

Rent Regulation Board

Magistrate Dr. Josette Demicoli LL.D.

Raymond Zammit

vs

**Gemma Catherine Hodge and
Jemma McColgan in solidum**

Application Number: 107/17JD

Today 14th June 2021

The Board,

Having seen Applicants' Application filed before the Court of Magistrates (Malta) on 26th July 2019 by virtue of which the plaintiff requested the Court:

1. That by means of private writing dated the 15th February 2016, applicant rented property Crimson Court, Block B, Penthouse 5, Triq il-Molletta, Swieqi to respondentes, which lease was for a period of one year that is up to the 14th February 2017;
2. That the lease was terminated but when applicant took back possession of the property, it transpired that there was substantial damage to the property, which damage did not exist prior to the lease in question;
3. That the balance of the said damages amounted to one thousand, two hundred and twenty three Euros and eight cents (€1,223.08);
4. That notwithstanding having been called upon to pay such damages, respondentes failed to oblige;
5. That therefore this lawsuit had to be filed;
6. Therefore applicant respectfully asks the Board to:
 - (i) Declare that respondentes in solidum are responsible for the damage suffered by applicant in the property Crimson Court, Block B, Penthouse 5, Triq il-Molletta, Swieqi;
 - (ii) Liquidate the damages suffered by applicant in the sum of one thousand, two hundred and twenty three Euros and eight cents (€1,223.08);
 - (iii) Condemn respondentes in solidum to pay applicant the sum of one thousand, two hundred and twenty three Euros and eight cents (€1,223.08).

With costs including those of the official letter 1230/17 and precautionary garnishee order and interest from the date the abovementioned official letter against respondents who are hereby being summoned to appear for reference of their oath.

Having seen respondents' reply filed on 8th March 2018 by virtue of which they pleaded that they contest that they caused any damage to the tenement let, and insist that any « wear and tear » damages were sufficiently covered with the deposit which Applicant retained despite the termination of the lease. They contend that Applicant had abusively changed extensive units of furniture in the tenement let, when this was not required. Respondent Gemma Catherine Hodge had requested Applicant to provide proof of the damage to the furniture and tenement let, together with documentary evidence of the expenses which he incurred abusively and arbitrarily, but he always refused to comply. They further contend that Applicant never delivered to Respondents the damaged furniture.

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

Having heard the testimony of the parties and their witnesses.

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

Considers that :

Applicant is requesting this Board to declare that Respondents are responsible for damages which he contends to have suffered in his penthouse Crimson Court, Block B, Penthouse 5, Triq il-Molletta, Swieqi, amounting to €1,223.08 (one thousand two hundred and twenty three Euro and eight cents), and that this Board consequently orders Respondents to remit said sum in favour of Applicant, together with the costs of the judicial letter number 1230/17, and the garnishee order filed contextually, and with interest from the date of filing of said judicial letter.

Respondents contest that they caused any damage to the tenement let, and insist that any « wear and tear » damages were sufficiently covered with the deposit which Applicant retained despite the termination of the lease. They contend that Applicant had abusively changed extensive units of furniture in the tenement let, when this was not required. Respondent Gemma Catherine Hodge had requested Applicant to

provide proof of the damage to the furniture and tenement let, together with documentary evidence of the expenses which he incurred abusively and arbitrarily, but he always refused to comply. They further contend that Applicant never delivered to Respondents the damaged furniture.

Considers further that :

By virtue of the Lease Agreement dated 15th February 2016¹, Applicant had granted by title of lease to Respondents, the tenement Crimson Court, Block B, Penthouse 5, Triq il-Molletta Swieqi, for a term of one year until 14th February 2017, at the monthly rent of €1050 (one thousand and fifty Euro), and depositing an additional sum of €1000 (one thousand Euro) with Applicant to *'be retained by the Landlord for the duration of the lease. This will be returned to the Tenant/s at the termination of the lease, provided gthsat all the terms and conditions of this agreement have been fully satisfied. The Landlord is hereby authorized to retain fromt he said deposit, any sums which may be payable to him in terms hereof'*.²

Clause 8 provided that *'At the termination of the lease, the Tenant/s shall return the premises together with the fittings, fixtures, furniture and furnishings in a good state as they were in the beginning of the lease. If the furniture of the apartment is damaged it has to be replaced with new furniture chosen by the Landlord'*.³

Clause 26 provided that *'The Tenant/s undertakes that on termination of the lease the property is left clean and tidy including all walls in the said apartment/penthouse. Alternatively the Landlord can charge an additional sum on the rent of €120 for the painting of each room in order that the same expenses may be covered.'*⁴

This was not the original lease agreement concluded between the parties. The parties had previously also signed an inventory of the movable content of this penthouse, on 12th June 2014.⁵

In his affidavit⁶, **Applicant Raymond Zammit** declares that, when Respondents informed his Letting Manager Dennis Gatt that they were quitting the penthouse, Dennis Gatt asked to inspect it before their departure. The penthouse and its furniture content were brand new when

¹ Doc. R22, fol. 43 to 45

² Clause 4, fol. 43

³ Fol. 43

⁴ Fol. 44

⁵ Doc. R21, fol. 38 to 42

⁶ Fol. 36 to 37

this tenement was originally let to Respondents. The Letting Manager was requested to attend and inspect late in the day, and when he did so, he found that the kitchen chairs and sofa were damaged, but asked to inspect again the following morning in the daylight. The following morning, he found damage in the six kitchen chairs having leather seatings, and in the 2 seater and 3 seater sofas. They appeared scratched as if an animal had damaged their surfaces. He also found dirt on the curtains, to the extent that they required drycleaning. Six lightbulbs were not functioning, and had to be changed, and the kitchen/living area and the corridor of the penthouse had to be repainted because of the scratches and damage. They had also failed to pay electricity and water bills, and their share of the expenses for the common parts. Applicant insists that he tried hard to settle with receiving payment from the Respondents, but all his efforts were fruitless.

Applicant presented his own breakdown⁷ of the re-imbursment sought through these proceedings. He contends that he incurred the sum of €1050 for replacing the kitchen chairs, €177 and €206.50 for cleaning the curtains, changing the bulbs and for the painting works, €35.55 and €77.68 for water and electricity consumption in December 2016 and January 2017 and €631.35 for replacing the sofas, totalling to €2223.08, then deducting the €1000 deposit.⁸ He exhibited the corresponding invoices.⁹ Replacing materials were brought from Atrium, reparatory works were conducted by Ta' Kola Limited and the online billing calculator was used to calculate the dues for utilities.

In his affidavit¹⁰, **Dennis Gatt** confirms the sequence of events which Applicant related in his testimony. He confirms that he had acceded into the tenement prior to the Respondents' departure, in the presence of Respondent Gemma Catherine Hodge, and then revisited the next morning, when she was not present, and when he identified the damage to the chairs and sofas. He opines that the damages appeared similar to cat's scratches. Gatt declares that he took various pictures¹¹ of the damages, and had sent them to Respondent Gemma Catherine Hodge via email and whatsapp. Gemma Catherine Hodge disclaimed responsibility and conveyed that disagreements had developed between her and her former partner, Respondent Jemma McColgan, causing a rift between them.

⁷ Fol. 53

⁸ Fol. 53

⁹ Doc. RZ3, fol. 46 to 52

¹⁰ Fol. 54 to 55

¹¹ Fol. 56 to 60

Under cross-examination, **Raymond Zammit**¹² was requested to present the receipt for the six kitchen chairs originally bought to furnish the penthouse prior to its letting in favour of Respondents, and the receipt for the replacement two-seater and three-seater sofas which he purchased following the termination of this lease. Applicant declared that he did not offer the damaged chairs and sofas to Respondents. He explained that his Letting Manager had visited the penthouse to review the inventory and register comments thereon together with Respondents, only that they were not present when he visited and could see the contents properly in the morning. Applicant insisted that he could not communicate with Respondents because they were not taking his calls, and therefore could not ask them to clean the curtains. He was not in a position to answer in respect of the materials of the curtains, whether Respondents' exhibited emails¹³ were answered, and why he sent the judicial letter to Respondents' previous address. Applicant insisted that the judicial letter was sent to the only address that Respondents had provided, and that he did not know that it referred to their previous residence.¹⁴

When he continued to testify, Applicant¹⁵ clarified that the replacement chairs were not bought specifically for this purpose. They formed part of a bulk of chairs which Applicant had in stock, and which he had bought in 2012. The purchase was made in the name of Ta' Kola Limited, which Applicant said belongs to him. The claimed charge refers to the actual price of the chairs at the time of Respondents vacating the penthouse, not their cost price. Subsequently, he¹⁶ declared that he instructed his auditor, and also Atrium, to trace the original receipts for the purchase of the chairs. This documentation however remained unexhibited. He confirmed that the sofa was replaced with a new one when Respondents renewed the lease agreement in 2016, and that cost €700¹⁷. Applicant also confirmed that he is a shareholder of Ta' Kola Limited, which is one of his subsidiaries, and that the drycleaning and repair works were carried out by this company.¹⁸

Under cross-examination, **Dennis Gatt**¹⁹ declared that he required access to documentation pertaining to applicant to be able to make out the

¹² See testimony, 21.6.2018, fol. 68 to 76

¹³ Fol. 77 to 80

¹⁴ See testimony, 21.6.2018, fol. 81 to 84

¹⁵ See testimony, 6.11.2018, fol. 93 to 102

¹⁶ See testimony, 29.1.2019, fol. 119 to 122

¹⁷ Doc. RZ6, fol. 111

¹⁸ See testimony, 2.3.2020, fol.147a to 147c

¹⁹ See testimony, 21.6.2018, fol. 85 to 90

original purchase price of the chairs that were replaced. He declared further that he had no idea what happened to the original chairs that were removed and replaced. He denied having any authority to offer them to Respondents, and therefore did not offer them. In regard to the curtains, he said that there were five or six pairs of heavy curtains in the penthouse. He said that normally they send them for cleaning, but in this case, they had to dryclean, and Respondents did not offer to clean them, nor did they ask Respondents to do so. Gatt denied seeing, receiving or responding to Respondents' emails exhibited in the acts of these proceedings, and insisted that the decision to proceed in Court was taken by Applicant and he was not involved.

Applicant presented a legal copy of the executive judicial letter dated 23rd June 2017²⁰ which he filed against Respondents for the payment claimed in these proceedings.

In her affidavit, **Respondent Gemma Catherine Hodge**²¹ explained that she and her ex-partner Jemma McColgan had rented this penthouse in Swieqi from Applicant by virtue of an agreement dated 21st January 2013²². Then they extended the lease by virtue of another agreement dated 15th February 2016 and paid a deposit of €1000. Before this lease, they used to live at 24, Flat 1, Triq it-Terz, Swieqi. She never received the executive judicial letter, but got to know about it after the bank froze her ex-partner's monies following the issue of the precautionary garnishee order. She had to see to this matter because, in her separation agreement with Respondent McColgan, she took over full responsibility for the lease.

Respondent continued to declare that, when Dennis Gatt inspected the tenement, she was present and accompanied by a friend, Laura Raphael Spasikj²³. On that occasion, Gatt pointed out the damage to the kitchen chairs only. She refutes the allegation that she had chosen the late time for the inspection to hide the damages. She said that she had vacated the tenement before the expiration of the lease. Then, on 10th March 2017, Applicant emailed her alleging that the value of the damages exceeded the deposit. On 20th March 2017, she replied, and asked for the receipts of the chairs originally purchased. Applicant's reply dated 22nd March 2017 directed her to ask Atrium for the prices, as they had no receipts. She made it clear that this response was not acceptable, but no one replied any further and she assumed that the case was closed. She

²⁰ Doc. CP2, fol. 103 to 107

²¹ See Doc. GH3, fol. 125 to 132

²² Doc. GH, fol. 128 to 130

²³ As confirmed in the latter's affidavit, fol. 138

contends that there was no need for the chairs to be replaced – they could have been upholstered ; the curtains could have been washed and she was never allowed to do that ; the sofa did not require replacement, considering that it was replaced a year before given that the original one was of poor quality. She insists that Applicant never allowed her the opportunity to take the old items, even if she asked for them²⁴, and that she cannot vouch that the exhibited pictures reflect the damages in this particular case.

Under cross-examination²⁵, **Respondent Hodge** confirmed that she had not changed her identity card address from 24, Flat 1, Triq it-Terz, Swieqi for quite some time, and changed it only in 2019, after the termination of the lease of this penthouse. She confirmed that Gatt's inspection was carried out on the eve of the day on which she was handing over the keys of the penthouse to Applicant. By then, she had already vacated and was living elsewhere. She confirmed that she agreed to the damage of the chairs, which were scratched by her pet cat. She however denied that the cat had scratched the sofa. She confirmed that she did not clean the curtains before leaving the penthouse. In regard to the electricity bills and common parts, Respondent declared not to have known that there were pending payments. So also, she contended that she did not know she was expected to change the bulbs and to the painting. She denied causing any damage whatsoever to the sofas and insisted that, were she aware of the expected repairs, she would have done them at a much lesser cost.

Considers furthermore that :

Essentially, the bone of contention between the parties in this case is that Applicant's claim is unfounded because the damages were sufficiently compensated for through his retaining the deposit of €1000. Applicant insist that Respondents received a new tenement, with new furnishings and furniture, and that no damage reservation or comment was noted in the Inventory originally signed between the parties. From this fact, Applicant draws the consequence that Respondents were duty bound to return the tenement, and its contents, in that same condition, which he contends that they did not. Respondents insist that the damages claim in this case is exorbitant – they were not informed that they were expected to clean the curtains and paint the walls. The chairs could have been upholstered, not replaced, and the sofas did not need any replacement.

²⁴ Fol. 132

²⁵ See testimony, 25.11.2019, fol. 139 to 146

Respondents argue that this claim, if successful, will benefit unduly Applicant with an unjustified enrichment, as he was obliged to minimise losses, which he did not, and also to return the damaged items, which he also did not, despite being asked to do so.

After having considered the lengthy evidence given by Applicant, the documents which he opted to present and not to present to this Board, and the statement of facts of Respondent Gemma Catherine Hodge, the Board is of the view that the sum of €1000 deposited with Applicant, and retained by him after the termination of this lease, constitutes sufficient compensation for the damages and dues subsisting in his favour, as lessor, after the termination of this lease.

The Board is arriving at this conclusion on the grounds that :

- (a) it was incumbent upon Applicant to present the best evidence showing that the damages claimed were effectively incurred – this notwithstanding, he did not prove sufficiently the extent of alleged damage to the chairs and sofas and that they could only be remedied through replacement ;
- (b) Applicant did not justify why he did not return the damaged items to Respondents ;
- (c) Applicant did not justify why he failed to serve on Respondents an immediate exhaustive notice of the damages he contended to have incurred ;
- (d) the testimonies of Applicant and his Letting Manager contradicted each other, and did not tally with the content of written electronic communications which they had at the material time with Respondent Gemma Catherine Hodge ;
- (e) in the light of Applicant's insistence on replacing the chairs and sofas with new articles of the same kind, Respondents' request to view the original receipt for purchase and the receipt for purchase relative to the substituting articles was justified.
- (f) Whilst Applicant was not entitled to quantify his damages with the current price of the allegedly replaced chairs and sofas, but to prove his losses consisting in the actual price which he paid for the replacements, Respondent Gemma Catherine Hodge's defence that she paid for all utility bills and common parts expenses remained unproved.
- (g) Besides the failure of Applicant to present the best evidence of his actual losses, his carrying out the cleaning/painting works by virtue of his own company's Ta' Kola Limited's staff, without any supporting evidence of the services that were actually tendered, and without any pre-notification thereof to Respondents, point to a lack of good faith on his

part. Applicant's contention that he had no way of communicating with Respondents following their vacating his penthouse is not justified in the context of the documentary evidence filed before this Board showing electronic communication passing between the parties during the relevant time. Good faith required applicant to serve on Respondents a clear and exhaustive notification of the damages identified during the second visit, together with the costs of replacement/remedial action, and a request to comply. The electronic communication which Applicant denied, but is actually shown to have sent, to Respondents on 10th March 2017, and the subsequent correspondence between the parties, do not mention anything about the curtains, missing bulbs or the outstanding dues for utility services, whilst refer to one damaged sofa. Furthermore, no clear evidence of the damages allegedly caused to the sofas or the wall was presented.

Decide

For all the abovementioned reasons, the Board decides this cause by upholding the first demand, and whilst upholding also the third to sixth pleas raised by Respondent, upholds only limitedly the second and third demands of Applicant, liquidating damages in the sum of one thousand Euro (€1000), and declaring that that the obligation of payment of said compensation for damages was extinguished through set-off with the deposit retained by Applicant.

Each party is to bear its own costs.

Dr Josette Demicoli
Magistrat

Cora Azzopardi
Deputat Registratur