

34. In light of the aforementioned, I find that the Claimant shall pay the Defendant the sum of AED 17,984.45.

35. As the Defendant has been successful in his counterclaim, he should be entitled to recover the fee in respect of the counterclaim. The Claimant shall pay the Defendant the amount of AED 899.22 being 5% of the judgment sum owed to the Defendant.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 29 September 2020
At: 2pm