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 NASSIR AL NASSER

BETWEEN

IBHAR

Claimant

and

IVANNA

Defendant

Hearing:**15 April 2018**

Judgment: **22 April 2018**

Amended Judgment:**23 April 2018**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON the Claim Form being filed on 26 February 2018;

AND UPON the parties being called on 14 March 2018 for a Consultation with SCT Judge Natasha Bakirci and the parties not having reached settlement;

AND UPON a Hearing having been held before SCT Judge Nassir Al Nasser on 15 April 2018, with the Claimant, the Agent and the Defendant attending;

AND UPON reviewing the documents and evidence submitted in the Court file;

AND PURSUANT TO Rule 36.40 of the Rules of the DIFC Courts, paragraph(s) [1 (of the Order), 36, 42, 43 and 44] of this judgment are amended.

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 2,368.66 ~~AED 5,542~~.

2. The Claimant shall return the Defendant's cheque for AED 16,250.

3. The Defendant shall pay the Claimant the Court fee in the sum of AED 367.50.

Issued by:

Nassir Al Nasser

SCT Judge and Registrar

Date of Issue: 22 April 2018

Date of re-issue: 23 April 2018

At: 3pm

THE REASONS

Parties

1.The Claimant is Ibhar (the "Claimant"), a Pakistani National and the owner and landlord of Apartment No. 1234 DIFC, DUBAI, UAE ("the premises").

2. The Defendant is Ivanna (the "Defendant"), a Jordanian National and tenant of the Claimant.

Background

3. The underlying dispute arises over the tenancy contract between the parties dated 4 November 2017 (the "Contract"). The Contract provided that the Claimant would rent the premises for a year in return for AED 75,000 in four cheques.

4. On 26 February 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") the claim value was only for AED 20,000. However, the Claimant is claiming the sum of AED 34,870 less the security deposit which consists of 60-day notice period in the sum of AED 18,750, AED 500 for a bounced cheque, chiller consumption in the sum of AED 2,368 and painting & cleaning in the sum of AED 1,000.

5. The Defendant responded to the claim on 4 March 2018, indicating her intention to defend the claim and provided written submissions.

6. The parties met for a Consultation with SCT Judge Natasha Bakirci on 14 March 2018 but were unable to reach a settlement.

7. A Hearing before me was scheduled on 15 April 2018. The Claimant, the Agent and the Defendant were in attendance.

The Claim

8. The Claimant's case is that as per Clause 4.2 and 4.4 of the Contract, the Defendant was obliged to provide a notice to vacate the premises 60 days prior. The Claimant also alleges that the Defendant stayed in the apartment without paying rent since 3 November 2017 until the first week of February 2018, but she then paid a cheque that was bounced in the sum of AED 16,750, which is less than the agreed amount as per the previous contract. Several days later the Defendant transferred the sum of AED 17,000 to the Defendant.

9. The Claimant also alleges that he had not received the final bills from DEWA or Place Management for her consumption. Such bill as per the Contract shall be paid upon vacation of the premises.

10. The Claimant also alleges that the tenant refused to handover the premises without returning her security deposit. The Claimant adds that he never refused to return the security deposit but there were payments pending that were not yet settled by the Defendant.

11. Therefore, the Claimant claims 3 months penalty as per clause 4.2 and 4.4 of the Contract in the sum of AED 18,750, the sum of AED 500 for the bounced cheque, Final Bill from Dewa and Place Management for her consumption in the sum of AED 2,368 and the cost of cleaning and painting the premises in the sum of AED 1,000.

The Defence

12. The Defendant signed the Contract on 4 November 2016 till 4 November 2017. The Defendant alleges that during her stay she had contacted the Agent (who was the middle man between the Claimant and the Defendant) informing him that the balcony door had to be repaired, the Agent and the Claimant arranged for it to be fixed but it became worse than it was before.

13. The Defendant alleges that she had paid a full high rent of AED 75,000 for a studio that was supposed to be well maintained while it was not.

14. The Defendant also alleges that in August 2017, the Agent contacted her asking about the renewal of the contract, she explained that she was supposed to be moving to Abu Dhabi so will not renew the Contract for one year but that she would stay up until February 2018 in the premises.

15. The Defendant alleges that she had given a notice for more than two months as she had agreed with the Agent. The Defendant provided a WhatsApp conversation with the Agent dated 3 February 2018, in which he stated:

> "As per your notice to vacate the premises as on 5th February 2018, please provide final Bills for DEWA and Place Management (chiller consumption)"

16. Therefore, the Defendant asserts that based on the above she never signed a renewal contract and that neither the Agent nor the Claimant asked her to sign a renewal contract or provide a further notice for the additional period of her stay.

17. The Defendant also alleges that she had asked for a discounted rate for her three months stay in the premises, in which she alleges that the Claimant has agreed on a prorate basis of AED 70,000. She attached a WhatsApp conversation, in which the sum was discussed.

18. The Defendant alleges that she asked for further discount but this was refused by the Claimant and the last discount from the Claimant's side was AED 70,000 for the additional period of her stay. Furthermore, she alleges that based on the above she provided a cheque which bounced due to a typographical mistake and not due to insufficient funds. Subsequently, she transferred the sum of AED 17,000 to the Claimant's account.

19. She also adds that when her stay in Dubai was confirmed, she asked if it was possible to renew the contract with a condition of providing her a discount and to remove the furniture from the flat, but the Claimant refused and the final rent for renewal was AED 75,000. Therefore, she alleges

that she kept her decision to move from the premises as per her notice on February 2018.

20. In addition, the Defendant alleges that she moved from the premises on 7 February 2018 and provided the final bill from DEWA, but in regard to the Place Management bill, it was under the Claimant's name, so she didn't have access to it. The Defendant also alleges that she had paid the sum of AED 1,415 to Place Management which was not reflected in the bill. She also alleges that she asked the agent to follow up on the payment, but he never did. In addition, she alleges that the Claimant asked her to pay the Place Management bill prior to moving into the premises.

21. The Defendant alleges that upon her vacation she had asked the Agent to do the handover, but he never showed up and kept on ignoring her. Therefore, she went to the Rental Committee for a consultation and when she went to register the claim, was referred to the DIFC Courts.

22. The Defendant also alleges that she tried to handover the premises on several occasions, but the Claimant/Agent did not show up or refused to cooperate until the Small Claim was filed and the Courts directed the parties to inspect the premises and handover the keys.

Discussion

23. The Claimant claims 3 months penalty as per clause 4.2 and 4.4 of the Contract in the sum of AED 18,750, the sum of AED 500 for the bounced cheque, Final Bill from Dewa and Place Management for her consumption in the sum of AED 2,368, the cost of cleaning and painting the premises in the sum of AED 1,000 and the overstay up until the date that she handed over the keys on 25 March 2018.

24. Article 4.2 of the contract states that:

> "In the event that the Tenant wishes to vacate or renew the lease at the end of the tenancy, they should notify the Landlord in writing 60 days prior to the expiry date of the rental contract."

25. Article 4.4 of the contract states that:

> "The parties agree that if the tenant terminates the contract before the expiry then 1 month notice and 2 months penalty will be applicable and incase of no notice than 3 months' rent penalty will be applicable."

26. The Claimant argues that the Defendant failed to provide 60 days' notice to vacate the premises as per the contract. On the other hand, the Defendant argues that she provided the notice to the Agent who contacted her asking about the renewal of the contract, she explained that she was supposed to be moving to Abu Dhabi so she would not renew the Contract for one year but that she will stay up until February 2018 in the premises.

27. The Defendant alleges that she had given notice for more than two months as she has agreed with the Agent. The Defendant provided a WhatsApp conversation with the Agent dated 3 February 2018, in which he stated:

> "As per your notice to vacate the premises as on 5th February 2018, please provide final Bills for DEWA and Place Management (chiller consumption)"

28. In my view, this is clear to establish that the Defendant provided notice to the Claimant, the Agent clearly mentioned the Defendant's notice. In addition, at the hearing, the Claimant admitted that he agreed to the Defendant's extension because he considered her as a "Woman" and a "Daughter".

29. Therefore, as per the evidence provided and the Claimant's admission at the hearing, the Defendant had provided notice to the Claimant. Subsequently, The Defendant provided a cheque to the Claimant, although it bounced due to typographical mistakes, as a result of the bounced cheque, the Claimant paid the sum of AED 500 which he is now claiming. The Defendant then paid the sum of AED 17,000 to the Claimant for the extension. However, the Claimant argues that the Defendant paid less than the amount owed, the Defendant should have paid the sum of AED 18,750 as the rent was AED 75,000 per year and not AED 70,000 as the Defendant considered.

30. The Defendant provided WhatsApp correspondence dated 11 January 2018, 16 January 2018 and 22 January 2018, with the Agent in regard to the discount to AED 70,000. The correspondence on 22 January 2018 clearly stated that the negotiations were in regard to the 3 months extension in which the Claimant agreed on AED 70,000 and not less than this amount.

31. I will consider the rent to be AED 70,000 per year as per the previous contract. Therefore, the Defendant shall pay the Claimant the difference to the rent in the sum of AED 500 and shall pay the sum of AED 500 for the bounced cheque.

32. The Claimant also argues that the Defendant failed to pay the Place Management bills (chiller bill) in the sum of AED 2,368. However, the Defendant argues that she had already paid the sum of AED 1,415.96 on 1 April 2017 and provided a copy of the transfer.

33. The Claimant after the hearing provided an updated invoice which reflects the payment made by the Defendant. Therefore, the only remaining amount less the deposit of AED 1,000 and AED 100 (Account set up fee) calculates to AED 952.

34. In regard to the Place Management bills, the Defendant shall settle the sum of AED 952 to the Claimant.

35. The Claimant also argues that the Defendant shall pay the cost of painting and cleaning in the sum of AED 1,000. However, the Defendant argues that such an amount is high, and she can get a quotation for a lesser amount. At the hearing, the parties agreed that the Defendant shall provide a quotation, which she did and the amount in the quotation was AED 500 for cleaning and painting the premises.

36. The Defendant has already provided an invoice that the sum of AED 500 in regard to cleaning and painting was already paid to the Company for providing such service.

37. The Claimant argues that the Defendant failed to handover the keys on time but the Defendant also argues that on numerous occasions she

contacted the Agent to collect the keys, but he kept on delaying.

38. At the hearing, the Claimant argued that the Defendant when contacting the Agent claimed the reimbursement of the deposit in exchange for the handover, which was refused by the Agent because other payments to the Claimant were not yet settled.

39. The parties kept delaying until 16 February 2018, when the Defendant informed the Agent that the keys will be at the reception for collection either by the Agent or by the Claimant. However, on 22 February 2018, the Agent informed the Defendant that he will not collect the keys, and that the Courts shall decide on this matter.

40. On 25 March 2018, the Courts directed the parties to commence the handover of the premises.

41. Therefore, I will hold the Defendant responsible for the over stay only for 15 days, from 7 February 2018 up to 22 February 2018. 22 February 2018 to 25 March 2018 will not be considered as over stay, because the Claimant's Agent decided that the Courts shall decide on the hand over matter.

42. As such, the Defendant shall pay the Claimant the sum of AED 2,916.66 calculated pursuant to the yearly rent of AED 70,000 ~~the sum of AED 3,090~~ in regard to the over stay of 15 days, as she insisted on the security deposit to be reimbursed during the handover process which delayed the matter.

Conclusion

43. In conclusion, I find that the Defendant shall pay the Claimant the sum of AED 4,868.66 ~~AED 5,542.00~~ for the remaining balance of rent in the sum of AED 500, the cost of the bounced cheque in the sum of AED 500, the Place Management bill in the sum of AED 952 and the over stay of 15 days in the sum of AED 2,916.66 ~~AED 3,090.~~

44. The Claimant holds the Defendant's deposit in the sum of AED 2,500, in which it shall be deducted from the sum awarded by the Courts AED 4,868.66. therefore, the Defendant shall pay the Claimant the sum of AED 2,368.66.

45. The Defendant shall also pay the Claimant the Court fee in the sum of AED 367.50.



Issued by:

Nassir Al Nasser

SCT Judge and Registrar

Date of Issue: 22 April 2018

Date of re-issue: 23 April 2018

At: 3pm