

**RENT REGULATION BOARD**

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

**51, 52, 53 The Strand Company Limited**

**vs**

**Veselin Valchanov**

**Sworn Application number 24/2018JD**

Today 13th of July 2020

The Board,

Having seen the Application<sup>1</sup> of Applicant Company:

Whereas the Company "51,52,53 The Strand Company Limited " leased to defendant Veselin Valchanov the shop numbered (unofficially ) fifty-one letter A (51A), The Strand, Sliema , underlying the block of apartments numbered officially fifty-one (51), and this in virtue of a Contract dated the first day of February of the year two thousand and sixteen (01/02/2016 ) [Vide Dok. "A" here attached];

And whereas the said lease was terminated in May of the year two thousand and seventeen (2017) and in fact defendant vacated and left empty the said shop;

And whereas defendant has left outstanding for payment to the applicant Company the sum of seven thousand, three hundred and fifty-eight euro (7,358) : as for seven thousand and two hundred euro (€7,200) representing four months rent in advance covering the period from the first day of February of the first day of February of the year two thousand and seventeen (01/02/2017) till the thirteenth day of May of the year two thousand and seventeen (30/05/2017); and as for the amount of one hundred and fifty-eight euro (€158) as a balance of the consumption of water and electricity of the said shop;

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<sup>1</sup> Fol. 1 to 4

And whereas the applicant Company called uselessly open the defendant to pay the said amount still due by him;

And therefore the applicant Company respectfully begs that this board, saving every necessary and opportune declaration:

1. Condemns defendant Veselin Valchanov to pay to the applicant Company the sum of €7,358 : as for €7,200 representing four months rent in advance of the shop unofficially numbered 51 A, The Strand, Sliema, covering the period from the 1<sup>st</sup> February 2017 till the 30<sup>th</sup> February 2017; and as for €158 as the balance of consumption of water and electricity of the said shop.

With costs, comprising €50 for the legal letter dated 17<sup>th</sup> November 2017, and the Garnishee Order filed contestually, against defendant who is presently being personally summoned to his oath.

Having seen the note of applicant company by virtue of which it filed a copy of the lease agreement dated 1st February 2016<sup>2</sup>.

Having seen the Respondent's Reply<sup>3</sup> by virtue of which he pleaded :

1. By way of preliminary plea, the plaintiffs, should prove title at law in regard of the property de quo;
2. The plaintiffs should prove to this board the intimations as official letters he supposedly sent and the respective notifications.
3. It is untrue that the sum indicated by the plaintiff is due as will be proved during the hearings of this case.
4. In addition the plaintiff never issued a VAT receipt of the rent paid by the responded Veselin Valchanov.
5. The respondent, humbly submits that this Honorable Board should refute the claims lodged by the plaintiff as requested.

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<sup>2</sup> Fol. 5 to 13

<sup>3</sup> Fol. 19

6. Any further submissions are being presently reserved.

With costs against the plaintiff who is being from now summoned to reply

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

Having heard the testimonies of witnesses produced by the parties.

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

**Considers that :**

Applicant Company is requesting this Board to order Respondent to pay the sum of seven thousand three hundred and fifty eight Euro (€7,358), which Applicant Company claims to be due in its favour as for the sum of seven thousand and two hundred Euro (€7200) by way of rent arrears for the term running between 1st February 2017 and 31st May 2017 in respect of its tenement 51A, The Strand, Sliema, and the balance of one hundred and fifty eight Euro (€158) representing an alleged outstanding balance for the consumption of water and electricity in said tenement. In his defence, Respondent pleads that Applicant Company must prove its title in regard to the tenement. On the merits, he denies that he owes Applicant Company the payment requested in this cause. He also pleads that he was never given a fiscal receipt for the rent which he paid to Applicant Company for the tenement 51A, The Strand, Sliema.

**Considers further that :**

By virtue of the Lease Agreement dated 1st February 2016, Applicant Company had granted by title of lease to Respondent, the tenement 51A, The Strand, Sliema, for a term of two years which were set to expire on 28th February 2018. Respondent agreed to pay the annual rent of €21,600 (twenty one thousand and six hundred Euro), by virtue of monthly rates of €1,800 (one thousand and eight hundred Euro). Furthermore, Respondent deposited with Applicant Company a sum equivalent to three months' rent, which was agreed to be forfeitable in favour of Applicant Company if Respondent terminated the Lease prior to the lapse of the stipulated term of two years, in which case he was required furthermore to give the Lessor at least three months' notice of such termination.<sup>4</sup> This tenement was let to Respondent as a shop for photo/printing and

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<sup>4</sup> Fol. 6

related activities.<sup>5</sup> Clause six (6) of the Lease Agreement then provides that all water and electricity bills for the term of the lease shall be borne by the Lessee, subject to the right of the Respondent to demand and obtain sight of all invoices/receipts relating to such bills.

In his affidavit, Charles Camilleri identified himself and an Anthony Cardona as the directors of Applicant Company, which owns the tenement at 51A, The Strand, Sliema. He explained that Applicant Company had acquired the tenement in virtue of a deed published in the records of Notary Patrick Critien of the 29th January 1997. A copy of this deed is exhibited as 'Doc. B'.<sup>6</sup> Subsequently, Applicant Company let this tenement to Respondent, and the lease was regulated in virtue of the Lease Agreement dated 1st February 2016.

Camilleri declared further that Respondent decided to terminate the Lease prior to the expiration of its two-year term, and in fact vacated the tenement in May 2017. He claims that Respondent did not give any advance notice of termination, and in his words *'We had explained to him that due to his failure to give us the prior three months' notice he would have to forfeit the security deposit equivalent to three months' rent which he had paid on the signing of the contract.'*<sup>7</sup> Camilleri declared also that Respondent *'had not been punctual in the payment of the monthly rent. In fact, he was four months' rent in arrears so that when he left the shop he owed the Company the amount of seven thousand and two hundred Euro (€7,200) representing the said four months' rent from February 2017 till May 2017.'*<sup>8</sup> He further declared that Respondent had an outstanding utilities bill to settle, for the amount of €135.98 (one hundred and thirty five Euro and ninety eight cents). This claim is reflected in the contents of the legal intimations for payment which Applicant Company sent to Respondent on 17th November 2017, a copy whereof is also exhibited in the acts of the proceedings.<sup>9</sup>

Camilleri declared that Respondent had promised to settle within a short time the full amount which Applicant Company claims in this action, but he did not do so. Camilleri alleges that Respondent ignored this promise, and then refused even to take calls for payment from him. Camilleri thus considered that Respondent was taking him for a ride, and instructed his lawyer to request and proceed for payment. Respondent had

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<sup>5</sup> Fol. 7

<sup>6</sup> Fol. 32 to 41

<sup>7</sup> Fol. 22

<sup>8</sup> Fol. 22

<sup>9</sup> Fol. 44 to 45

instructed Dr. Philip Manduca to respond on his behalf, on a without prejudice basis, and because of that, his response is not exhibited.

In his *viva voce* testimony<sup>10</sup>, Charles Camilleri declared that Respondent used to pay rent in cash, and had failed to pay four rent instalments, and also the last utilities' bill. He said that Applicant Company had to chase Respondent to pay, and that it was the second director's son – Stefan Cardona – who used to pick up the rent from Respondent. He confirmed that Applicant Company never gave a receipt for the rent received, neither an informal one nor a fiscal one. According to this witness, communications with Respondent were also conducted by the aforementioned Stefan Cardona. Camilleri stated that they were lamenting with Respondent for failing to pay four instalments, and then he agreed to terminate the Lease, and quit. Under cross-examination, Camilleri denied that they met Respondent, and agreed that he owed them only a sum equivalent to one month's rent.

Applicant Company produced as witness the representative of ARMS Limited, Katya Axiak<sup>11</sup>, who testified in regard to the water and electricity services serving the tenement let, and the bill paid on 19th October 2017<sup>12</sup>, for the total sum of €135.98. This bill shows that it was issued for the term running between 7th July 2017 and 11st August 2017. The previous bill for a total of €106.98 was settled on 31st July 2017. This bill<sup>13</sup> was issued for an electricity consumption of 700 units, without a reading (N), and no water consumption, and includes an electricity and water service charge for the term which the bill covers.

In his affidavit<sup>14</sup>, Respondent declared that he owns a small business relating to photography in Malta. In 2016, he rented the tenement 51A, the Strand, Sliema, with an intention to grow this business. The monthly rent was set at €1800 (one thousand eight hundred Euro), and the term of the lease was for two years. His communication was done with Charles Camilleri, Anthony Cardona, or Stefan Cardona, but he used to communicate primarily via text messages with Stefan Cardona. Respondent stated that he always paid the rent on time, and in cash, putting the money in an envelope and informing Cardona that he could pick it up. He claimed that he had many times asked for a signed paper confirming the payment of the rent, but Applicant Company simply promised to provide a written receipt, which it never did. Respondent explained further

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<sup>10</sup> See testimony, 21.11.2018, fol. 58 to 62

<sup>11</sup> See testimony, 21.11.2018, fol. 52 to 53

<sup>12</sup> Fol. 55

<sup>13</sup> Fol. 56 to 57

<sup>14</sup> Doc. VV, fol. 64 to 67

that, in 2017, his business went through a turbulent time, and in May 2017 he realized that he had barely enough money to maintain his family. This led him to decide to terminate this Lease.

Respondent declares that, at the end of May 2017, he text messaged Stefan Cardona and asked him for a meeting. They met on 30th March (recte : May) 2017 at 5pm, and Charles Camilleri was also in attendance. He informed them of his intention to terminate the lease, and accepted that he was thus forfeiting the deposit. The only pending issue was the current month's rent, and he claims to have tried to negotiate time to settle. They only allowed him one week to pay, and he immediately informed them that their term for payment was hard for him to meet. He delayed to pay, and then Applicant Company's representatives started to threaten him with suing for the full two years' rent, and damages.

Respondent insists that he had settled the rent due for February 2017, March 2017 and April 2017 on time, and that the only outstanding payment was the rent for May 2017. He denies also to have an outstanding debt in regard to the utilities serving the tenement throughout the term of the Lease. He notes that the claimed bill refers to a period following his terminating the Lease and vacating the tenement.

Respondent presented a transcription of the text messages that he sent and received, in regard to this Lease, to Stefan Cardona.<sup>15</sup> Of particular relevance are the text messages dating back to May 2017, and before, in particular those referring to the picking up of the rent money from the shop in the preceding months, and also the mention of the '*last rent*' in a text message received from Stefan Cardona on 26th July 2017.

Under cross-examination<sup>16</sup>, which was conducted with the assistance of an interpreter to the English language, Respondent declared to have approached the landlord to ask for termination, and the landlord accepted during a meeting. During that meeting, they discussed his forfeiting the deposit, and paying an outstanding one month's rent. The last month's rent was never paid because his accounts were blocked. He declared to have vacated the tenement at the end of May 2017, and stated not to be aware that it was subsequently vacant for many months. He insisted that he owes Applicant Company a sum equivalent to one month's rent only.

The Board heard the testimony of the aforementioned Stefan Cardona<sup>17</sup>, whom Respondent produced to testify in the case. He declared to be a director of Christef

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<sup>15</sup> Doc. VV1, fol. 68 to 69

<sup>16</sup> See testimony, 21.10.2019, fo. 81 to 84

<sup>17</sup> See testimony, 14.2.2019, fol. 71 to 77

Company Limited, which owns a third of the shares in Applicant Company. He further declared that according to the Lease Agreement, Respondent had four monthly rent instalments to pay, and that it was merely out of his good will that he requested him to pay only one month's rent. When asked to specify exactly where the Lease Agreement says that Respondent had to pay four months' rent arrears, Stefan Cardona replied that *'The contract, I forgot. I do a lot of rent. I forgot the contract how it was. We were four months due. Now I had messaged him to send me the last rent out of our own good will. We went to his new place. I told him again, can you give us eth elast rent and we're done over and one with ? He was basically arrogant and tell us I don't have th emoney. I can't pay you. We just left and decided to go according to the contract.'*<sup>18</sup> Stefan Cardona confirmed that the rent was paid in cash, and that he or Charles Camilleri used to pick up the payment. He confirmed that no receipt was ever released by Applicant Company to cover the rent paid – Cardona alleged that Respondent never asked for it. Cardona explained further that this tenement is situated just underneath his office, so he used to meet Respondent everyday. He further confirmed that Applicant Company never re-imbursed Respondent with the deposit paid on the Lease Agreement. Stefan Cardona did not deny having received or sent the text messages compiled by Respondent, although he stated not to remember what happened between them on 31st May 2017 and 1st June 2017. In regard to the utilities' bills, Cardona stated that the exhibited bill does not show any outstanding payments because Applicant Company settles the bills received immediately.

### **Considers further that :**

The Board is satisfied that Applicant Company owns, and had lawfully let, in favour of Responent, the commercial tenement at 51A, The Strand, Sliema. This Lease is regulated by the law applicable to leases following the enactment of Act X of 2009, set out in the Civil Code, and is therefore regulated in its entirety by the terms and conditions stipulated in the Lease Agreement. The relevant clauses of the Lease Agreement for the purposes of determining this dispute are the following :

- 1.3 The sum of equivalent three (3) months rent is being paid by the Lessee as a security deposit to the Lessor. This sum will be returned to the Lessee at the end of the lease agreement subject to clause 1.4 below.

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<sup>18</sup> Fol. 72

1.4 The Lessee has the right to terminate the Lease at any time during these two years by giving the Lessor at least three (3) months' notice in advance before the next due rent. Doing so will forfeit the deposit in favour of the Lessor.

...

6.1 All license fees, insurance, water, electricity and telephone bills shall be borne by the Lessee, together with all expenses, ancillary to the business operated by the said Lessee.

The parties are in agreement that (i) Respondent terminated the Lease before the expiration of the two-year period mentioned in clause 1.3 ; (ii) Respondent vacated the tenement around the end of May 2017, or thereabouts ; (iii) Respondent forfeited the deposit, equivalent to three months' rent, deposited with Applicant Company on the conclusion of the Lease Agreement.

The bone of contention between the parties is twofold : (i) whether Respondent failed to pay the rent due for the months of February, March and April 2017 ; and (ii) whether Respondent failed to reimburse Applicant Company with the expense of the last utilities' bill.

After having heard the testimonies of the parties involved, and considered their different versions, the Board is not convinced that Applicant Company acted in good faith in the execution of the Lease Agreement, or in raising this claim against Respondent. It is certainly not a justifiable excuse for Applicant Company that Respondent never asked for a receipt to cover the hefty rent he paid for an entire year, or more. Considering that the lessor in this case is a limited liability company, and therefore that its directors acted on its behalf presumably in its very best interest, it was certainly incumbent upon them to ensure a proper auditable trail for the receipt of the rent from Responent. That certainly was amiss in this case, considering that the rent was paid in cash, and no receipt was released to cover its settlement.

The Board is of the view that, on a balance of probabilities, the version of events as related consistently throughout these proceedings by Respondent, is more likely to reflect what actually happened between the parties. Applicant Company, and in particular its resrepresentative Stefan Cardona, certainly did not deny the text messaging communications that Respondent claimed to have passed between them, and in particular the messages sent and received during the months of February, March and April 2017, referable to the handover of the rent payments covering those months. In that context, the Board interprets his reference to *'last rent'* in his text messages sent to Respondent



to refer to the outstanding one month's rent for May 2017 which Respondent never denied to have owed, and still owe, to Applicant Company.

In regard to Applicant Company's claim for the re-imbusement of the sum of one hundred and fifty eight Euro (€158) allegedly representing utilities' outstanding payment, the Board notes that (i) no complete explanation for this claim was provided by Applicant Company ; (ii) the bill showing a total due of €135.98 which Applicant Company produced through the provider's representative refers to a period subsequent to the termination of this Lease, and Respondent vacating the tenement ; (iii) this bill shows that the previous bill was for a sum total of €106.98 and was settled on 31st July 2017, also after Respondent had already vacated the tenement ; (iv) in any case, this bill was issued without any reading of actual consumption on the electricity meter (N reading).

### **Decide**

For all the abovementioned reasons, the Board decides this cause by rejecting the first two pleas raised by Respondent, and whilst upholding his remaining pleas in so far as compatible with the aforesaid, upholds only limitedly Applicant Company's demands, and therefore condemns Respondent to pay in favour of Applicant Company the sum of one thousand and eight hundred Euro (€1,800).

Each party is to bear its own costs.

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

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