



IN THE SMALL CLAIMS TRIBUNAL

Adjudicator: Dr. Claudio Żammit

Sitting of Monday 25th May 2020

Claim Number: 3/20 CZ

John O'Keefe

vs.

Yvonne Azzopardi

The Tribunal,

Having seen the Notice of Claim filed in virtue of Regulation (EC) 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure, filed on 30th January 2020 in virtue of which claimant premised:

I rented a flat from the defendant. It was soon clear that there was a problem between us, so we mutually agreed to finish the rental agreement. When it came [sic] to the return of my security deposit the defendant made up expenses and damages and returned me nothing.

The Tribunal also considered the reply of defendant filed on the 7th May 2020 where she stated:

That she had leased an apartment in St. Julian's to plaintiff from 31st January 2018 till 30th January 2019, both days included;

That plaintiff decided to leave the apartment, and left on 31st October 2018.

That this led to the loss of three months of lease;

That every time that defendant went to make an inspection of the premises according to law, she would remark that the place was not clean. Due to this problem, plaintiff decided to leave the premises, because defendant would always pass this comment. Later, defendant realised that he left the apartment for other reasons. Plaintiff also used to say that the washing machine did not function properly, and after plaintiff departed, defendant sought technical advice and learned that the washing machine was malfunctioning because it had been over loaded.

That plaintiff had broken some floor tiles in the kitchen and defendant had to replace the whole kitchen floor because she did not find matching tiles. (Defendant at this point referred to an estimate of cost, which was attached to the reply).

That when defendant had insisted that the parties meet so that a proper inventory could be drawn up before plaintiff left, the latter told her that he did not have the time to do so, and left the keys inside the apartment. When defendant accessed the apartment after plaintiff's departure she got to know that the place was not clean at all.

That defendant paid for two days of cleaning and had to replace cushions and chair covers. The desk's surface was damaged and the vertical blind was damaged.

That defendant claims that the amount of the deposit (€700) does not cover all the expenses needed to remedy these shortcomings.

The Tribunal:

Having seen the documents filed by the parties;

Having therefore considered all evidence brought forward by the parties;

Having also considered that the Tribunal can adjudicate this case on the basis of the evidence produced and that therefore no oral hearing needs to be fixed;

Considers that:

In this action plaintiff is claiming the payment of seven hundred Euro (€700) from defendant allegedly due to him by way of refund of the deposit he had paid to defendant as the landlord of the apartment he had leased from her.

This Tribunal was not provided with any contract of lease by any party, but the parties are in agreement that plaintiff was indeed the lessee of this apartment. There was no contestation that the deposit paid was seven hundred Euro (€700). In fact defendant herself claimed that the expenses she needs to make amount to more than this sum of seven hundred Euro (€700) paid by way of deposit.

Defendant is claiming that she should not refund such deposit, mainly because plaintiff left the place in a general state of uncleanliness, and also because he had broken the washing machine, tiles in the kitchen floor, the chair covers, a cushion, the desk's surface, and vertical blinds. She also paid for two days of cleaning.

The Tribunal noted that defendant only provided an estimate of costs related to the damage which was done in the kitchen floor. She claims that she needs to replace such floor, since she did not find matching tiles. This also entails the disconnection of appliances and plumbing work and all the services related thereto. The Tribunal is however not satisfied with the estimate of costs provided by defendant. Defendant stated that the kitchen floor had to be replaced, but she provided no photographs of

the kitchen floor prior to the works carried out and after such works were completed. Neither did she provide any copies of receipts for the payments of the material and the works carried out. Defendant provided the photographs of other shortcomings, such as the dirty pots and pans, and could have easily filed a photo of the kitchen floor which she alleges had broken kitchen tiles.

Regarding the other items which defendant claimed to have been damaged, it was defendant herself which had to provide enough evidence that it was indeed plaintiff who left them in that state. Defendant did not provide an inventory signed prior to the commencement of lease whereupon plaintiff acknowledged that all contents of the apartment were in good condition. Regarding the state of the kitchen as shown in the photographs, while it is true that if plaintiff left the kitchen in such state he should have been more careful to leave the place tidy, it must also be stated that this does not constitute damage. Nor did defendant bring forward any evidence of expenses which she claims to have made (she did not mention specific amounts, except for the estimates regarding the kitchen floor, as per above, and she did not file any receipt).

It results therefore that plaintiff really paid defendant seven hundred Euro (€700) by way of deposit, which however defendant is pretending to retain. For the Tribunal defendant has no reason at law to retain such deposit, because she did not adequately prove that she suffered the damages alleged by her. Notwithstanding that these are special procedures and generally not formally conducted in open hearings, defendant still had every duty to sustain her allegations, particularly by receipts, or other adequate evidence, which she did not. Once defendant alleged that plaintiff had damaged some items, it was her duty to prove what she was alleging, and this according to a general principle of law (*iuxta allegata et probata*) and also considering the way in which this principle was applied by our courts¹.

On the basis of all these considerations, the Tribunal is rejecting all defendant's defence pleas, and consequently upholding plaintiff's claims and thus orders

¹ Vide *Joseph Tonna vs Philip Azzopardi*, Court of Appeal (Inferior Jurisdiction) delivered on the 12th April 2007 per the Hon. Mr. Justice P. Sciberras.

defendant to pay to plaintiff the sum of seven hundred Euro (€700). Since plaintiff specifically indicated in the Form A that he is claiming no interest, the Tribunal orders that no interest shall accrue on this sum.

Defendant shall pay all the costs of these proceedings.

Dr. Claudio Zammit

Adjudicator

Mary Josette Musu'

Deputy Registrar