

**Rent Regulation Board**

**Magistrate Dr Josette Demicoli LL.D**

**Francis Xuereb**

**(456458(M))**

**vs**

**Patrick Hunout**

Application Number: 88/16JD

Today 16<sup>th</sup> March 2017

The Board,

Having seen Francis Xuereb's application which reads:

That the applicant has leased to the respondent the apartment numbered three (3) forming part of the building block known as 'Bajja Apartments' and is externally numbered one hundred and eighteen (118) in Xemxija Hill, Xemxija, and this against the payment of rent amounting to five hundred Euro (€500) per month payable on the ninth day of each month, and subject to the other terms and conditions stipulated by virtue of the private writing dated twenty-fourth (24<sup>th</sup>) April of the year two thousand and fifteen (2015). A copy of this private writing is being attached to the present and is being marked with the letter 'A'.

That the lease granted to the respondent expires on the twenty-fourth (24<sup>th</sup>) October of the year two thousand and sixteen (2016).

That the respondent has breached the conditions of the lease by omitting the punctual payment of the lease for various times, and remained so in default notwithstanding that he was duly called upon by

means of a judicial letter, a legal copy of which is hereby attached and marked with the letter 'B'.

That the respondent also failed to pay that which was due by him in connection with the service and consumption of electricity and water to the apartment rented to him.

That these are the reasons why this application is being filed.

Therefore the applicant humbly requests this Board to:

- (1)decide and declare that the respondent breached the conditions of the lease agreement dated twenty-fourth (24<sup>th</sup>) April of the year two thousand and fifteen (2015);
- (2)declare that the lease agreement dated twenty-fourth (24<sup>th</sup>) April of the year two thousand and fifteen (2015) is terminated and dissolves;
- (3)orders the respondent to vacate the apartment numbered three (3) forming part of the building block known as 'Bajja Apartments' and is externally numbered one hundred and eighteen (118) in Xemxija Hill, Xemxija, in a short and peremptory period which is imposed on him;
- (4)declares that the respondent is a debtor of the applicant in an amount which consists of rent, costs relative to the consumption and service of electricity and water, as well as compensation for abusive occupation by the respondent of the apartment rented to him;
- (5)liquidate the amounts due by the respondent to the applicant, if necessary by means of the appointment of experts;
- (6)condemns the respondent to pay the liquidated amount to the applicant, with interest according to law.

With costs, including those of the judicial letter numbered 1649/2016, of the garnishee order numbered 1178/2016 and of the warrant of seizure numbered 1180/2016 against the respondent, who is called to reference by his oath.

Having seen the respondent's reply:

1. In the first case the respondent humbly submits that this Board is not the competent Court to decide this court case but it is the First Hall Civil Court as there is no rent agreement in existence.
2. The amount allegedly due is not established and this has to be established.

Having seen the acts and documents of this case.

Considers:

This judgment is limited to the first plea raised by respondent.

Briefly the facts of this case as resulting till now are the following:

- Francis Xuereb leased to the respondent the apartment situated at Bajja Apartments in Xemxija.
- A lease agreement was entered into on the 24<sup>th</sup> April 2015. The start date of the lease was on the 5<sup>th</sup> May 2015 and the duration period was 18 months.
- This case was filed on the 16<sup>th</sup> September 2016.
- The basis of the case in question is that applicant is alleging that respondent has not paid the rent due on time, that respondent has failed to pay the utility bills as it was agreed upon and moreover applicant is asking the Board to condemn respondent to pay an amount due to abusive occupation of said premises.

Article 16(4) of Chapter 69 provides:

*“Without prejudice to any other law the Board shall also decide all matters affecting the leases of urban property including residential as well as commercial property in terms of Title IX of Part 11 of Book Second of the Civil Code, Of Contracts of Letting and Hiring, including*

causes relating to the occupation of urban property where such leases have expired”.<sup>1</sup>

Article 1525(1) of the Civil Code provides that:

*The Rent Regulation Board, (hereinafter referred to as the "Rent Board"), established under the Reletting of Urban Property (Regulation) Ordinance shall have exclusive competence to decide on all matters relating to contracts of lease of urban property and of a residence and of commercial tenements. Other leases fall under the competence of the courts of civil jurisdiction while matters relating to agricultural leases shall fall under the competence of the Rural Leases Control Board appointed according to the provisions of the Agricultural Leases (Reletting) Act. Rent Board may collect information and data.*

Reference is made to the judgment in the names of **Francis Cachia Caruana et vs Ludgardo sive Riccardo Fiteni**<sup>2</sup> wherein the Court of Appeal whilst referring to the above-mentioned article stated:

*“Fil-31 ta’ Lulju 2012 sidien il-kera pprezentaw il-kawza, cjoe wara li kienu dahlu fis-sehh l-emendi ntrodotti bl-Att X tal-2009. Permezz tal-artikolu 16 tal-Kap. 69, il-Bord Li Jirregola l-Kera nghata l-gurisdizzjoni **esklussiva** sabiex jiddeciedi:-*

- i. **Kull materja** li jolqtu kirjiet ta’ fondi urbani;*
- ii. Kawzi dwar **okkupazzjoni** ta’ fondi urbani fejn il-kirjiet ikunu ntemmu wara t-terminazzjoni ta’ kirja. F’dan il-kaz ma jirrizultax li l-gurisdizzjoni ma gietx limitata biss ghal dawg il-kazijiet fejn l-okkupazzjoni tkun tal-persuna li kienet l-inkwilin. “*

Moreover in the judgment in the names of **Catherine Darmanin et vs Miriam Cutajar Fiorini et**<sup>3</sup>, the Court held:

*“4. Fil-White Paper “Il-Htiega ta’ Riforma Sostenibilita’, Gustizzja u Protezzjoni” pubblikata f’Gunju 2008 dwar il-kiri, fil-parti 04.12 **Fuq Min Taqa’ r-Responsabbilta’ ghar-Regolamentazzjoni tal-Kera**, jinghad:-*

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<sup>1</sup> This article applies to the leases which were entered to before and after the 1<sup>st</sup> June 1995 (Art. 46 of Chapter 69)

<sup>2</sup> Court of Appeal (Inferior Jurisdiction) decided on the 30<sup>th</sup> January 2017

<sup>3</sup> Court of Appeal (Inferior Jurisdiction) decided on the 16<sup>th</sup> December 2015 – in which case the applicant requested the Board to declare that respondent was occupying the premises without any valid title

*“Il-qafas tal-legislazzjoni kurrenti jissepara r-rikors ta’ konflitt bejn il-Qrati u l-Bord tal-Kera. Dan ir-rapport jargumenta li din is-separazzjoni tohloq kumplessitajiet bla bzonn.*

*Ghalhekk qed ikun propost li, bhala parti mir-riformi, materji li ghandhom x’jaqsmu mal-kera **jitnehhew mill-gurisdizzjoni tal-qrati u titwaqqaf entita’ amministrattiva wahda li jkollha gurisdizzjoni sija fuq ir-regolamentazzjoni u l-governanza tas-suq tal-kera biex ikun zgurat li materji relatati jkunu indirizzati b’mod effettiv.** Dan ir-rapport jirrikmanda li din ir-responsabbilta’ ghandha taqa’ fuq Bord ghar-Regolamentazzjoni tal-Kera strutturat mill-gdid.....*

### *Rakkomandazzjoni 33*

*Ir-regolamentazzjoni u l-governanza tas-suq tal-kera ghandhom jitqieghdu taht entita’ wahda biex ikun zgurat li jkun hemm dtrument effettiv ghal soluzzjonijiet legali f’materji ta’ din ix-xorta, u f’dan ir-rigward ghandha tinghata gurisdizzjoni shiha lill-Bord ghar-Regolamentazzjoni tal-Kera li ghandu jkun ristrutturat.*

*5. Fil-fehma ta’ din il-qorti il-kliem: “..... il-Bord ghandu wkoll jiddeciedi **l-materji kollha** li jolqtu kirjiet ta’ fondi urbani....”, jinkludu l-kaz in ezami. Il-qorti tosserva li r-rikorrenti qeghdin isostnu li mal-akkwist ta’ nofs indiviz tal-fond mill-intimata, il-kiri nhall. Da parti taghha l-appellata tikkontesta tali fatt. Hu minnu li fl-ewwel talba r-rikorrenti talbet dikjarazzjoni li:-*

*“..... l-intimata qed tokkupa u zzomm il-fond 102 gja 28, Triq Santa Katerina, Birzebbugia minghajr ebda titolu validu fil-Ligi”;*

*pero’ hu ovvju li fl-ewwel lok hemm bzonn ta’ dikjarazzjoni dwar jekk il-kirja spiccatx minhabba li r-rikorrenti jsostnu li minhabba li l-intimata xtrat nofs indiviz tal-fond, ma tistax tkun inkwilina ta’ nofs indiviz tal-fond2. Materja li tolqot kirja ta’ fond urban. B’applikazzjoni tal-Artikolu 16(4) tal-Kap. 69 il-kompetenza hi tal-Bord Li Jirregola l-Kera.*

*Sahansitra, l-Artikolu 39(4) tal-Att X tal-2009 jipprovdi:-*

*“Il-Bord tal-Kera mahtur bis-sahha tal- Ordinanza li tirregola t-Tigdid tal-Kiri ta’ Bini, ghandu jkollu gurisdizzjoni esklussiva li jiddeciedi*

*kwistjonijiet konnessi ma' kirjiet ta' fondi urbani li jinkludu kemm fondi kummercjali kif ukoll fondi residenzjali. B'dan izda li kawz li jirrigwardaw kuntratt ta' kiri li fl-1 ta' Jannar, 2010 ikunu pendent quddiem Qrati jew Tribunali oħra għandhom jibqgħu trattati mill-istess Qrati jew Tribunali” (enfazi tal-qorti)<sup>4</sup>.*

*Kliem li fil-fehma tal-qorti jkompli jikkonferma kemm hi wiesgħa l-kompetenza tal-Bord u x'kienet l-intenzjoni tal-Gvern li ppropona dik il-ligi. Bl-introduzzjoni tal-Att X tal-2009 ir-regola, u mhux l-eccezzjoni, hi li fejn si tratta ta' kirjiet ta' fondi urbani, il-Bord Li Jirregola l-Kera għandu l-gurisdizzjoni esklussiva. Sahansitra kienu biss daww il-kawzi li kienu diga' pendent quddiem il-Qrati u Tribunali, li kellhom jibqgħu jinstemgħu u jigu decizi minn daww il-Qrati u Tribunali. F'dan ir-rigward fit-Tieni Qari tal-Abbozz, il-Ministru tal-Politika Socjali li pprezenta din il-ligi, qal li bid-dhul fis-sehh tal-Att:-*

*“Materji li għandhom x'jaqsmu mal-kirjiet ma jibqgħux taht id-diskrezzjoni tal-qrati imma jibdew jaqgħu taht il-kompetenza tar-Rent Regulation Board. L-eccezzjoni tkun li daww il-kawzi li nfethu qabel din il-li i jibqgħu taht il-kompetenza tal-qrati” (seduta tal-10 ta' Dicembru 2008, seduta numru 66).”*

In this particular case, respondent is agreeing that there was a contract of lease. However, he is stating that this contract of lease has expired. It is evident however that the merits of this case are intrinsically related to the contract of lease between the parties since applicant is claiming arrears of the rent due, the bills for utilities and compensation for the abusive occupation. It is also to be noted (just for precision and not because it has a bearing on the decision) that when the case was actually filed the term agreed upon between the parties had not elapsed.

On the basis of such facts, of the law and on the basis of the above-mentioned jurisprudence the Board deems that the plea of incompetence must be rejected since it is the Rent Regulation Board which is competent to decide this case.

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<sup>4</sup> Dan apparti l-Artikolu 1525 tal-Kodici Civili li jipprovdi li l-Bord għandu kompetenza esklussiva li jisma' u jiddeciedi “.... Kwistjonijiet konnessi ma' kuntratti ta' kiri ta' fond urban u ta' dar għall-abitazzjoni u ta' fond kummercjali.....”.

For the above-mentioned reasons the Board rejects the first plea raised by the respondent and declares that it is competent to decide on the merits of this case. Thus orders the continuation of this case.

Expenses with regards to this plea are to be borne by the respondent.

Dr Josette Demicoli LL.D  
Magistrate