



RENT REGULATION BOARD

Magistrate Dr. Monica Vella LL.D., M. Jur.

Application number: 03/2017

Michael (KI 68749G) and Rita spouses Bugeja of 12, 'Alvinjohn', Triq il-Kanal, Xewkija, Gozo¹ and by virtue of a note filed on the 1st December 2017 by Mary Portelli (Identity Card number: 41862 (G) declares that she is assuming the acts of the case for the plaintiffs Michael and Rita spouses Bugeja as authorised by a power of attorney annexed as Document MP1.

Vs

¹ Translated to English in view of the order of the Board that proceedings are to be continued in English as recorded in the minute of the 23rd November 2017, a folio 40 of the proceedings.

Friedrick and Katerina Bergauer (Austrian passport number P3862191 and P2671591);

Marc-Alexander Bergauer and Leeni Ojaniemi (Austrian Passport number P7145891 and Finnish Passport number PV887921)

5, Ta' Pasura, Saint Elia Street, Xewkija, Gozo.

Today, the 12th October 2023

The Board;

Having seen the application² filed by applicants on the 25th of October 2017 which states:

“Jesponi bir-rispett u bil-gurament jikkonferma:-

- 1. Illi l-atturi huma sidien tal-fond numru hamsa (5), “Ta’ Pasura”, Triq Sant Elia, Xewkija, Ghawdex;*
- 2. Illi permezz ta’ skrittura tas-sittax (16) ta’ April elfejn u sittax (2016), l-atturi krew a favur tal-intimati, l-istess fond numru (5), “Ta’ Pasura”, Sant Elia Street, Xewkija, Ghawdex, (kopja tal-iskrittura annessa u mmarkata bhala Dok. A);*
- 3. Illi skont l-ewwel (1) klawnsola ta’ din l-iskrittura, il-kirja saret ghal terminu ta’ sena, versus hlas ta’ kera ta’ elf u sebgha mitt euro (€1,700) fix-xahar, liema kera kellha tithallas kull xahar bil-quddiem;*

² A folio 1 of the proceedings.

4. *Illi skont klawnsola hdax (11) subinciz (a)(i) tal-iskrittura, is-sidien kellhom il-jedd li jitterminaw il-kirja f'kaz li l-kera ma tithallasx fi zmien ghaxar (10) t'ijiem minn meta l-intimati jigu nterpellati jhallsu dak dovut permezz ta' ittra rregistrata;*
5. *Illi inoltre, skont klawnsola sitta (6) subinciz (a) tal-iskrittura, l-ispejjez ta' konsum relatati mal-fond kellhom jithallsu mill-kerrejja u ghal din ir-raguni kellhom jithallsu mitt euro (100) fix-xahar flimkien mal-kera, liema ammont kellu jigi aggstat skont l-ammont dovut fil-kontijiet rispettivi;*
6. *Illi skont klawnsola tlettax (13) subinciz (e) tal-istess skrittura, f'kaz li l-kerrejja jonqsu li jivvakaw il-proprjeta` mikrija meta l-kuntratt jigi tterminat, il-kerrejja intimati kellhom ihallsu s-somma ta' mitt euro (€100) ghal kull gurnata bhala piena sakemm jivvakaw il-proprjeta`;*
7. *Illi l-intimati waqghu sostanzjalment lura fil-hlas tal-pagamenti tal-kera dovuti. Fil-fatt, l-ahhar pagamenti li hallsu kienu l-pagamenti ta' kera dovuti sa` Marzu elfejn u sbatax (2017) u l-kontijiet tad-dawl u ilma dovuti sal-hamsa u ghoxrin (25) ta' Lulju elfejn u sbatax (2017);*
8. *Illi prezentament, il-bilanc ta' kera dovut huwa fl-ammont ta' hdax-il elf u disgha mitt euro (€11,900);*
9. *Illi inoltre, minkejja li l-intimati gew prezentati bil-kontijiet tad-dawl u ilma rizultanti mid-dokument anness bhala Dok B, li jammontaw ghal mitejn u tletin euro u tmienja u tmenin centezmu (€230.88), l-intimati naqsu ukoll milli jeffettwaw il-hlas relattiv;*
10. *Illi l-intimati gew interpellati permezz ta' ittra registrata datata tmienja u ghoxrin (28) ta' Settembru elfejn u sbatax (2017) (kopja annessa u mmarkata bhala Dok C) sabiex fi zmien ghaxar (10) t'ijiem huma jhallsu dak dovut u gew infurmati li f'kaz li dan ma*

jsehxx, l-esponenti kienu qed jitterminaw il-kirja in kwistjoni u li kienet se tibda tapplika l-imsemmija penali, izda minkejja tali interpellazzjoni l-intimati baqghu inadempjenti;

11. Illi l-intimati gew ukoll avzati b'dan kollu permezz ta' ittra ufficjali datata tnejn (2) ta' Ottubru tas-sena elfejn u sbatax (2017) (Ittra Ufficjali 449/2017) (kopja hawn annessa u mmarkata bhala Dok D), izda l-intimati nonostante baqghu inadempjenti;

12. Illi l-esponenti m'ghandhomx ghazla ohra hlief li jipprosegwu ghat-terminazzjoni tal-kirja msemmija, u dan ghas-semplici ragunijiet illi: (a) huwa evidenti li l-intimati qed izommu l-pussess tal-fond lokatizju u jikkonsmaw dawl u ilma mill-istess fond bl-iskop li jaghmlu dan kollu a spejjez tal-esponenti; (b) aghar minn hekk, l-intimati huma barranin li behsiebhom jitolqu mill-pajjiz fil-granet li gejjin, u dana bil-konsegwenza li jkun ferm diffiqli, jekk mhux impossibbli, ghall-esponenti li jirkupraw il-hlas dovut lilhom, Ghaldaqstant, huwa important ghall-esponenti li l-intimati jigu zgumbrati kemm jista` jkun malajr mill-fond lokatizju, sabiex l-intimati ma jkomplux japprofittaw irwiehhom minnhom;

13. Illi in vista ta' dan kollu, l-esponenti jixtiequ jitterminaw il-kirja fuq imsemmija, kif ukoll li ssir ordni biex l-intimati jhallsu l-arretrati ta' kera, jhallsu l-kontijiet tad-dawl u ilma, jhallsu l-penali ta' mitt euro (€ 100) ghal kull gurnata sakemm jivvakaw l-imsemmi fond u li inoltre huma jhallsu kumpens ghal kwalunkwe okkupazzjoni ulterjuri li huma jzommu tal-fond lokatizju.

14. Illi precedentament ghal dan ir-rikors, ir-rikorrenti ipprezenta talba quddiem dan l-istess Onorabbli Bord ghall-hrug ta' mandat ta' qbid sabiex jigu maqbuda mobbli proprjeta' tal-intimati li

jinsabu fil-fond mikri in garanzija tal-hlas dovut u dana permezz tal-Mandat ta' Qbid numru 133/2017;

15. *Illi ghar-ragunijiet hawn fuq spjegati jezistu l-elementi kollha rikjesti mil-ligi ai termini tal-Artikolu 16A tal-Kapitolu 69 tal-Ligijiet ta' Malta sabiex dan l-Onorabbli Bord jilqa` dawn it-talbiet ghal zgumbrament u ghall-hlas bi proceduri sommarji specjali li fihom is-sentenza ghandha tinghata fl-ewwel dehra fil-kawza jekk l-intimati jkunu kontumaci f'dik is-seduta u anke ghaliex l-intimati m'ghandhom ebda difiza valida x'jaghtu ghal dawn it-talbiet, u dan kif konfermat ukoll fid-dikjarazzjoni guramentata (Dok E) li qed tigi pprezentata flimkien ma' dan ir-rikors.*

16. *Illi l-esponenti jafu b'dawn il-fatti personalment.*

Ghaldaqstant, l-esponenti umilment jitolbu li, prevja kwalsiasi dikjarazzjoni necessarja u opportuna, dan il-bord joghgbu;

- (i) *Jisma' u jiddeciedi skont it-talba bid-dispens[a]³ tas-smiegh tal-kawza a tenur tal-Artikolu 16A tal-Kapitolu 69 tal-Ligijiet ta' Malta, u*
- (ii) *Jiddikjara illi l-intimati ghandhom jhallsu lill-atturi jew min minnhom l-ammont ta' tnax-il elf mija u tletin euro u tmienja u tmenin centezmu (€12,130.88) rapprezentanti kwantu ghal hdax il-elf u disa' mitt euro (€11,900) arretrati ta' hlas ta' kera u kwantu ghall-bilanc ta' mitejn u tletin euro u tmienja u tmenin centezmu (€230.88) hlas ghal servizzi u konsum ta' dawl u ilma fuq il-fond;*
- (iii) *Jikkundanna lill-intimati jhallsu lill-atturi jhallsu dan l-ammont ta' tnax il-elf mija u tletin euro u tmienja u tmenin*

³ Errata corrige

centezmu (€12,130.88) rapprezentanti kwantu ghal hdax il-elf u disa' mitt euro (€11,900) arretrati ta' hlas ta' kera u kwantu ghall-bilanc ta' mitejn u tletin euro u tmienja u tmenin centezmu (€230.88) hlas ghal servizzi u konsum ta' dawl u ilma fuq il-fond;

- (iv) Jordna illi l-kuntratt lokatizzju jigi terminat skont il-klawzoli hdax (11) subinciz (e) u sitta (6) subinciz (a) tal-kuntratt lokatizzju msemmi;*
- (v) Konsegwentament, jordna li l-intimati jizgombraw mill-fond numru hamsa (5), Ta' Pasura, Sant Elia Street Xewkija, Ghawdex fi zmien li jigi stabbilit minn dan l-Onorabbli Bord;*
- (vi) Jiddikjara u jiddeciedi wkoll illi l-atturi ghandhom id-dritt li jigu kkumpensati mill-intimati ghall-okkupazzjoni minnhom tal-fond fuq imsemmi mid-data tax-xoljiment tal-kirja tal-fond sad-data tal-izgumbrament effettiv, skont rata ta' kumpens stabbilit u likwidat mill-istess Bord, flimkien mal-penali ta' mitt euro (€100) ghal kull gurnata sakemm l-imsemmi fond jigi vakat.*
- (vii) Jikkundanna lill-intimati jhallsu lis-sidien atturi din is-somma hekk likwidata in linea ta' kumpens.*
- (viii) Bl-ispejjez kollha inkluzi dawk tal-ittra ufficjali numru 449/2017 kontra l-intimati, dawk tal-mandat ta' qbid numru 133/2017 u bl-imghax legali mid-data ta' kull skadenza sal-pagament effettiv, kontra l-intimati li huma minn issa ngunti ghas-subizzjoni.*

Ir-rikorrenti jirriservaw kwalunkwe rimedju u dritt iehor spettanti lilhom skont il-kuntratt u l-ligi.”

Having seen the documents annexed with the application consisting of the rent agreement Dok A, the copy of the utility bill Dok. B, copy of legal letter Dok. C, copy of judicial letter Dok. D, Affidavit of Michael Bugeja Dok. E annexed with the application⁴.

Having seen the decision of the Board as previously presided, as recorded in the minute of the sitting of the 23rd November 2017⁵, whereby the Board rejected the request of the applicant that the case be treated summarily and allowed the respondents to file a reply.

Having seen the reply of the respondents⁶ whereby they submitted respectfully:

“1. That preliminarily, the pretensions emanating from this application are null and void given that these are based on the premise that there was a rent agreement which has been expired and that was not extended or renewed in writing as established by Article 1531A of Chapter XVI of the Laws of Malta;

2. That consequently, any plea for the payment of rent, or any issue emanating after the expiration of the lease agreement, that is on the first (1st) May, 2017 is null and void and cannot be accepted;

3. That preliminarily, without prejudice to the above, the applicants did not possess any licence to lease out the property in question under the relative regulations in force namely but not limited to Chapter 409 of the Laws of Malta;

⁴ A folio 7 - 33 of the proceedings.

⁵ A folio 40 of the proceedings.

⁶ A folio 43 of the proceedings.

4. That in the merits, without prejudice to the above, the parties were in continuous discussions between themselves in order to sort out a number of issues about the property, and to this effect the defendants were staying in the property with the full acceptance of the applicants as will be shown throughout this application;

5. That the payment of rent up till the expiration of the lease agreement, namely up till the first (1st) May, 2017 has-been paid to the full and in fact the applicants have retained the deposit of one thousand and seven hundred Euro (€1,700.00) equivalent to one (1) month's rent against the payment of the rent for the month of April, 2017;

6. That the plea for the payment of the balance of two hundred and thirty Euro and eighty eight cents (€230.88) representing the consumption and services of electricity and water in the property has been duly paid up and thus the said plea has been duly satisfied:

7. That similarly, the defendants have evicted the property in question, 5, "Ta' Pasura", Triq Sant'Elia, Xewkija, Gozo and consequently, the fifth (v) plea is also unnecessary;

8. That with respect to the payment of compensation and penalty of one hundred Euro (€100) for every day, is similarly unfounded, given that in the first place, the legal pre-requisite that the lease agreement has to be drawn in writing as established by Article 1531A of Chapter XVI of the Laws of Malta has not been adhered to and secondly, the defendants were only notified of the intentions of the applicants on the fifth (5th) October, 2017, at which time, the defendants had no difficulty to vacate the premises de quo as they effectively did;

9. That consequently, the pleas of the applicants are unfounded in fact and at Law and therefore should be rejected;

Saving for any other defence pertinent to the defendants at Law, which may be brought forward by the defendants during the course of these procedures.”

Having seen the note of Mary Portelli whereby she assumed the acts of the case as attorney to the applicants in view of the relative power of attorney thereby annexed⁷.

Having seen all the records of the case.

Having seen all the affidavits brought forward.

Having heard the testimonies in cross-examination.

Having read, examined and evaluated all the evidence brought in the proceedings.

Having seen the note of submissions of the applicants⁸.

Having seen that the case was adjourned for judgement for today.

Considered:

The Facts in Brief

The applicants in this case had leased the premises number 5, Ta' Pasura, Saint Elia Street, Xewkija, to the respondents for a period of one year, as results from the lease agreement Dok. A a folio 7 of the proceedings. The rent payable was of one thousand and seven hundred Euro (€1,700) per month, payable in advance. Payment of utilities was at one hundred Euro (€100) per month payable over and above the rent and then an adjustment was to be made as to the actual amount due⁹.

⁷ A folio 41 of the proceedings.

⁸ Respondents did not file a note of submissions.

⁹ Paragraph 6 of the agreement, folio 11 of the proceedings.

During the period of lease there arose some issues between the parties, in particular as to the provision of air conditioners, the respondents continued in occupation of the said property, even after the expiration of the one year period of lease. The parties during the time were trying to reach an agreement for a further period of lease. This agreement, however, was not reached and on the 23rd November 2017, respondents' legal counsel registered in the acts of the proceedings that a payment for utility bills at the amount of two hundred and thirty Euro and eighty eight cents (€230.88) had been made to the applicants and that the respondents had vacated the premises and that the keys were to be returned to the applicants' legal counsel that same day. Thus, the respondents continued to occupy the premises and to hold the keys of the same premises until the 23rd November 2017.

Considered:

Preliminary Pleas

The respondents have brought forward three preliminary pleas, or at least pleas number four onwards are declared to be on the merits.

The **first preliminary plea** reads as follows:

“1. That preliminarily, the pretensions emanating from this application are null and void given that these are based on the premise that there was a rent agreement which has been expired and that was not extended or renewed in writing as established by Article 1531A of Chapter XVI of the Laws of Malta;”

Considered:

Article 1531A of Chapter XVI of the Laws of Malta states:

“1531A.(1) With regard to the letting of an urban property, a residence and a commercial tenement made after the 1st January,2010, the contract of lease shall be made in writing and shall stipulate:

(a) the property to be leased;

(b) the agreed use of the property let;

(c) the period for which that property will be let;

(d) whether such lease may be extended and in what manner;

(e) and also the amount of rent to be paid and the manner in which such payment is to be made.

(2) In the absence of one or more of these essential requirements, the contract shall be null.

(3) The lease of an urban property, a residence and a commercial tenement made after the 1st January, 2010 shall be regulated exclusively by the contract of lease and by the articles of this Code:

Provided that private residential leases shall be regulated by the Private Residential Leases Act Conditions for letting of private residential lease.”

As also indicated by the short note on the side this proviso was *“Added by:XXVIII.2019.39.Cap.604.”*

Considered:

The Board will first consider this plea from a point of law.

This case is a consequence of the lease agreement entered between the parties on the 16th April 2016, the occupation of the lessees following the said agreement and the continued occupation of the lessees upon its expiration and until 23rd November 2017 when the keys of the property

were to be returned to the applicants' Legal Counsel. Thus there is no doubt that the proviso to Article 1531A which was added by Act XXVIII of 2019 and therefore, also Chapter 604 of the Laws of Malta, does not apply to this case.

Article 1531A states that the letting of an urban property is to be made in writing and also lists the requisites ad validitatem which such writing is to include. Subsection 2 of the same Article declares that if any one requisite is missing, then the writing is null. Subsection 3 then states that the lease of an urban property made after January 2010 is regulated exclusively by the agreement made between the parties and the articles of the Civil Code.

The respondents submit that since the lease agreement between the parties had expired, and it was not renewed, then there was no valid agreement between the parties.

The Board makes reference to Article 1536 of the Civil Code which states:

*“(1) If, at the expiration of the lease¹⁰, the lessee continues and is suffered to continue in the enjoyment of the thing let to him, **the lease shall be deemed to be renewed on the same conditions and with the same rights and duties, for a period to be regulated in accordance with the provisions of article 1532¹¹**, except as regards rural tenements with respect to which the lease shall be deemed to*

¹⁰ Emphasis of the Board

¹¹ Ibid

be renewed for the period which is necessary for the gathering of the produce of one year:

Provided that where the rent is payable in termly payments, the lease, except as regards rural tenements, shall be deemed to be renewed for a time corresponding to the period of one term only:

Provided further that in case of private residential leases under the Private Residential Leases Act, the lease shall be deemed to be renewed in accordance with the said Act.

(2) The provisions of sub-article (1) do not apply with regard to lease of urban, residential and commercial property entered into after the 1st January 2010:

Provided that private residential leases under the Private Residential Leases Act shall be regulated in accordance with the said Act.

The Board deems that this Article is applicable in this case. Subsection 1 clearly makes reference to how the situation is to be regulated when an agreement has expired and the lessee continues in the enjoyment of the property, as has happened in this case in front of the Board.

With regard to subsection 2, the inapplicability of subsection (1) is qualified by the proviso of subsection 2 which provides that private residential leases are regulated in accordance with the Private Residential Leases act. This proviso came into being through Act XXVIII of 2019, again years after the signing of the agreement between the parties. Thus there is no doubt that Chapter 604 does not apply in

this case since it came into force years after the signing of the agreement between the parties. It is clear that the agreement between the parties is regulated by the laws in force at the time of the signing of the lease agreement.

The Board hereby also makes reference to Article 16 subsection (4) Of Chapter 69 of the Laws of Malta, The Reletting of Urban Property (Regulation) Ordinance which states:

*16.(4) Without prejudice to any other law the Board shall also decide all matters affecting the leases of urban property including residential as well as commercial property in terms of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, including causes relating to the occupation of urban property **where such leases have expired after the termination of the rent, and any damages resulting during such period of occupation**¹² ...”.*

It is therefore clear that the law provides for cases, such as the one before the Board, whereby a lease agreement has expired and there are pending issues between the parties and the law also provides for the determination of such pending issues.

Moreover, when one considers the facts which gave rise to this case, this plea also cannot succeed and does not hold water and this in view of the following reasons:

1. Both parties, including lessees themselves, agree that there was a signed agreement between them.

¹² Emphasis of the Board

2. The agreement has been exhibited and lessees do not contest that agreement. They only argue that it is expired.
3. Notwithstanding the agreement expired, lessees continued in occupation of the premises, for a number of months with the idea that a new agreement will be signed with some changes and they would continue to occupy the premises.
4. Only when it was clear that the lessors were not going to install the air conditioners and photovoltaic panels requested by the lessees, did the lessees decide to leave the premises and this without informing the lessors of their intention to leave.
5. Thus it is clear that up until then, the intention of both parties was to continue to lease out the property both on the side of the lessors as well as the lessees.

Therefore, it is also clear that the lessees are to pay at least the rent as agreed in the lease agreement and this for the period of time they remained in occupation of the property, whether or not a renewal or a fresh lease was signed. Were this not to be so, this would result in a case of unjustified enrichment, whereby the lessees continued in the occupation of the property free of charge and without paying a corresponding rent, and this to the detriment of the lessors.

For the above reasons, the Board therefore decides that the first preliminary plea submitted by the respondents cannot be accepted and is being rejected by the Board.

The **second preliminary plea** reads as follows:

2. That consequently, any plea for the payment of rent, or any issue emanating after the expiration of the lease agreement, that is on the first (1st) May, 2017 is null and void and cannot be accepted;

As indicated by the wording of this second plea, this second plea is a consequence of the first plea submitted by the lessees. Therefore, since the first plea is not acceptable for the reasons indicated and as explained above, for the same reasons this second plea is not acceptable and is being rejected by the Board.

The **third preliminary plea** reads as follows:

“3. That preliminarily, without prejudice to the above, the applicants did not possess any licence to lease out the property in question under the relative regulations in force namely but not limited to Chapter 409 of the Laws of Malta;”

The respondents did not amplify on this plea. The board will therefore examine this plea in the light of Chapter 409 of the Laws of Malta. Chapter 409 is The Malta Travel and Tourism Services Act. The title itself of this law speaks for itself. It is clear that this act regulates travel and tourism services. The preamble to the act reads: “To make provision for the promotion of tourism, for the regulation of tourism services and operations, for the establishment of an authority with powers to that effect and for matters connected therewith or ancillary thereto.”

The Board has examined the said law and there is not one single reference to a residential lease, or to a long term lease, as is the case of the lease agreement and the relationship between the parties in this case

before the Board. There is no doubt that the respondents are not locals, but there is also no doubt that the respondents did not lease the said property for a holiday as tourists, but for residential purposes while they are living here in Malta. In their affidavits they declare that their intention at the time was to retire in Gozo and they were therefore seeking a long term lease¹³. It is therefore, obvious that the respondents are not tourists, since even after vacating the said property they sought to take up residence elsewhere and as a matter of fact are still living here in Malta.

The Board therefore, deems that Chapter 409 does not apply to this case. Moreover, even if it were to apply, the respondents did not bring forward any evidence whatsoever to sustain their allegation that the applicants did not possess any license whatsoever to lease the said property. Thus the said plea remains a mere allegation and therefore, even on this ground cannot be accepted by the Board.

Thus, the Board is also rejecting this third preliminary plea.

The Board will now pass on to examine the case on its merits.

Considered:

Proof

The applicants presented a note with three affidavits¹⁴, that of Michael Bugeja¹⁵ and Rita Bugeja¹⁶ both lessors, together with various

¹³ A folio 87 paragraph 2,3 and 4 and a folio 94 where Mrs Bergauer confirmed her husband's affidavit.

¹⁴ A folio 46 of the proceedings

¹⁵ A folio 47 of the proceedings

¹⁶ A folio 51 of the proceedings

documents RB1 to RB20¹⁷ to substantiate their affidavits and that of Mary Portelli, their attorney in these islands. They also presented another note with the affidavit of Carmel Portelli¹⁸.

The respondents presented their affidavits, Dok A and Dok B¹⁹ together with another document marked Dok B being a picture of a rug described as a persian rug in the respondents' affidavit and Dok. C, D, E²⁰ being a transcription of messages which passed between the parties.

The respondents cross-examined the applicants²¹ and Mary Portelli ²².

The applicants cross-examined the respondent Fredrick Bergauer²³.

In the hearing of the 27th February 2020, applicants requested that the acts of the Warrant of Seizure number 133/2017 in the same parties' names be attached to these proceedings. The Board acceded to that request.

No further evidence was produced by either party.

¹⁷ A folio 55 to 74 of the proceedings

¹⁸ A folio 80 of the proceedings

¹⁹ A folio 86 of the proceedings

²⁰ A folio 90 – 93 of the proceedings

²¹ A folio 101 of the proceedings

²² A folio 111 of the proceedings

²³ A folio 118 of the proceedings

Considered:

Upon examining and analysing the testimony and cross-examinations of the parties it results that both parties stuck to their version of events and their point of view of how this issue developed between them.

From the evidence in the acts of the proceedings it results that:

1. Applicants leased the property 5, Ta' Pasura, Saint Elia Street, Xewkija, Gozo, to the respondents, for a period of one year from the 1st May 2016 to the 1st May 2017 for the amount of one thousand and seven hundred Euro (€1,700) per month payable monthly in advance, as results from the contract attached and marked Dok A.
2. Respondents were always late in payment and did not pay monthly in advance according to contract, clause 1 (b).
3. After signing the contract, on the 26th May 2017, the respondents made their first payment of rent in the amount of rent for one month and a deposit of one hundred Euro for water and electricity for the first month at one hundred Euro (€100) per month according to clause 1(b) and 6(a) of the contract.
4. Mary Portelli called on respondents on various occasions requesting payment and at the end of each month, even leaving notices in the letterbox reminding them that the rent was due, but to no avail.
5. Applicants are claiming that the last rent payment was made for the month of February 2017 and therefore respondents are to pay rent in arrears as from March 2017 to October 2017.
6. Since the respondents were amply late in the payment of rent, the applicants sent them a legal letter requesting the payment of rent arrears and all dues for water and electricity and also informing the

respondents that they were to vacate the property and that the penalty clause for mere delay was being put into effect.

7. Since the respondents gave no heed to this legal letter, the applicants also filed a judicial letter against the respondents to the same effect.

8. The respondents vacated the property first week of November 2017 while the keys to the property were later on the 23rd November 2017 declared to be returned to applicants' legal counsel, during the first court hearing.

9. Applicants presented photos of damages to the property and expenses they suffered so as to fix the said damages, flight expenses as well as truck renting expenses with reference to the Warrant of Seizure they filed against the respondents.

10. Respondents do not contest applicants' claim that the last payment of rent was made for the month of February 2017. Nor do they contest applicants' claim that they remained in occupation of the property until October 2017, even though they declare that they were trying to negotiate the installation of air conditioners and photovoltaic panels with the applicants so as to remain in occupation of the said property. This negotiation however, never materialised.

11. Respondents' claim that they offered ten thousand and six hundred Euro in full settlement so as to reach an amicable settlement, however this was not accepted.

12. Applicants declare that they had to file a warrant and a lawsuit since they had no reply for the legal letter, nor the judicial letter and then they found out that the respondents were leaving the property, and they had as yet not paid what was due.

Considered:

This case involves a dispute between the parties whereby the applicants are requesting this Board to condemn the respondents to settle in their favour the alleged outstanding balance of twelve thousand and one hundred and thirty Euro and eighty eight cents (€12,130.88) representing eleven thousand and nine hundred Euro (€11,900) in rent arrears and two hundred and thirty Euro and eighty eight cents (€230.88) as payment of a utility bill.

From the evidence brought by both parties it results that there was a lease agreement between the parties. The lease agreement had expired. However, the respondents continued to occupy the premises while trying to negotiate terms with the applicants such as the installing of the air conditioners with the intention of continuing with the lease.

There is no doubt that the respondents were late in the payment of rent for the months of March and April 2017. There is also no doubt, and no contestation that as a matter of fact they continued occupying the property and this at least until October 2017. Therefore, for the reasons explained above it is clear that respondents are to pay the rent also for the months from May 2017 to October 2017. The Board deems that the respondents should pay the same amount of rent per month as agreed in the lease agreement, that is one thousand and seven hundred Euro per month, for each month or part thereof that they continued in occupation of the premises.

The applicants in their affidavit presented a schedule of the payments which in their opinion are due, which schedule²⁴ is claiming a balance of sixteen thousand and one hundred and twenty two Euro and forty nine cents (€16,122.49).

It is clear that the Board cannot entertain any amount other than that requested in the demands made by the applicants in the application itself whereby they instituted this case. This, since the Board is bound by the parameters of the case as set out by the applicants in their application and also by the pleas submitted by the respondents to that application.

Moreover, there was no application made to the Board during the course of the proceedings for an adjustment of the amount being claimed, thus the Board can only entertain the original amount claimed in the application.

Furthermore, in their application, the applicants did not make any claim for payment of damages, neither for reimbursement of expenses in connection with the flight changes they made. Thus, the Board, for the same reasons, cannot give any remedy in this regard, and this without prejudice to the applicants' rights to any such claims.

The Board in this regard also notes that in the very first sitting held on the 23rd November 2017 Legal Counsel for respondents declared that respondents have paid the utility bill in the amount of two hundred and thirty Euro and eighty eight cents and this without prejudice. It was also

²⁴ A folio 50 of the proceedings

declared that respondents have vacated the premises and that the keys were to be returned that very same day to applicant's legal counsel²⁵.

The Board also notes that the respondents declared that they vacated the property in October, however the keys of the property were declared to be returned to applicants' Legal Counsel on the 23rd of November, 2017, that is on the same day of the first court hearing.

The Board will therefore be making its own computation to reach the amount which is to be paid by the respondents and this computation will be based on the parameters of the demands made by the applicants.

The Board deems it fair and just that the respondents continue to pay the same rent as agreed in the lease agreement and this for the period of time they remained in occupation of the property after the expiration of the lease.

Therefore, the rent due from March 2017 to October 2017 at €1,700 per month amounts to €13,600 and pending bill as claimed €230.88²⁶ total €13,831.88. However, since the second demand of the applicants in their application was limited to the amount of twelve thousand and one hundred and thirty Euro and eighty eight cents (€ 12,130.88)²⁷, the Board can only award that amount.

With regard to the sixth demand of the applicants, the Board deems that the payment of the amount liquidated above, based on the fair rent as

²⁵ A folio 40 of the proceedings.

²⁶ Though respondents' Legal Counsel, in the sitting of the 23rd November 2017, stated that that bill had been paid, no proof of payment of the same was brought forward.

²⁷ See (ii) a folio 4 of the proceedings

had been agreed by the parties is sufficient compensation for the continued occupation of the property by the respondents and no further compensation is to be liquidated. Otherwise, the respondents would be paying twice for their continued occupation of the premises.

Considered:

With regard to the payment of the penalty for mere delay, this is specifically provided for under Article 1121 and 1122 of the Civil Code, forming part of the title which regulates penalty clauses, which Article states:

“1121.(1) Where the obligation consists in forbearing to do something, the penalty becomes due as soon as the contravention takes place.

(2) Where the obligation could not be performed except at a certain time, the penalty shall be incurred as soon as such time expires, unless another time has been fixed by agreement.

(3) In any other case, the penalty shall be incurred when the debtor is put in default as provided in article 1130.

1122.(1) It shall not be lawful for the court to abate or mitigate the penalty except in the following cases:

(a) if the debtor has performed the obligation in part, and the creditor has expressly accepted the part so performed;

(b) if the debtor has performed the obligation in part, and the part so performed, having regard to the particular circumstances of the creditor, is manifestly useful to the latter. In any such case, however, an abatement cannot be made if the debtor, in undertaking to pay the penalty, has expressly waived his right to any abatement or if the penalty has been stipulated in consideration of mere delay.”

Article 1130 states:

“1130.(1) Where the obligation is to give or to do, and a time is fixed in the agreement, the debtor is in default by the mere lapse of such time, saving, as regards the payment of interest under article 1141, the provisions of that article.”

Clause 13 (e)²⁸ of the lease contract provides: *“Where for whatever reason, the Lessees fails to vacate the Property within the applicable period set out in the agreement, the Lessees shall pay unto the Lessors, the sum of Euro one hundred (€100) for every day or part thereof of such delay and this by way of penalty for mere delay, which penalty shall not be subject to any review, revision or abatement by any Court of Law;”*

Thus, according to this clause, in order that the penalty for mere delay comes into effect, there should have also been set an applicable period within which the Lessees were to vacate the property once the lease agreement had expired.

The agreement however does not provide for any such applicable period within which the Lessees were to vacate the premises after the expiration of the lease.

The Board notes that in paragraph (e) of the agreement, the parties chose to provide a different condition in that paragraph (e) does not provide that upon the expiration of the period of lease (as does paragraph d) the penalty clause comes into effect. If this were so, the penalty clause would have been worded in this manner, in the same

²⁸ A folio 144 of the proceedings

manner as is worded Article 13 (d), which states “Upon the expiration of the period of the Lease...”.

Considering that the parties made such a differentiation, in the wording of paragraph (d) and (e), then the Board deems that the intention of the parties was not that the penalty clause comes into effect upon the expiration of the lease period, since it would have been very easy for the parties to stipulate so in the agreement as they actually did in paragraph (d). However, in paragraph (e) which regulates the penalty clause the parties did not stipulate that it comes into effect upon expiration of the lease period, but that it comes into effect upon failure of the lessees to vacate the property “within the applicable period set out in this agreement”.

This therefore, can only mean that the parties did not intend for the penalty clause to come into effect upon the expiration of the lease period but that they intended to have an applicable period set out in the agreement which would trigger the coming into effect of the penalty clause.

Thus, according to the said wording, the agreement was to provide “an applicable period” for the penalty clause to come into effect.

Thus, the demand for the liquidation of the penalty for mere delay is being rejected, since in accordance with such clause the penalty clause could not and did not come into effect.

Decides:

Consequently, for these reasons, the Court, hereby:

1. Refrains from pronouncing itself further on the first demand since this had already been decided at the first hearing of the case; and
2. Accedes to the second demand of the applicants and declares that the respondents are to pay to the applicants the sum of twelve thousand and one hundred and thirty Euro and eightyeight cents (€12,130.88) representing the rent arrears and the balance for utility bills in the amount of € 230.88; and
3. Accedes to the third demand of the applicants and condemns the respondents in solidum, jointly and severally, between them to pay to the applicants the sum of twelve thousand and one hundred and thirty Euro and eightyeight cents (€12,130.88) representing the rent arrears and the balance for utility bills in the amount of €230.88; and
4. Accedes to the fourth demand of the applicants and declares the contract of lease between the parties terminated; and
5. Abstains from pronouncing further on the fifth, sixth and seventh demand for the reasons explained above and since it has resulted that the respondents have evacuated the said property within days the institution of this case; therefore, rejects the same demands.

With legal interest, from the date that this judgement becomes res judicata until the date when effective payment is received by the applicants, against the respondents.

And with costs of this procedure, and those of the judicial letter number 449/2017, and those of the Warrant of Seizure number 133/2017 in the name of the same parties against the respondents.

Magistrate Dr. Monica Vella LL.D., M. Jur.

Chairman

Mary-Jane Attard

Deputy Registrar