RENT REGULATION BOARD

Magistrate Dr. Josette Demicoli LL.D.

George Spiteri and Melita Spiteri for and behalf of 'George Spiteri & Sons Ltd' and by virtue of a decree of this Board dated 27th April 2017 the words 'for and on behalf of 'George Spiteri & Sons Ltd' were cancelled and substituted by the word 'personally'

vs

Abdul Aziz Dembele and by means of a decree dated 11th November 2019 the name was corrected to read Abdul Aziz Dembele

Application Number: 4/2017JD

Today 11th November 2019

The Board

Having seen applicants' application[1] filed on 10th January 2017 by virtue of which applicant is claiming arrears of rent and damages suffered by him in his property during the lease of premises at 39, St Theresa Street, Tarxien and the value of a television set which applicant states was taken by defendant when he left the premises, making up a total request for payment of two thousand and three hundred euro (€2,300).

Having seen respondent's Reply[2] filed on 6th February 2017 by virtue of which he holds that this claim is not only unfounded but is vexatious, save for the sum of €800.

Having seen the Decree of this Board dated 27th April 2017 by virtue of which the Board acceded to applicants' request for the correction of the Applicants' capacity in the Application, and ordered the cancellation of the words 'for and on behalf of 'George Spiteri & Sons Ltd' and their substitution by the word 'personally'.

[1] Fol. 1 to 2
[2] Fol. 7

Having seen the acts of the proceedings, and the documentary evidence submitted by the parties.

Having heard the testimony of the parties and their witnesses.

Having reviewed the written submissions which the parties filed prior to the delivery of this judgment.

Considers that:

In this cause, applicants are requesting the Board to condemn respondent to pay them the sum of two thousand and three hundred Euro (€2,300) allegedly due as to the amount of one thousand five hundred and twenty five Euro (€1525) rent arrears in regard to the lease of the tenement number 39, Triq Santa Tereza, Tarxien, which applicants had granted to respondent, the amount of four hundred and ninety five Euro (€495) reimbursement of expenses which applicants contend to have incurred to remedy damages which respondent allegedly left in the tenement on his vacating it on 15th December 2015, the amount of two hundred Euro (€200) in settlement of utilities' expenses consumed by respondent and his family, and the amount of eighty Euro (€80) representing the value of a television set which respondent allegedly took away from the tenement let without authorisation.

On his part, respondent pleads that this demand is unfounded in law and in fact and that the payment requested is not due.

Considers furthermore that :

From the evidence produced, the Board understands that :

(i) applicant George Spiteri used to employ respondent, and had allowed him to reside in applicants' tenement at Tarxien prior to the conclusion of the lease agreement dated 1st October 2015. No lease agreement referable to that time is exhibited in the acts of these proceedings and from the defendants' testimonies it seems that there was no agreement which was put into writing;

(ii) on 1st October 2015, applicant and respondent signed a lease agreement in regard to the tenement 39, Triq Santa Tereza, Tarxien. The duration of the lease was six months from 1st October 2015 to 1st April 2016. The stipulated rent was €250 monthly, and respondent agreed to pay an additional monthly sum of €50 on account of the price of utilities consumed in the tenement let throughout the lease. The respondent was bound to continue with the lease for the whole term, and to pay the rent due for the whole term had he opted to quit the tenement or terminate the lease prior to the lapse of the stipulated term ;

(iii) respondent continued to reside in this tenement with his family until 15th December 2015.

The Board notes that this letting relationship between the parties is regulated by **Art. 1525(1)** of the **Civil Code** which requires *ad validitatem* that the lease agreement be concluded in writing.[3] In default, no contract of lease may exist between the owner of a tenement and its occupier, and therefore this Board cannot accede to applicants' demands in so far as they refer to a time prior to 1st October 2015 with effect from when a lease relationship was created between applicant George Spiteri and respondent in virtue of the lease agreement dated 1st October 2015 and exhibited in the acts of these proceedings.[4]

In so far as the time following said date is concerned, applicant, respondent[5] and respondent's wife[6] gave a diametrically-opposite account of the occurrences and the dealings between them. Nonetheless, this Board is satisfied that :

(i) respondent did not continue in the lease for the whole duration of the contract, but quit the tenement on the 15th December 2015;
(ii) in so far as the term of this lease is concerned, respondent paid only the sum of €250 in settlement of the rent due for the month of November 2015[7] and did not pay the rent due for the months of October 2015, December 2015, January 2016, February 2016 and March 2016. Nor did respondent pay the

[3] See **Setra Trading Limited vs Joseph Briffa**, Court of Appeal, 2.3.2018; see also **Robert Court vs Butterfly Houses Limited**, Court of Appeal (Inferior Jurisdiction), 16.2.2018
[4] Fol. 62 to 64
[5] Dok. GC1, fol. 50 to 51; see also respondent's cross-examination, 13.5.2019, fol. 93 to 101
[6] Fol. 86 to 87
[7] Doc. JD4, fol. 70

€50 payment-on-account stipulated in the lease agreement, and due in connection with the consumption of utilities in the tenement let;

(iii) neither party did produce evidence in regard to the total price due for the consumption of utilities throughout the term of this lease, and therefore the stipulated monthly contribution of €50 on account shall be deemed to have to be paid and received in full settlement of the price of utilities referable to said term;

(iv) The respondents left the keys of the rented place to the landlord and he took possession of the place.

The Board deems to point out two things at this stage.

First of all, respondents explained in their testimonies that they left the place because the applicant had installed new water and electricity meters which worked with a top-up mechanism whilst the lessees were abroad on a holiday. There was an issue between the parties particularly because respondent used to work with applicant and there were issues between them and so applicant was refusing to top-up the meter. Hence, respondent and his family were left without the necessary utilities. Applicant seems to imply that he was refusing to top-up because there was a larger bill to pay with regards to utilities and respondent had not paid it but this has not been substantiated. On the other hand, from the acts of the case it results that respondent went to lodge a report at the Paola Police Station on the 12th December 2015 reporting that the lessor was refusing to grant them access to utilities.

In clause 3 of the written agreement the parties had agreed that *If for any reason the tenant wishes to discontinue the rent before the six month period is over, the tenant had to notify the landlord a month in advance and in writing, and the tenant has to pay the rest of the rent for the remaining period the rent stipulated above in this agreement.*

However, in this case the issue was not that the tenant wished to leave the premises. He could not live in place with his family without having water and electricity.

Hence, the respondents have proven that they had no alternative but to leave the premises because at the time respondent's wife was 28 weeks pregnant and they had another child. So, the place could not be lived in anymore. Hence, the respondents

had every right to leave the property because the lessor was not adhering to his obligations.

Secondly, the fact that the applicant has taken possession of the keys of the rented place begs the question whether he renounced to his right to insist on the remaining term. Reference is being made to what has been stated the judgmnent in the names of **Mary Ciantar vs Ladislao Giuseppe Micolucci et**[8] fejn inghad:

"Illi *dwar il-kuncett ta' rinunzja ssir riferenza ghad-decizjoni* – ***"Anthony Scerri v Anthony Cutajar et"*** *(A.I.C. (PS) - 16 ta' Marzu 2005) fejn gew elenkati l-elementi necessarji stabbiliti fil-gurisprudenza dwar ir-rinunzja ta' dritt, u konsistenti ma' dan inghad li:-*

*(1) "La rinunzia ad un diritto, perche' si possa ritenere tale, deve risultare da espressioni chiare ed univoche, e non gia da espressioni generiche". (**Kollez. Vol. XXVIII P III p 1154**).*

*(2) "Qualunque rinunzia, non essendo generale e specifica, non riceve che stretta interpretazione, in guisa che in dubbio s' intenda rimesso quanto meno sia possibile" (**"Sciberras -vs- Giappone**, Qorti Civili, Prim' Awla, 12 ta' Ottubru 1840)".*

*(3) "Ir-rinunzji huma di stretto diritto u ghandhom jirrizultaw minn fatti assolutament inkonciljabbli mal-konservazzjoni tad-dritt u li juru l-volonta preciza tar- rinunzjant" - "**Henry Thake -vs- Carmel sive Lino Borg**", Appell, Sede Inferjuri, 25 ta' Novembru 1986.*

*(4) "In kwantu ghall-ezami dwar in-natura ta' l-att u l-effikacja tieghu biex jopera r-rinunzja, dan l-ezami huwa rimess ghall-apprezzament tal-gudikant, li ghandu jiehu in konsiderazzjoni c-cirkostanzi kollha li fihom gie kompjut l-att" (**Kollez. Vol. XXXIV P II p 646**).*

Illi applikati ghall-fattispecie tal-kaz in ezami jirrizulta li l-iktar l-iktar bejn iz-z-zewg versjonijiet tal-partijiet dwar ir-rinunzja tad-dritt ghall-hlas skont il-kuntratt jista' jinghad li hemm dik tal-attrici fejn hija tghid li kienu l-konvenuti li riedu u fil-fatt tawha c-cavetta, u dik tal-konvenuti fejn huma jghidu li kienu l-attrici li talbithom ic-cavetta.

Illi din il-Qorti thoss li mill-kumpless tal-provi jirrizulta car li l-konvenuti kienu cemplu lill-attrici sabiex jghidula li huma ma kienux setghu ikomplu bil-kirja, u fil-

[8] Prim'Awla tal-Qorti Civili deciza fis-27 ta' April 2010

fatt sar appuntament sabiex jiltaqghu fuq il-post, u jirrizulta li l-iskop kien sabiex il-partijiet prezenti jitkellmu u sabiex tghaddi din ic-cavetta tal-post minghand il-konvenuti lill-attrici, tenut kont ukoll tal-fatt li l-attrici kienet konxja, kemm ta' dak li kienet gja qaltilha l-konvenuta, u kif ukoll il-post kien qed jinzamm maghluq, u jirrizulta li l-konvenuti hadu, jew dak in-nhar, jew qabel, l-oggetti li kienu taghhom mill-istess fond, hlief ghall-cash register, u li l-attrici effettivament accettaw ic-cavetta tal-istess fond, minghajr ebda riserva kwalunkwe. Jidher li l-attrici kienet konxja ta' dan kollu, tant li ppruvat tirrimedja ghal dan bl-ittra tal-11 ta' Settembru 2006, li biha qalet li hija rceviet l-istess cwievet "minghajr pregudizzju", u wara l-istess ittra hija rceviet il-cash register fit-13 ta' Settembru *2006.*

Illi fil-kuntest ta' dan kollu din il-Qorti thoss li bl-accettazzjoni tac-cwievet tal-fond mill-konvenuti, l-attrici accettat lura l-pussess tal-istess fond, u dan l-att ifisser li hija rrinunzjat ghad-dritt li tinsisti li l-kera tissokta ghall- perjodu di fermo, u b'hekk dan l-att wassal ghall-terminazzjoni tal-kirja. Il-fatt li l-kera hija korrispettiva ghall-uzu ta' haga, u l-fatt li allura b'dan l-att, il-post suggett ghal-lokazzjoni gie ritornat lis-sid bla ebda riserva, ifisser li ma jissusstix izjed id-dritt ta' pagament, ghaliex f'dan il-kaz l-accettazzjoni u t-tehid lura tal-post minghand l-inkwilin, u s-sussegwenti talba ghall-pagament ta' kera, huma nkonsistenti ma' xulxin; persuna ma tistax titlob hlas ta' kera ta' fond, li hija accettat li tiehu lura, u l-accettazzjoni tac-cwievet tal-fond tfisser proprju dan. Fil-fatt din il-Qorti thoss li l-agir tal-attrici, li accettat ic-cwievet minghand il-konvenuti ghall-fond de quo ma jistax hlief iwassal ghat-terminazzjoni tal-kirja.

Illi dan qed jinghad fil-kuntest tal-fatt, li l-attrici kellha ghazla libera, jekk taccettax jew le l-istess cwievet; tant li setghet liberalment irrifjutathom, haga li ma ghamlitx, izda minn naha l-ohra ma tistax taccetta li tiehu l-fond lura, u fl-istess hin tippretendi li tithallas minghand il-konvenuti ghall- uzu ta' fond ghal zmien li jigi wara li hija accettat ic-cwievet tal-istess minghandhom, u allura taf li l-pussess attwali tal-istess fond jinsab ghandha u mhux ghandhom. Dan il-kaz jiddistingwi ruhu minn dak ta' ***"Emmanuel Cauchi et vs BCF Holding Limited et"*** *(P.A. (RCP) - 28 ta' Gunju 2006) peress li f'dak il-kaz ic-cwievet gew depositati l-Qorti, proprju ghaliex is-sidien f'dak il-kaz ma accettawx l-istess.*

Illi ghalhekk din il-Qorti thoss li gie ppruvat a sodisfazzjon tal-Qorti u fil-grad li trid il-ligi li bl-azzjoni bilaterali tal-partijiet, u dan billi ghaddew ic-cwievet tal-fond de quo minghand il-konvenuti ghal ghand l-attrici, nkluz il-fatt li l-istess attrici accettat l-istess minghajr ebda kundizzjoni, dan iwassal ghat-terminazzjoni tal-kirja, u ghar-relazzjoni li kien hemm bejn il-partijiet ta' lokazzjoni fuq l-istess fond, u wkoll ghar-rinunzja da parte tal-attrici ta' kull dritt li seta` kellha sabiex tinsisti

fuq l-kontinwazzjoni ta' kera di fermo, haga li ma ghamlitx, b'dan li l-att taghha li tircievi c-cwievet huwa ghal kollox inkonsistenti mal-premessa ta' ezistenza ta' relazzjoni ulterjuri ta' kera. Dan huwa konsistenti anke in vista ta' dak kontenut fl-istess skrittura fejn jidher car li l-konsenja tac-cwievet lis-sid tekwivali ghal terminazzjoni tal-kirja u dan johrog ukoll mill-artikolu 17 tal-istess. Huwa wkoll konsistenti ma' dak ritenut fis-sentenza ***"Antonio Cafania vs Ronaldo Zahra"*** *(A.C. – 20 ta' Frar 1953) fejn inghad li l-konsenja tac-cwievet tal-fond tfisser il-konsenja tal-fond stess, b'dan li dan l-att jaghti titolu u dritt li jagixxi lill-possessur tal-istess fond.*

Illi f'dan jista' wkoll jinghad li f'dan l-isfond ladarba l-konvenuti rritornaw ic-cwievet tal-fond lis-sid bil-kunsens u bl-approvazzjoni taghha, jirrizulta li l-istess attrici ma hijiex intitolata ghall-ebda kera wara z-zmien li hija hadet konsenja tal-istess post, ghaliex l-istess fond ma giex utilizzat mill-konvenuti u lanqas kien izjed fil-pussess taghhom. Jinghad f'dan il-kuntest li l-ittra li hija baghtet lill-konvenuti fil-11 ta' Settembru 2006, fejn hija zammet ic-cwievet tal-istess fond minghajr pregudizzju, ma tistax tbiddel dak li hija stess kienet ghamlet qabel, ghaliex meta hija accettat ic-cavetta jew cwievet tal-fond de quo hija ghamlet dan bla ebda riserva jew kondizzjoni, b'dan li l-ittra hija f'dan is-sens tentattiv minn naha tal-attrici sabiex tirrimedja ghall-effetti tal-agir taghha, haga li fil-mument tal-ispedizzjoni ta' l-ittra kien tard wisq li jsir. Tali riserva kellha se mai issir kontestwalment mal-accettazzjoni tac-cavetta, izda jidher car li c-cavetta tal-fond de quo giet accettata bla ebda kondizzjoni, u allura l-fatt li l-attrici hadet il-pussess tal-fond ghandha l-effett naturali taghha, u cjoe' li jittermina l-istess kirja."

Most certainly the facts of the case in question are different in that respondent left the keys to the lessor. However, when the lessor found the keys he did not take any remedial action for example depositing the keys in Court but instead he took possesion of the place unreservedly. Hence, the respondent will not be ordered to pay to the applicant for the remaining months that were left in accordance to the rent agreement.

Of course, this does not mean that applicant will not be paid for the months that respondent lived in the apartment and which is still outstanding. Respondent and his wife stated that they owe applicant the sum of €600. Infact it results that respondent did not settle the rent for October 2015 and December 2015.

In so far as the refund of expenses is concerned, the Board has considered in detail the testimony of applicant, and the documentary evidence that applicants produced

to sustain this claim. In the absence of the best evidence that applicants were required to produce in this regard (**art. 559**, Chapter 12 of Laws of Malta), and faced with contradicting declarations of applicant himself in his written affidavit and oral evidence, the Board is not morally convinced, on a balance of probabilities, that applicants incurred expenses to repair damages which respondents had occasioned in the tenement let through their fault. The Board is coming to this conclusion on the basis of the following facts :

(i) in the Application, applicants declare that they incurred an expense of €495 to remedy damages occasioned through respondent's fault in the tenement let[9] ;

(ii) in his written testimony[10], applicant George Spiteri declared to have incurred this sum to repair a sofa which was found torn, a washing machine timer, and also to whitewash the internal walls of the tenement. He declares to have furthermore incurred an additional expense of €193 to repairs the drains and the bathroom shower ;

(iii) applicants produced copies of invoices/cash sale receipts, issued by a Joe Farrugia, which are not authentic copies, and which refer to the sale of ironmongery items on 22nd January 2014[11] – which therefore do not tally with the time when respondent vacated the tenement – and on 12th February 2016[12]. This last invoice/cash sale receipt shows a total of €173.95, and includes a €135 labour fee for works which are not identified, even less confirmed on oath by whoever executed them ;

(iv) applicants failed to exhibit a receipt for the alleged expense to repair the sofa and the washing machine, and to whitewash the internal walls of the tenement ;

(v) applicants declare to have been repossessed of the tenement when respondent left the keys at their disposal. They however failed to show the condition of the tenement upon repossession, and failed further to prove that the alleged damages were occasioned through the fault of respondent throughout the term of the lease.

[9] Fol. 1, see also Doc. D at fol. 25
[10] Fol. 20 to 21
[11] Doc. B at fol. 23
[12] Doc. C at fol. 24

Decide

For the aforementioned reasons, this Board refrains from considering any further the first plea raised by respondent[13], and upholds his second plea only to the extent that it is compatible with the aforestated considerations, and therefore upholds only in part applicants' demand and condemns respondent to pay in favour of applicants the sum of six hundred Euro (€600) representing the balance of rent and utilities' arrears due in connection with the lease in favour of respondent of tenement number 39, Triq Santa Tereza, Tarxien as explained, and rejects the remaining part of the demand. Judicial interest shall accrue, in favour of applicants, on the sum so due and payable from the date of this judgment up to the date of effective payment.

Costs of these proceedings shall be borne as to eighty per cent applicant and twenty per cent respondent.

Dr Josette Demicoli
Magistrate

Cora Azzopardi

Deputy Registrar

[13] Since the Board has acceded to the applicant's request to effect a correction by means of a decree dated 27th April 2017