MALTA

Court of Magistrates (Malta)
Magistrate
Dr. Gabriella Vella B.A., LL.D.

Application No. 466/10VG

Suzanne Bonavia

Vs

Noel Attard

Today, 16th October 2017

The Court,

After having considered the Application submitted by Suzanne Bonavia on the 2nd November 2010, by means of which she requests the Court to condemn Noel Attard to pay: (a) the sum of two thousand three hundred and ninety one Euro (€2,391) by way of refund of water and electricity bills relative to the premises La Vallette Court/6, Qawra Point, Qawra, leased to him for the period 1st June 2006 to the 31st May 2010, which sum is the balance due following the deduction of four hundred and sixty six Euro (€466) deposited by him in terms of the lease agreement dated 23rd May 2006; (b) the sum of two thousand two hundred and sixty two Euro (€2,262) by way of refund of expenses incurred for the repair, maintenance and cleaning in relation to damages caused by him to the said premises during his tenancy; and (c) the sum of seven hundred and sixty two Euro (€762) representing non-reparable damages on movables and objects found in the premises which were used by him during his tenancy; together with legal interest due till date of effective payment and legal and judicial expenses, including those pertaining to the legal letter dated 3rd July 2010, the judicial letter having progressive number 2620/2010 dated 25th August 2010 and the Precautionary Garnishee Order bearing number 3718/2010 against the said Noel Attard;

After having considered the documents attached to the Application at folios 2 to 4 of the records of the proceedings;

After having considered the Reply by Noel Attard wherein he pleads that: (i) the action by the plaintiff is untimely since at the time of filing they were still discussing the merits and extent of her claims against him; (ii) the plaintiff's

requests are unfounded in fact and at law; (iii) even though plaintiff was asked to provide a breakdown of the *quantum* of her claim, she failed to provide the same; (iv) he did not cause any damages to and in the premises as alleged by the plaintiff and he surely did not cause the damages being claimed by the plaintiff; and (v) without prejudice to the above-mentioned pleas, the amount being claimed by the plaintiff is excessive;

After having considered the affidavit of the plaintiff and the affidavit of Francesco Attard and the documents submitted by the plaintiff marked Doc. "SB3" to Doc. "SB8", all of which have been exhibited by the plaintiff by means of a Note filed on the 25th January 2011 at folios 13 to 79 of the records of the proceedings and after having heard the testimony by the plaintiff during the sittings held on the 10th May 2011[1] and on the 21st February 2012[2] and the documents submitted by her at folios 94 to 124 of the records of the proceedings, and the testimony by the defendant during the sittings held on the 15th May 2012[3] and on the 8th November 2012[4];

After having heard final oral submissions by the parties to the proceedings;

After having considered all the records of the proceedings;

Considers:

By virtue of these proceedings the plaintiff requests the Court to condemn the defendant to pay: (a) the sum of €2,391 by way of refund of water and electricity bills relative to the premises La Vallette Court/6, Qawra Point, Qawra, leased to him for the period 1st June 2006 to the 31st May 2010, which sum is the balance due following the deduction of €466 deposited by him in terms of the lease agreement dated 23rd May 2006; (b) the sum of €2,262 by way of refund of expenses incurred for the repair, maintenance and cleaning in relation to damages caused by him to the said premises during his tenancy; and (c) the sum of €762 representing non-reparable damages on movables and objects found in the premises which were used by him during his tenancy. The defendant contests and objects to the requests put forth by the plaintiff on the grounds that: (i) the plaintiff's action is untimely because at the time of filing they were discussing the merits and extent of her claims against him; (ii) the requests are unfounded in fact and at law; (iii) even though plaintiff was asked to provide a breakdown of the *quantum* of her claim, she failed to provide the same; (iv) he did not cause any damages to and in the premises as alleged by the plaintiff and he surely did not cause the damages being claimed by the plaintiff; and (v) without prejudice to the above-mentioned pleas, the amount being claimed by the plaintiff is excessive.

[1] Folios 83 to 87 of the records of the proceedings.
[2] Folios 125 to 129 of the records of the proceedings.
[3] Folios 132 to 135 of the records of the proceedings.
[4] Folios 138 to 150 of the records of the proceedings.

From evidence submitted during the hearing of the proceedings it results that by virtue of a lease agreement dated 23rd May 2006[5], the plaintiff leased to the defendant the premises situated at La Vallette, Flat 6, Qawra Point, Qawra. Originally the lease was for a period of six months running from the 1st June 2006 to the 30th November 2006 but the said lease continued to be extended until the 1st June 2010, when the defendant vacated the premises and returned the keys, and therefore the possession thereto, to the plaintiff. In her affidavit[6], the plaintiff claims that on the 26th May 2010, that is a few days before the defendant vacated the premises, *Frans and I went in, and we immediately noticed that the place was in a filthy mess, some items of furniture and curtain rails were broken, and Noel had disconnected and damaged the shower outlet drainpipe, in order to run the washing machine drainpipe through instead. Frans said this would be a major job to repair. Since the apartment was still crammed full of Noel's and his children's possessions, and all their pictures, shelves, hooks, etc. were still hanging on the walls, it was difficult to tell what else was damaged or missing at that point. However, I rang Noel the next day to tell him about the damage we had already noticed, and to ask him why he had not informed me about it. He gave no good reason. I also told him I expected him to clean up the mess and assemble the beds before he moved out, as he had promised to do. On the 31st May 2010, the last day of his tenancy, Noel and I read the electricity and water meters of the flat and garage, and we both signed a document with the readings. I also took a photo of them – (Doc. 5). The following morning, 1st June 2010, Noel signed over 4 sets of keys of the apartment (Doc. 6) and I gave him a cheque for 454.23 euros (Lm192) for the television, as he had finally found the receipt and guarantee which I had been asking him to give me for the past 3 years. Then accompanied by Frans Attard and his sons, I entered the apartment. We could not believe the state of filth and destruction we found.* The plaintiff then proceeds to describe in detail the damages she found in the premises and claims that *due to the dire state of the apartment, it took Frans and his two sons 6 full working days to do all the necessary refurbishments which included plastering and painting the walls of the apartment (which has large dimensions), repairing the damaged plumbing fixtures, replacing all the light fittings, assembling and repairing the double-beds, mending, sanding and painting the damaged furniture, and fitting new locks on the front door. The cleaners then spent another 3 days, a whole day of which on the kitchen alone. The sofa-covers and curtains needed to be extensively mended as well as dry-cleaned. As I have mentioned, I have had to buy a new vacuum cleaner, a new set of bedroom rugs, a new mattress a new microwave oven, a new set of saucepans and a new set of hot-plates for the cooker. Receipts for the expenses incurred in this paragraph, including the water and electricity bills mentioned further up, upon which I am basing my claim are attached (Docs. 27 to 35). And I have not even included such items as the aluminium man's bill for the maintenance which was necessary to the window runners and fly-nets, or the cost of completely replacing the membrane of the water osmosis unit, neither of which should have needed to be done after only 4 years, but which were*

[5] Folios 21 to 23 of the records of the proceedings.
[6] Doc. "SB1" a folios 14 to 20 of the records of the proceedings.

necessary due to the neglect of even the most basic cleaning and maintenance during Noel's tenancy. Also I have refrained from asking for expenses relating to the time lost due to the amount of work that needed to be done, and due to which I was unable to begin showing the apartment to prospective tenants for a whole month, which delay translated into loss of rent.

In so far as concerns the payment of electricity and water bills and the repayment of damages caused, the plaintiff claims that *I also confronted Noel with the outstanding utility bills, which he had only paid up to June 2009 for Flat 6, and not at all for the water-meter rent in the garage. His response to me was that the bills were in my name, not his, and he had no intention of paying them. … On confronting him about the amount of damage in the apartment, Noel informed me that he had left the deposit of Lm200, as stipulated in the letting contract when he moved in, to cover such expenses, and he was not obliged to pay anything more.*

The plaintiff substantiated her claims with photographs showing the damage caused to the premises and to certain items, furniture and soft furnishings in the premises[7] and with receipts pertinent to the expenses incurred for making good the said damages and to the value of items which had to be thrown away due to the extent of the damage caused to them[8], together with the testimony by Francis Attard who in his affidavit[9] gave a detailed account of the state in which the premises were found when the defendant vacated them and of the works he had to carry out in order to repair the damages and bring the premises back into a habitable state. He also claimed that *ix-xoghlijiet li semmejt haduli sitt ijiem xoghol, jigifieri jiena u tnejn min-nies, tmien sieghat il-guranta, mis-7am sat-3pm. Normalment niccarja 70 Ewro il-gurnata kull persuna, biss f'dan il-kaz iccargjat naqra inqas, jigifieri 200 Ewro kull gurnata ghat-tlieta minn nies u ghaldaqstant il-kont telgha ghal 1200 Ewro labour u 216 Ewro VAT u kien hemm l-ispejjez tal-materjal, li kien 300 Ewro.*

The defendant, apart from claiming that the plaintiff's action is untimely because, according to him, at time of filing discussions were on-going between him and plaintiff with regard to her claims for payment for unpaid utility bills and damages caused to the premises, also claims that *when I moved into the apartment for example the plastering of the wall was in order. However I cannot say whether it had been recently plastered or otherwise by the plaintiff. The only thing I can say about the whitewashing of the apartment was that the apartment was not very close to the day when I took up occupancy of the said apartment because there wasn't any smell of paint in the apartment. In so far as concerns the furnishings, I have to state that the kitchen was very old and in so far as concerned, the cooker I immediately complained about. In fact when I raised this complaint it was agreed with the plaintiff, instead of changing the cooker for me, she allowed me to use the garage as well. I was not asked to pay additional rent so far as concerns the garage. When the garage did not function*

[7] Folios 30 to 58 of the records of the proceedings.
[8] Folios 63 to 69 of the records of the proceedings.
[9] Doc. "SB2" at folios 70 and 71 of the records of the proceedings.

properly the garage rail was completely rusted, the plaintiff changed the rail completely. After she increased the rent for the apartment. There was a lot of dampness in the garage and when I shifted furniture from the apartment to the garage with the plaintiff's permission I covered the walls and the floor of the garage with plastic as not to damage the furniture. The electrical system was very old, in fact the system was still porcelain was used. I also remember that the cooker which was, which had an electric hob, when I used to switch on the hob, the safety electric used to trip. In so far as concerns the bulbs, when I moved into the apartment I replaced all the bulbs and fitted energy saving bulbs. Since these are very expensive I removed them when I vacated the premises, however I left four boxes of bulbs varying in size ordinary bulbs and these were situated in the box room. I also recall that the beams of the balcony where in a very bad state, in fact the plaintiff had informed me when I vacated the premises that she needed to change them. She had indeed brought an architect who told her that she needed to change these beams. As a matter of fact, during the period of occupancy of the apartment, I was instructed by the plaintiff to keep the windows of the balcony closed as she was afraid that the same would collapse. Since she needs to do these works, the plaintiff told me that I did not need to clear up and clean the premises after I vacated it. She told me also that she had to re-do the whole apartment. When I entered into the apartment, when the bulbs were not of energy saving type but of the ordinary type when I vacated the premises, these were inspected by the plaintiff, in fact we went round the whole flat together to see that everything was in place. We did not sign any form of document which indicated them item by item, however I have a document signed by the plaintiff herself indicating that I returned the keys to the apartment. When the plaintiff inspected the premises, she did not draw my attention to any form of faults that there could have been. Prior to the inspection we carried out together, the plaintiff had already inspected the apartment, in fact with my permission she entered the same together with her handyman what works needed to be done. In as for as concerns the shower in the spare toilet, this was broken, as claimed by the plaintiff. I did not break it during my occupancy, in fact that shower was never used since it had a system of instant heat which did not work. However since I had another bathroom where showers could be taken I did not bother about it. When I entered the apartment after some time, the lock to the outside door did not function properly, in fact I had to ask for a locksmith to come over so that I could enter the premises. The plaintiff changed the lock however after about a year the same problem occurred. Since I ended up locked outside at around eleven o'clock at night I had to force myself my way into the apartment. As a consequence of this, the side of the door broke, however the door itself was not damaged. I changed the lock, however I used the same barrel. I have no doubt that the cooker eventually had to be changed but it had to be changed due to the fact that it was a very old cooker. The beds and mattresses which were in the apartment were not comfortable at all, in fact after about a year and a half I brought my own bunk beds and two other beds and those two mattresses for them and those instead of the bed mattresses which were in the apartment. I purchased the bunk beds and the mattresses on the 6th of March 2010. I dismantled the beds which were in the apartment, however each piece was duly labelled and therefore they could be easily re-assembled. Prior to my vacating the

apartment, I told the plaintiff that I wanted to re-assemble the beds for her, however she told me to let them be since the apartment was easier to do once it was void and empty of all the furniture. The microwave which was in the apartment was not functioning and therefore on the 21st of October 2008, I had to buy another microwave. On one occasion the microwave continued working and started sparking. When I asked the technician he told me that the transformer was faulty and it was not worth repairing it. I asked the plaintiff to change the microwave for me, however she did not seem too keen to do so, so I told her to let it be and I purchased my own microwave. So far as it concerns plates and glasses these were of very poor condition and even though I asked the plaintiff to replace them for me, she did not want to. Even the pots, pans and dishes, which were provided together with the apartment were of very poor quality. I continued living in the apartment not withstanding all these faults, because I am a person who does not complain unnecessarily. The plaintiff did actually re-do all of the apartment and the neighbours also told me she is doing extensive works in it and I also went past by some while ago and it is indeed that she is totally re-furbishing the whole place. At the time I used to live in the apartment together with my three children and sometimes they used to have some friends over. Initially my children used to come over during the weekend, however following a decree by the court issued in 2008, they used to come and sleep over for four nights every week[10].

Even though in his Reply to the plaintiff's Application the defendant pleads that her action is untimely because at time of filing discussions were supposedly ongoing between them with regard to the merits and extent of her claim, he failed to submit any form of proof in support of the said plea. It is an established principle at law that *tali eccezzjoni* (that is the plea that the action is untimely), *li hija wahda ta' natura dilatorja u ghalhekk li ghandha titqajjem u tigi mistharrga fil-bidu tal-kawza. M'hemmx ghalfejn jinghad li f'dan il-kaz* ***il-piz tal-prova jaqa' fuq l-imharrkin fuq il-massima li reus in excipiendo fit actor, u huma mehtiega l-istess provi fi grad tali li ssoltu jaqa' fuq attur dwar il-pretensjonijiet tieghu. Minbarra dan, minhabba li l-effett ta' ezitu favorevoli ghal eccezzjoni ta' intempestività huwa dak li jehles lill-parti mharrka milli tibqa' izjed fil-kawza, bil-jedd tal-parti attrici li terga' tibda procedura meta jghaddi t-terminu li kien inghata, l-eccezzjoni trid tintlaqa' meta tassew tkun pruvata u dan fuq il-massima li azzjoni tigi salvata jekk dan huwa possibbli***[11]**.**

In this case not only did the defendant fail to bring forth any form of evidence to substantiate his claim that discussions were on-going between him and the plaintiff with regard to the merits and extent of her claim against him, but the plaintiff exhibited a legal letter dated 3rd July 2010[12] and a judicial letter in terms

[10] Testimony given during the sitting held on the 15th May 2012, folios 132 to 135 of the records of the proceedings.
[11] St. George's Bay Hotel Limited v. Bay Street Holdings Limited et, Writ No. 85/01 delivered by the Civil Court, First Hall on the 25th September 2003. Emphasis by this Court.
[12] Doc. "SB3" at folios 72 and 73 of the records of the proceedings.

of Section 166A of Chapter 12 of the Laws of Malta dated 25th August 2010[13], both addressed to the defendant, by virtue of which he was asked to pay the total sum of €5,641.54 representing legal and judicial expenses for said letters and *hlas ta' kontijiet ta' l-ilma u ta' l-elettriku u danni relatati ma' tgharriq u hsarat li safu fil-fond La Vallette Court/6, Qawra Point, Qawra, li kien mikri ghandek fis-snin bejn l-2006 u l-2010*. In the light of the said legal letter and subsequent judicial letter sent to the defendant it is very difficult for the Court to believe and thus accept as valid the defendant's plea that the plaintiff's action is untimely because at the time of filing they were discussing the merits and extent if her claims against him.

The defendant also claims that the plaintiff did not provide him with a breakdown of the damages being claimed by her, in spite of repeated requests by him. This claim by the defendant has been successfully negated by the plaintiff who, as already pointed out above, exhibited the legal letter addressed to the defendant dated 3rd July 2010[14], wherein there is a detailed breakdown of her monetary claim against him. Therefore, prior to the filing of these proceedings the defendant was fully aware of the extent and contents of the plaintiff's claim against him.

In so far as concerns the payment of utility bills, namely water and electricity bills, Clause 6 of the lease agreement dated 23rd May 2006[15] provides that *tenant shall be solely responsible for and shall promptly pay all fees, deposits and charges, including use and/or connection fees and the like for water, electricity, telephone and any other service or utility used in or upon or furnished to the premises. The Landlord shall have the right to request the Tenant to provide written evidence to the effect that such charges have been regularly paid by the tenant*. From the said Clause, it clearly results that the defendant as tenant of the apartment in question was legally and contractually bound to pay for utilities, namely water and electricity, which became due during the term of the tenancy. Even though the defendant argues that the garage did not form the subject-matter of the lease agreement, which according to him referred only to the apartment, he acknowledges and admits that during the term of occupancy of the apartment he also had in his possession and for his use the garage. In the light of this fact, it clearly results that the defendant was also legally bound to pay for utilities serving the said garage during the term occupancy of the said garage.

The defendant argues that he is not bound to pay the amount being requested by the plaintiff by way of refund of electricity and water bills which were paid by her when he refused to do so, because: (a) the period to which these bills refer to is not the period when he was occupying the apartment and garage; and (b) in any case the amount being claimed is excessive.

In spite of these allegations the defendant did not submit any form of proof in support of the same. Even though he alleges that the refund requested by the

[13] Doc."SB4" at folio 74 of the records of the proceedings.
[14] Dok. "SB3" at folio 72 and 73 of the records of the proceedings.
[15] Folio 21 of the records of the proceedings.

plaintiff represents payment for utilities which do not tally with his term of tenancy/occupancy of the apartment and garage, which term terminated on the 1st June 2006, from the bills submitted by the plaintiff as Doc. 27 and Doc. 28 at folios 61 and 62 of the records of the proceedings, it clearly results that the same refer to the period between 18th November 2009 and 31st May 2010, a period which falls squarely within the term of tenancy/occupancy by the defendant. Even though the defendant claims that the said amount is excessive he never sought to sort out the matter with the competent entity nor did he summon a representative of the competent entity as a witness in these proceedings in order to ascertain that the amount claimed by the plaintiff is indeed excessive.

In the light of the above the Court is of the opinion that the defendant owes the plaintiff the sum of €2,391 being claimed by way of refund for payment of electricity and water bills covering the period 18th November 2009 to 31st May 2010, pertinent to the apartment and garage occupied by him during the period 1st June 2006 to the 31st May 2010.

In so far as concerns the damages to the premises and objects, items, furniture and soft furnishings being claimed by the plaintiff, even though the defendant argues that he is not responsible for payment of the same because: (i) it was the plaintiff herself who told him not to bother with cleaning and re-plastering the apartment since she was going to refurbish the same due to structural damages in the balconies; and (ii) that certain items now being claimed by the plaintiff were already in a poor state of maintenance and repair at the start of the tenancy, once again he did not submit any evidence in support of the same.

In so far as concerns the alleged agreement with the plaintiff that he was not to re-plaster and clean the premises because of an imminent refurbishment of the same due to structural damage in the balconies, the defendant tries to support these allegations by claiming that his neighbours within La Vallette Court informed him that such refurbishment works were being carried out. However, not even one of said neighbours has been summoned by the defendant as a witness and upon being asked *Who are you referring to? Can you name these neighbours?* the defendant merely replied *No, I don't know.*
The defendant also argues that the fact that the plaintiff accepted receipt of the keys to the premises without any mention as to the state of maintenance and repair of the same, is a clear indication that she accepted the state in which the premises were returned to her and had also decided to bear all expenses related to cleaning, re-plastering and repairs there to. This argument is however, in the opinion of the Court, totally unfounded and unacceptable.

In this regard reference is made to the observations by the Civil Court, First Hall in the judgement in the names **Theresa Falzon et v. Arcidiacono Mfg. Co. Ltd., Writ No. 2454/99** delivered on the 31st May 2002: *fit-tieni eccezzjoni is-socjetà konvenuta trid tghid illi, ladarba fir-ricevuta ghac-cwievet l-attrici Theresa Falzon ma ghamlet ebda riserva, mela ghandha titqies illi irrinunzjat ghall-kera. Din l-interpretazzjoni tal-kliem tar-ricevuta tmur ghal kollox kontra d-disposizzjonijiet ta' l-art. 1194 tal-Kodici Civili: 1194. In-nuqqas biss ta' riserva ta' dejn fir-ricevuta dwar dejn iehor, ma hux presunzjoni tal-mahfra ta' dak id-*

dejn. Is-socjetà konvenuta kienet marbuta mhux biss illi trodd ic-cwievet izda wkoll illi thallas il-kera. Il-fatt illi nghatat ricevuta ghac-cwievet ma johlqox presunzjoni tal-mahfra tad-dejn tal-kera. Even though in this case the issue at hand concerns damages caused to the leased premises during the term of the lease and not payment of rent, the Court is of the opinion that the principles set out in the mentioned judgement apply to this case as well.

Both in terms of law[16] and in terms of the lease agreement[17] the defendant was bound to return the premises in a good state of maintenance and repair, fair wear and tear excepted. Therefore, in the light of the principle set out in the above-mentioned judgement, once the defendant was both legally and contractually bound to return the premises in a good state of maintenance and repair, fair wear and tear excepted, he cannot now successfully argue that once no provision or reservation regarding damages to the premises was made in the receipt for the return of the keys, the plaintiff waived her right to claim damages from him.

Further to the obligation of the lessee as set out in Section 1559 of the Civil Code, Chapter 16 of the Laws of Malta, namely that: *where the lessor and lessee have made a description of the condition of the thing let, the lessee is bound to restore the thing in the same condition in which he received it, according to the description, except as regards that which may have perished or deteriorated through age or irresistible force* and also further to that provided for in Section 1560 of the Civil Code, *where no description of the condition of the thing let has been made, it shall, in the absence of any proof to the contrary, be presumed that the lessee received the thing in good condition*, Section 1561 of the Civil Code provides that: *the lessee is liable for any deterioration or damages which occurs during his enjoyment, unless he proves that such deterioration or damage has occurred without any fault on his part*.
From the above-mentioned provisions of the law the following principles emerge: *gjaladarba l-kerrej hu tenut jirritorna l-haga lilu lokata fi stat tajjeb f'gheluq il-kirja jezistu, imbaghad principji ta' indoli generali li kerrej hu obbligat josserva. Hekk jinghad fl-Artikolu 1126(1), Kodici Civili illi* ***"fl-obbligazzjoni li biha wiehed jintrabat li jaghti haga tidhol l-obbligazzjoni li jikkonsinna l-haga, u li jikkonservaha sal-kunsinna". Dan l-artikolu, kombinat mal-precitat dispost 1561, Kodici Civili, igid li l-piz tal-prova dwar in-nuqqas ta' htija hu mill-ligi mixhud fuq l-inkwilin. Jghodd ma' dawn id-disposizzjonijiet il-principju generali stabbilit fl-Artikolu 1133, Kodici Civili, li jipprezumi l-htija fid-debitur inadempjenti. B' illustrazzjoni ta' dan kollu premess, jekk allura l-kerrej juza l-haga lilu lokata 'in modo che possa derivarne danno al locatore, si deve di necessità conchiudere che il conduttore deve rispondere sempre del danno...'*** [18] .

[16] Sections 1559 and 1560 of the Civil Code, Chapter 16 of the Laws of Malta.
[17] Clauses 8 and 9 of the Lease agreement, folio 22 of the records of the proceedings.
[18] Frances Cassar et v. B&M Supplies Ltd., Appeal No. 152/00 delivered by the Court of Appeal (Inferior Jurisdiction) on the 1st December 2004. Enfasi tal-Qorti.

From the above it results that it is a presumption at law that the lessee is responsible for damages caused to and in the leased premises and that the he has the onus to prove that the damages claimed by the lessor were not caused through any fault of his own. Therefore, in the present case the onus of proof lies squarely on the defendant.

Whilst the plaintiff proved to the satisfaction of the Court that damages were indeed caused to and in the leased premises, namely by exhibiting a number of photographs which clearly show the state in which the defendant returned the said premises, items and movables found therein[19] together with her testimony[20] and that of Francesco Attard[21], the defendant did not in any way prove that the said damages were not caused through any fault of his own.

Even though the defendant tries to give the impression that overall the premises were not in a particularly good state of maintenance and repair, in the sense that most items and electricity connections were old, the plaintiff submitted documentation, namely order forms and/or invoices and relative receipts[22], which show that in 2005, that is the year prior to the commencement of tenancy by the defendant, she had carried out plumbing and electricity works in the premises, plastered and whitewashed the premises and also purchased certain items which were then utilised by the defendant. Similarly, even though the defendant claims that the cooker – one of the items which according to the plaintiff had been seriously damaged by the defendant – was in a very poor state at the beginning of the lease, the Court is not at all inclined to believe him and this for the following reasons: (i) first of all, it transpired from evidence submitted that the plaintiff was always willing to replace items about which the defendant complained or to provide the defendant with items he required during the term of the lease and therefore it is very hard to believe that the defendant made do – for a full four years – with a cooker which hardly worked and tripped the circuit breaker every time he turned it on without ever complaining about it and asking the plaintiff to replace the same; and (ii) nowhere in the lease agreement is there an indication that the said cooker was in a poor state of repair at the beginning of the lease and therefore, just as in the case of the premises, once no indication or description was given of the cooker, it is to be presumed that the same was in a good state of maintenance and repair and was damaged by the defendant.

The defendant also claims that in the garage there was a lot of dampness however, notwithstanding this problem he did not hesitate to store certain items, including carpets and other soft furnishings, in the said garage at considerable damage to the same items. In this case the defendant clearly failed to act as *bonus pater familias,* his legal obligation in terms of Section 1554(a) of the Civil Code, Chapter 16 of the Laws of Malta, to the detriment of the plaintiff. Even if the defendant found that certain items were not sufficiently comfortable for him and

[19] Folios 30 to 58 of the records of the proceedings.
[20] Plaintiff's affidavit a folios 14 to 20 of the records of the proceedings.
[21] Affidavit at folios 70 and 71 to the proceedings.
[22] Folios 94 to 124 of the records of the proceedings.

his family or that they were not needed by him and his family, to the extent that he decided to store them away during the term of the tenancy, he still had an obligation towards the plaintiff to maintain and store the said items in a way that no damage or deterioration would be caused to them.

Even though the defendant claims that he changed the beds and mattresses which were in the apartment because they weren't comfortable, from evidence put forth by the plaintiff it transpires that the same were returned to her, not simply badly stained but also damaged. Once there is no description of the items at the beginning of the tenancy and it is therefore to be presumed that they were in a good condition, the fact that they were returned in the state that they were returned in can only mean one of two things; they were either damaged by the defendant or they weren't adequately stored by him - in either case a violation of his obligation as lessee.

The Court also cannot fail to observe how easily the defendant brushed off the damage *ex admissis* caused by him to the apartment's front door, when in the testimony given during the sitting held on the 15th May 2012[23] he stated that *when I entered the apartment, after some time the lock to the outside door did not function properly, in fact I had to ask for a locksmith to come over so that I could enter the premises. The plaintiff changed the lock however after about a year the same problem occurred. Since I ended up locked outside at around elven o'clock at night I had to force my way into the apartment. As a consequence of this, the side of the door broke, however the door itself was not damaged. I changed the lock, however I used the same barrel.*

When the defendant's testimony, which really and truly is the only evidence put forth by him in support of his pleas to the plaintiff's requests, is considered in the light of the damning evidence put forth by the plaintiff with regard to the damages caused to the premises leased to him and certain items and movables found therein, it clearly results that he didn't, in any way, manage to prove that he didn't cause the damage himself or that certain items were already old or in a bad state of maintenance and repair at the beginning of the lease.

In the light of the above that Court deems that the defendant is totally responsible for the damages caused to the premises leased to him by the plaintiff and to certain items and movables found therein and is therefore bound to make good for the damages suffered by her.

Even though the defendant claims that the *quantum* of damages being claimed by the plaintiff is excessive, in this case too he failed to substantiate this plea. The plaintiff on the other hand put forth sufficient evidence, namely the documents exhibited at folios 63 to 69 of the records of the proceedings, to substantiate her claim for the payment of the total sum of €5,415 by way damages caused to her by the defendant consisting of: the sum of €2,391 representing water and electricity bills for the period 18th November 2009 to the 31st May 2010; the sum of €2,262

[23] Folios 132 to 135 of the records of the proceedings.

representing the expenses incurred for repairs, maintenance and cleaning which had to be carried out in the premises leased to the defendant; and the sum of €762 representing the value of irreparable damages caused to objects and items which were in the premises leased to the defendant.

Therefore, for above-mentioned reasons the Court rejects the pleas put forth by the defendant and upholds the claims by the plaintiff and condemns the defendant to pay the plaintiff the total sum of €5,415 by way of damages caused to her by him during the lease of the premises La Vallette Court/6, Qawra Point, Qawra, from the 1st June 2006 to the 31st May 2010, consisting said total sum of: the sum of €2,391 representing water and electricity bills for the period 18th November 2009 to the 31st May 2010; the sum of €2,262 representing the expenses incurred for repairs, maintenance and cleaning which had to be carried out in the premises leased to the defendant; and the sum of €762 representing the value of irreparable damages caused to objects and items which were in the premises leased to the defendant; with legal interest due from the 9th November 2010, the date when the Application was served on the defendant, till date of effective payment.

Judicial expenses, including those pertinent to the judicial letter in terms of Section 166A of Chapter 12 of the Laws of Malta dated 25th August 2010 bearing progressive number 2620/10, are to be borne by the defendant.

MAGISTRATE

DEPUTY REGISTRAR