**RENT REGULATION BOARD**

**Magistrate Dr. Josette Demicoli LL.D.**

**Miguel Sunna Duque**

**vs**

**Meander Co Limited**

## Sworn Application number 164/17JD

Today 1st July 2020

The Board,

Having seen the Application[1] which reads:

1. That by virtue of a lease agreement dated 31st March 2017, the applicant had leased from the respondent company the premises 'Mabruka', Flat 6, Notary Emanuel Debono Street, Naxxar for the period of 3 months between the 1st April 2017 and the 30th June 2017.

2. That upon the signing of the lease, the applicant had paid the sum of €800 as a deposit, which deposit had to be refunded to him upon the termination of the lease, *provided that the tenement, after having been inspected by the Lessor or his Agent, is found to be in the same condition as it was when occupation was effected and that Lessee has paid all electricity, water, gas and telephone bills up to date of the termination of the lease or to be kept pending until settlement is made to the Lessor's satisfaction.*

3. That upon the termination of the lease the applicant was informed by Caroline Sammut, the director of the respondent company, that the following Monday

[1] Fol. 1 to 17

she would be sending someone from her end to inspect the premises, and to verify that there weren't any damages before this refund could be paid.

4. That despite this, and despite the *following Monday* having come and gone, the respondent company failed to pay this deposit back to the applicant.

5. That after some time, the said Caroline Sammut started to bring an excuse to the effect that she was expecting to receive the water and electricity bills before refunding any balance to him.

6. That apart from this, the same Caroline Sammut started to bring another excuse stating that there was an outstanding internet service bill, however, it was the applicant who personally returned all the relative equipment to Melita plc on the day of the termination of the lease, and not only wasn't there any outstanding balance due but he was also refunded the sum of circa €5 by Melita plc once the equipment was returned.

7. That despite this, the applicant until today, despite the various calls for payment, the respondent company has failed to show any bills which are allegedly due and neither has it paid any balance which could still be due.

8. That moreover, when the applicant, after a number of months, had requested assistance from the Naxxar Police station in order to be paid back what was due to him, and before he was directed to seek legal assistance, a phone call was made to the said Caroline Sammut where she was asked to provide an explanation as to why she hadn't paid back this amount. She had also alleged that there were some damages in the towel holder, but that these damages did not amount to more than €20 and that despite this she still hadn't refunded this amount because she was still awaiting to receive the water and electricity bills.

9. The applicant had called upon the respondent company by means of the judicial letter dated 28th September 2017, judicial letter number 2291/2017, sent in terms of Article 166A of Chapter 12 of the Laws of Malta, for her to pay this amount, despite this, the respondent company had replied to this letter by stating, 4 months after the date of the termination of the lease, that the applicant had caused some damages to the premises which damages had to be deducted from the amount being claimed.

10. That the said Caroline Sammut had declared to the applicant on the day of the termination of the lease that as far as she could see there weren't any damages to the premises. Moreover, the applicant also knows and declares that there were no damages to the towel holder, minor as they may have been, nor to any other part of the premises or to any movables.

11. It is thus clear that whatever is being told to the applicant by the representative of the respondent company is nothing but an attempt to avoid payment.

12. That to date, the hereunder has not been paid this amount.

13. That the applicant knows personally of the facts stated and confirms these on oath.

14. That as far as the applicant knows, respondent company has no defence to bring against this claim.

That for these reasons, the applicant, saving any necessary and opportune declarations and for the stated reasons, and without proceeding to trial with the special summary proceedings as established at law in terms of Article 16A of Chapter 69 of the Laws of Malta, requests this Honourable Board to order the respondents to appear before it at a date and time established by the same Board and should the respondent fail to appear of that sitting, or should he fail during that sitting to show that he has a valid defence that can be made to contest the requests of the applicant, the said Rent Regulation Board should:

1. To proceed to judgment with regards to the matter in question summarily and this in terms of Article 16A of Chapter 69 of the Laws of Malta;

2. Declare and decide that the respondent is a debtor of the applicant in the sum of € 800 representing a deposit that was paid by the applicant to the respondent company which deposit had to be refunded to him at the termination of the lease;

3. Consequently to condemn the respondent to pay the applicant the sum stated of €800.

With costs including those of the judicial letter number 2291/2017 and with legal interests against the respondent company, reference to the oath of whose respondents is being made.

Having seen that, during the first sitting held on 19th February 2018[2], this Board ruled that the special summary proceedings, as contemplated in art. 16A of the Reletting of Urban Property (Regulation) Ordinance, do not apply in this case.

Having seen the Reply with Counter-Claim[3] which Respondent Company filed on 12th March 2018 by virtue of which , Respondent Company refutes said claim and insists that Applicant left damages in the tenement let, on his vacating it, and therefore said deposit has to make good for their repair which cost €687.73 (six hundred and eighty seven Euro and seventy three cents). These alleged damages are listed in a separate document annexed as 'Doc. MCL01'.[4] Respondent Company has offered, and still offers, reimbursement of the excess of €112.27 (one hundred and twelve Euro and twenty seven cents). By virtue of its Counter-Claim, Respondent Company is requesting the Board to approve its retention of the sum of €687.73 (six hundred and eighty seven Euro and seventy three cents), or any other sum, from the deposit.

Having seen Applicant's Reply to the Counter-Claim[5] by virtue of which

1. That the demands put forward by the defendant counter-claimant company are unfounded in fact and at law since the applicant did not cause any damage whatsoever in the premises leased to him, on the contrary he left the said premises in a better state than when the premises were first leased to him.

2. That the applicant categorically denies all that contained in the fourth plea of the defendant company that any offer was ever made to settle the claims he has against the company. In fact, this is the first time that the applicant is hearing of the possibility of an offer having been made, and in any case the applicant can never accept this offer which is not acceptable as will be described further down

[2] Fol. 28 to 29
[3] Fol. 30 et seq which although filed in the Maltese Language has been admitted in the acts of the case.
[4] Fol. 34
[5] Fol. 37 et seq.

and as will be proven during the course of this lawsuit. In fact, even when the judicial letter that preceded this case was sent, the defendant company never made any form of offer. Moreover, the defendant company did not deposit this said amount in the Registry of this Honourable which means that an offer that was made through a plea can never exonerate it from legal responsibility in the eventuality that it is condemned to pay the balance due and the interest.

3. That the excuse which was constantly being put forward by the defendant company before releasing the deposit was always that it was still awaiting water and electricity bills. This is the first time when, conveniently, it is now being alleged that damages were caused, which damages equate to around the same value as the deposit it is retaining. That before the applicant left the premises he had repeatedly asked representatives of the defendant company for an inspection to be carried out, however on the day when this inspection was to be held the representatives of the defendant company never showed up and therefore one cannot understand how the defendant company is claiming that the inspection was carried out on the 3rd of July 2017.

4. That the application also categorically denies that he is responsible for any form of damages as are being claimed by the defendant company, and this for the following reasons:

    i. The towel Rail was not broken but it had simply become detached from the wall, so there was no need for it to be replaced. In order for it to be reattached to the wall all that was required was anew clip which costs a few cents.
    ii. There was no problem with the shower rail when the applicant left the premises.
    iii. There was no broken lampshade when the applicant left the premises.
    iv. There was no coffee table in the premises leased to the applicant.
    v. There were no tie backs in the curtains when the applicant leased the premises.
    vi. There were no missing bed sheets when the applicant left the premises.
    vii. There was no problem with the paintwork when the applicant left the premises.

viii. There were no missing or broken plates when the applicant left the premises and in any case, such damages are to be considered as fair wear and tear.

ix. It had been agreed between the parties that the payment for gas was included in the sum of Euro50 which the applicant had paid to a representative of the defendant company.

x. None of the beds or chests of drawers were broken.

xi. Neither was there the need for any form of transport, not for any carpenters ,nor for cleaning services, not for handymen , and in any case, the amount being claimed for these services which were allegedly provided is manifestly eccessive.

5. Therefore no amount is due to the defendant counter-claimant company.
6. Saving other pleas available at law.

With costs at the charge of Meander Co Ltd.

Having heard the witnesses produced by the Parties.

Having seen the documentary evidence presented in the course of the proceedings.

Having heard the oral submissions of the respective legal counsels of the Parties.

**Considers that :**

In this cause, Applicant is requesting this Board to order Respondent Company to re-imburse him with a sum of eight hundred euro (€800) which Applicant deposited with this company in warranty of the execution of his obligations arising from a lease agreement dated 31st March 2017[6]. In virtue of this lease agreement, Respondent Company hired in favour of Applicant the tenement at Mabruka, Flat 6, Notary Emanuel Debono Street, Naxxar, for a term of three (3) months running from 1st April 2017, at the monthly rent of eight hundred Euro (€800), and subject to the other obligations stipulated therein, in warranty whereof Applicant deposited with Respondent Company a sum of eight hundred Euro (€800). In terms of clause 'd' of this Lease Agreement, said deposit was *'to be refunded to Lessee at the termination of the lease, provided that the tenement, after having been inspected by the Lessor or his Agent, is found to be in the same condition as it was when*

[6] Dok. B, fol. 11 to 13

*occupation was effected and that Lessee has paid all electricity, water, gas and telephone bills up to the date of the termination of the lease or to be kept pending until settlement is made to the Lessor's satisfation'.*[7]

On its part, Respondent Company refutes said claim and insists that Applicant left damages in the tenement let, on his vacating it, and therefore said deposit has to make good for their repair which cost €687.73 (six hundred and eighty seven Euro and seventy three cents). These alleged damages are listed in a separate document annexed as 'Doc. MCL01'.[8] Respondent Company has offered, and still offers, reimbursement of the excess of €112.27 (one hundred and twelve Euro and twenty seven cents). By virtue of its Counter-Claim, Respondent Company is requesting the Board to approve its retention of the sum of €687.73 (six hundred and eighty seven Euro and seventy three cents), or any other sum, from the deposit.

In his Reply to the Counter-Claim, Applicant strongly contests Respondent Company's allegation that it had offered him re-imbursement of any balance of the deposit. He insists that Respondent Company had responded that there was no outstanding balance due in its objection to his executive judicial letter, and further that Respondent Company had failed to deposit this excess in the Registry of the competent Court. Applicant further contends that, prior to the filing of the cause, Respondent Company had always cited non-receipt of water and electricity bills as the reason for not refunding the deposit, and had never referred to or otherwise mentioned any alleged damages in the tenement left on his vacating it. Finally, Applicant rejects each and every claim of damage which Respondent Company is raising in its Counter-Claim giving his explanation therefor.

**Considers also that :**

In his affidavit[9], Applicant states that, upon termination of the lease, Caroline Sammut, a director of Respondent Company, informed him that the following Monday she would be sending someone to inspect the tenement, and verify that there were no damages before refunding the deposit. Respondent Company nevertheless never refunded the deposit. Some time after, Sammut justified this failure on the

[7] Fol. 11
[8] Fol. 34
[9] Fol. 5

ground that water and electricity bills were not yet in hand. She further mentioned that there was an outstanding internet service bill, which however was not the case as Applicant had settled it all. Applicant explains that he had attempted many times, however without any success, to obtain this re-imbursement. He had also reported the occurrence to the Police, who called Sammut for an explanation. She mentioned then that there was a damage in the towel holder, which however did not cost more than twenty Euro (€20), and that she was still waiting for the water and electricity bills. Applicant insists that, on his vacating the premises, Sammut had confirmed to him that she could see no damages. He also says that he filed an executive judicial letter against Respondent Company for the re-imbursement of the deposit ; however, Respondent Company replied that Applicant had caused damages the expense for the repair of which was to be deducted from the deposit.

When he testified before the Board[10], Applicant explained that he works as a solar energy technician and came to Malta on 23rd March 2017 to work in a solar company. He needed accomodation for a short period of three months, and with the help of a real estate agency, found this tenement which he eventually let from Respondent Company. He confirmed that he deposited the sum of eight hundred Euro (€800) with Applicant Company on taking this tenement in Naxxar on lease. He said taht when the lease expired, on 31st July 2017 – which happened to be a Saturday – Caroline Bonello for Respondent Company visited the tenement in the morning. However, she said that she could not refund the deposit there and then because, on the following Monday, someone else from Respondent Company was inspecting the apartment and it would only subsequently settle re-imbursement of the deposit. Applicant was reluctant to return the keys without receiving his monies, but agreed to wait till the following Monday to obtain the re-imbursement. The following Monday, Bonello (recte : Sammut) did not communicate at all with Applicant, until Applicant managed to reach her and she said that there was a Melita service still registered on the apartment. However, Applicant insists that he had terminated the service, and settled all bills, prior to vacating the tenement. Following this, Bonello (recte : Sammut) stopped taking Applicant's calls. After a week, Bonello (recte : Sammut) mentioned for the first time that there were some damages in the apartment and she promised to send pictures thereof, which however

[10] See testimony, 21.6.2018, fol. 54 to 81

Applicant never received. More time passed, the deposit was not re-imbursed and Applicant could not reach Bonello through calls and messages. He then went to the Police Station in Naxxar, where he was advised to instruct a lawyer. The Police officers nevertheless contacted Caroline Bonello (recte : Sammut), who now replied that the water and electricity bills had not yet arrived. Applicant clarifies that he paid fifty Euro (€50) per month to make good for his consumption of water and electricity in the tenement let. Another four months passed and nothing happened. Applicant then decided that Respondent Company was retaining his deposit, and therefore filed these proceedings. He claims that it was only subsequently that he heard for the first time that Respondent Company was demanding the sum of more than six hundred Euro to make good for damages allegedly left in the apartment on his vacating it. Applicant further states that the same apartment was hired to different tenants only one week after his vacating it. Finally, Applicant gave a detailed account of his grounds for rejecting all claims of alleged damages. The only damage he accepts to have been aware of is that the towel holder had come off the wall and needed to be re-attached. Applicant notes that there was no signed inventory attached to the lease agreement, and that no inspection was carried out on his taking delivery of the tenement. When cross-examined, Applicant declared that the premises were in dust when he took their detention. The towel rail was not attached to the wall, the mattresses were mouldy and had to be put in the sun. The sheets and all content generally needed a cleaning which Applicant carried out. Applicant stated further that this was the first time he rented a place for himself, and now he acknowledges that he made a lot of mistakes on account of his lack of experience, including not insisting on taking photographs of the tenement and its content on taking over its detention.

Applicant presented a legal copy of the executive judicial letter dated 28th September 2017[11] which he filed against Respondent Company requesting re-imbursement of the deposit. This document includes Respondent Company's replying Note by virtue of which it opposed the demand claiming that the deposit made good for damages which Applicant caused in the tenement let.

[11] Doc. C, fol. 14 to 17

Applicant presented further an affidavit of WPS 158 Gillian Henwood[12], a police officer stationed then at the Birkirkara police station, who declared that Applicant had sought their assistance in July 2017 in connection with the re-imbursement of this deposit. He did not want to file a formal report against his lessor ; however, WPS 158 had called Caroline Sammut on her mobile phone and, from what witness could recollect, Ms Sammut admitted that the lessor retained an €800 deposit, out of which compensation for a small damage amounting to €20, and water and electricity bills, had to be paid, and the balance refunded.

Applicant further produced as witness a representative of Melita Limited, Emily Abela, who confirmed that all bills issued in relation to internet service at the tenement let between 1st April 2017 and 30th June 2017 have been settled in full.[13]

Respondent Company produced as witness its director Caroline Sammut.[14] She confirmed the lease agreement signed by the Parties, on the basis of which Applicant's claim is raised. She stated that Applicant delayed repeatedly to pay the rent, but eventually paid all three instalments in full. She then explained that the lease terminated on a Friday, but Applicant did not vacate on the day because he was working and still had to vacate the tenement. They agreed on his vacating the tenement the following Sunday. He partied in the tenement on Saturday night, as he was doing quite often throughout his detention, and then she went to pick up the keys on Sunday morning, as agreed beforehand with Applicant. She attended at ten in the morning, but Applicant did not open. She went again at midday, and this time he opened but refused to let her enter the tenement to inspect the premises. He demanded immediate reimbursement of the deposit and set this as a pre-condition for the return of the keys. The witness said that, because of the call she received the previous night from the Police Station with a report of the excessive noise that was made in the apartment, she could understand what had happened and why he was refusing to let her in. They disputed on all this for almost two hours, outside the apartment, and finally he returned one key but retained the other. During the following week, representatives of Respondent Company acceded into the tenement

[12] Dok. KM1, fol. 66 to 67

[13] See testimony, 21.6.2018, fol. 48 to 49; see also Doc. EA1 to EA3, fol. 50 to 53 which show an overpayment of €5.67 from Applicant's end

[14] See testimony, 12.2.2019, fol. 71 to 76

and found it in complete disorder. There were garbage bags with refuse from the party held the day before left on the terrace, and damages and breakages all over the place. Caroline Sammut confirmed the damages report submitted by Respondent Company. All cleaning was carried out by the witness and her husband themselves.

Respondent Company produced various receipts[15] for expenses incurred to remedy the damages which Applicant allegedly left in the apartment let. Witness Caroline Sammut explained under oath[16] that these receipts cover the repairs of tower handrail, lampshade and sliding door, coffee table, mattress sheets and tie backs, paint and plates, and also for transport fees.

When cross-examined[17], Caroline Sammut reasserted that she used to go and pick the rent from Applicant at the tenement let, although she was not admitted inside the tenement on the various occasions she attended for that purpose. She explained that no inventory was attached to the lease agreement because all contents were brand new, like the tenement itself. Sammut agreed that the clause prohibiting the admittance of pets in the tenement was crossed off from the lease agreement, but she insisted on the responsibility of the tenant, once pets are admitted, to see to their not causing damage to the apartment and its contents – in this case, according to the witness, the curtains appeared to have been actually damaged severely by the cat which Applicant kept in the apartment. She clarified that Applicant did not accompany her on her taking repossession of the apartment, and verifying its condition, because he had refused to allow her to do so in his presence when she visited for the return of the keys allegedly because he still had his things in the apartment. When later that same day, the witness and her husband acceded into the tenement, they found pizza boxes and vodka bottles scattered all over and they filled up a pick-up Isuzu van with the rubbish material they gathered fromt he apartment.

With respect to the reclaimed expenses, the witness clarified that the €75 and €90 fee for transportation and cleaning were not disbursements but compensation

[15] Docs. ML(i) to ML(vi), fol. 79 to 83, see also acceptance of their authenticity on the part of Applicant in the minutes of the sitting held on 12th July 2019, fol. 87
[16] See testimony, 6.5.2019, fol. 84 to 86
[17] See testimony, 12.7.2019, fol. 89 to 106

calculated for the work carried out by herself and her husband to clean the apartment and throw away the rubbish found.

The witness explained further that they bought some replacement materials from Chinese sellers in Sicily who do not provide a fiscal receipt or official invoice.

With reference to her signing for the statements *'Returning the keys 1st July 2017'* and *'The deposit will be turned as signed on Contract'* , the witness explained that these statements were made, and signed for, on the insistence of Applicant, because she accepted that he returns the keys a day after the lapse of the lease agreement. The witness insisted that she was unable to release the deposit on the return of the keys, because some damages and breakages are only identified on cleaning the apartment, like the damage that resulted in the bed which was covered with the bedspread. Sammut confirmed that, the night before Applicant vacated the property, while she was in Gozo, she received a call from the Naxxar police station advising that excessive noise was being made in this apartment at half past midnight. She also insisted on having mentioned various damages – not only the towel handrail damage – to the police officer who called her following Applicant's report on the non-refund of the deposit.

**Considers further that :**

The contending parties gave diametrically-opposed accounts of the occurrences leading to this dispute. The picture which Applicant sets conveys complete adherence on his part to the terms of the lease agreement, and sheer abuse of his lack of experience and utmost trust on the part of the Respondent Company. On the other hand, Respondent Company insists that Applicant was in breach of his obligations. He was not only late in the payment of the rent, and the respossession of the tenement, but left rubbish and damages behind to which Respondent Company had to attend.

After considering at length the testimonies of Applicant, and Caroline Sammut for Respondent Company, the Board concludes that, on balance of probabilities, it is more likely that the version of events detailed by Sammut reflects the true and actual occurrences between the parties. The Board has reached this conclusion after noting that :

(i) the term of the lease (three months from 1st April 2017) expired on 30th June 2017 and not 31st July 2017 as Applicant contends ;

(ii) 1st July 2017 happened to be a Saturday, as Caroline Sammut stated repeatedly in her testimony;

(iii) Applicant was duty bound to vacate the apartment on 30th June 2017, but Respondent Company accepted to take repossession later, on Applicant's request;

(iv) representative of Respondent Company, in clear good faith, registered in writing Respondent's Company concession to take repossession a day after due date, and to return the deposit as agreed in the lease agreement ;

(v) ignorance of the law is no excuse. Applicant did not produce any evidence of the allegedly good state in which he left the apartment, despite his being very concious of his right to receive reimbursement of the deposit, and did not supply any good ground for not allowing the representative of Respondent Company to verify the condition of the Apartment and its contents on repossession in his presence ;

(vi) the Police officer who cordially attempted to assist Applicant, despite his declaring that he did not intend to file a formal report against Respondent Company, stated very clearly in her testimony that she does not have a complete recollection, or a record, of the full statement made by Caroline Sammut during her call to query the non-refund of the deposit.

With regard to the quantification of damages which Respondent Company is claiming to retain from the sum deposited, the Board has considered at length the evidence produced in this respect and accepts to approve only the sums reclaimed for broken shower rail, lamp shade, coffee table, tie backs, sheets and pillow case, paint, plates, gas cylinder, together with the sum of €100 (one hundred Euro) fixed *arbitrio boni viri* to make good for the cleaning efforts that had to be unduly made by the representatives of the Respondent Company in consequence of Applicant's breach of his obligation to return the tenement clean and in good condition. The Board cannot uphold the major reclaimed expense for the allegedly broken bed and chest of drawers because no clear corresponding documentary evidence for this expense was produced.

The Board finally notes that, even if Applicant breached his obligation to vacate the tenement let and return it in good condition to the Lessor, Respondent Company should have insisted that Applicant verifies with its representatives the condition of the tenement on repossession, and more importantly, notified Applicant immediately of the outcome of that verification and gave a detailed statement of reclaimed damages together with a refund of the remaining balance of the deposit, and passed on to deposit said balance under the authority of the competent Court failing its acceptance by the Applicant.

**Decide**

For all the above mentioned reasons, the Board decides this cause by upholding Applicant's demands only limitedly, and therefore condemns Respondent Company to pay in favour of Applicant the sum of €476.14 (four hundred and seventy six Euro and fourteen cents), with legal interest from the date of this judgment until the date of final payment, and in this sense, upholds also limitedly Respondent's Company counter-claim, establishing that the due compensation for damages left in the tenement let amounts to €323.86 (three hundred and twenty three Euro and eighty six cents).

Each party is to bear its own costs.

**Dr Josette Demicoli**
**Magistrat**

**Cora Azzopardi**
**Deputat Registratur**