



THE SMALL CLAIMS TRIBUNAL

ADJUDICATOR
AVV. DR. DUNCAN BORG MYATT

Today the 26th February 2024

Claim Number 334/2020

CHRISTIAN PREUSS
AND BY VIRTUE OF A DECREE DATED 29TH NOVEMBER 2021,
ERIKA SCHEIDIGGER
WAS ADDED.

VERSUS

LISA MARIE INGLIS

THE TRIBUNAL,

Saw the Notice of Claim filed by the claimant on the 18th December 2020 whereby plaintiff asked this Tribunal to condemn defendant as responsible for the damages caused to the plaintiff and to consequently liquidate the damages caused to the plaintiff to which the defendant is responsible in the amount of five thousand Euro (Eur 5,000.00) or any other amount if necessary together with all expenses.

Saw defendant's reply dated 24th March 2021, whereby defendant has repudiated all plaintiff's claims as being unfounded both in fact and in law since defendant is not responsible for any damages and consequently there are no damages to be liquidated and paid.

Saw the sworn declarations of plaintiff, defendant, Erika Scheidegger and Amanda Atkins.

Saw all documents and evidence presented.

Saw the note of submissions filed by both parties.

Saw that this case has been adjourned for judgment.

Facts of the Case

The Tribunal will make a summary of the evidence produced before and which it considers as important for its considerations of the case.

Plaintiff, Christian Preuss presented an affidavit in which he states that he resides in Zurich but owes some properties in Malta which he leases out. Given that he resides in Zurich, in 2014 he had employed a friend of his, Lisa Inglis, as a property manager to lease out the property, "Marble Arch", Block B, Apartment 7, Triq Lapsi, St.Julians to Sandro Bianchi and Klara Stankovic.

Plaintiff states that as part of her job as property manager, defendant had to collect the rent every month on plaintiff's behalf which amounted to Eur 1000 a month, managing maintenance, paying bills, collecting postal letters received and taking care of any other issues related to the said rented property.

Defendant's contract was extended for another period of three years since plaintiff was happy with the way things were being handled. However, plaintiff says that following the contract extension, he became aware that the rent was not being collected every month. Plaintiff states, *"I paid Lisa an extra fifty Euro fee in addition to her monthly salary for every rent payment collected. I also became aware that the fee was being deducted regardless as to whether or not the rent was collected."* (Fol.36)

Plaintiff states that defendant had also informed him that due to numerous pending bills, Enemalta were going to stop the provision of electricity and water. This notwithstanding that, according to the agreement between plaintiff and defendant, a deposit of Eur 150.00 was to be collected to cover these utility bills.

Once plaintiff managed to come over to Malta, he found that there were numerous breakages and damages in the property which he was never made aware of. Plaintiff suggested to defendant that they should seek a lawyer but *"Lisa was very reluctant and therefore we did not seek any advise."*

Defendant had let the lessees to keep their dog in the apartment, even though the lease agreement prohibited this. Furthermore, plaintiff states that defendant had paid for additional things without his authorization, such as handyman services, painting and other things which, according to plaintiff, should have been paid directly by the tenants.

Defendant had agreed to contact a lawyer to seek a settlement with the tenants with regards to these damages and unpaid lease. Plaintiff states, *"Whilst Lisa was negotiating on my behalf, she was not authorized to sign and settle the pendencies without my approval. I was later informed that Lisa had agreed to settle the issue in full and final settlement for the sum of one thousand and five hundred Euro (Eur 1500)".* However, this amount of money did not cover half of the expenses, taking into consideration that defendant had to collect Eur 250 upon tenant's departure, for the cleaning of carpets and linen. Plaintiff states that in addition to all these damages and unpaid lease, he had to personally fork out EUR 618.00 for bulky refuse removal, upholstery, cleaning and buying a new sofa.

Plaintiff's mother, Erika Scheidegger, declared, through an affidavit, that defendant was employed by her son and herself, as a property manager. The witness says that she considered defendant more as a friend rather than an employee. Defendant used to transfer any amounts due to plaintiff and his mother via bank transfer.

The witness says that, *"In two thousand and nineteen (2019) I began to notice a number of changes and irregularities on Lisa's part. When confronted with this, Lisa explained that on her own accord, she agreed with the tenant, Sandro Bianchi to collect the rent every three months instead of every month. This decision was made without any authorization from our end."* However, defendant was still charging the Eur 50.00 for monthly rent collection.

In 2019, defendant's contract was extended. However, the witness states that it was made clear to the defendant that she had to run after the tenants and collect the rent every month. IN 2020, defendant stopped sending statements of accounts and it transpired that there were 4 months of rent missing. The witness states that she together with her son, could not travel to Malta because of the Covid-19 pandemic.

On the 6th March 2020, defendant informed the witness that the tenants were leaving the property. Defendant found new tenants who left shortly due to the state of the apartment. In July 2020, the witness together with her son managed to come to Malta *"and saw the apocalyptic condition of the property"*. The witness states that defendant had agreed but without their consent, to settle the pending dues owed by the tenants for the amount of Eur 1500.00, which was not enough to cover all the dues and costs.

Defendant presented her own affidavit wherein she stated that she became a property manager for plaintiff's property in May 2015. The agreement between plaintiff and defendant was renewed on the basis of a property management contract. However, defendant states that in May 2020 there was a tacit renewal since plaintiffs still used to contact defendant to check upon the proceedings of the property.

Notwithstanding, defendant says that plaintiffs have not paid her the annual fee of Eur 944 and the 5% on the receivable rent. With regards to the sum of Eur 1500 accepted by defendant as a settlement for damages and unpaid lease, defendant states that this is untrue, since tenants had offered Eur 1360 and plaintiffs through their lawyer had accepted the sum of Eur 1500 in full and final settlement.

Defendant states that there plaintiffs were aware of the sum of Eur 1500, so much so that on the 25th June 2020, *"Christian Preuss specifically said, well, Eur 1500 I would accept, still a difference, but a middle optimal accordance."* (Fol.58). Defendant continues saying that, plaintiffs lawyer had drafted a full and final settlement agreement for tenants to sign.

Defendant had also informed plaintiffs that the tenants had got a puppy since this act constituted a breach of the lease agreement. This notwithstanding that before defendant started her employment as property manager, there was already a pet in the property kept by the previous tenants. Defendant also claims that most of the photos of damages presented by plaintiff were already existing before her involvement.

A sworn statement was also presented by Amanda Atkins, who holds the position of Chief Executive Officer at Afinia Commercial Ventures Ltd., wherein she attested defendant's track record and professionalism in her job.

Under cross examination, plaintiff states that he came to Malta twice a year since 2015. Plaintiff states that he was not aware that previous tenants were keeping a dog in his property. He also states that

he had taken the photos submitted. Plaintiff states at Fol.134 that he had no complaints with Lisa's services till Bianchi, the tenants left. He also confirms that around the middle of July 2020, he had also offered defendant to start a joint venture. However, defendant had refused.

Condsiderations

Plaintiff is the owner of the property Marble arch, Block B, Apartment 7, Lapsi Road, St. Julians which he used to lease to third parties. He had contracted defendant to act as a property manager, since May 2015, as per agreement at Fol.74 et seq. Defendant's responsibilities varied from, collecting the monthly rent, checking upon the premises, paying bills and other tasks listed in the same agreement.

As plaintiff states under cross-examination, he was happy with the service being provided by defendant. However, things took a twist in the year 2019, when plaintiff says that he noticed that the rent was not being deposited on a monthly basis and that the tenants (Bianchi's) were keeping a dog in the leased property. Finally, plaintiff states that defendant had accepted, without his consent, the amount of Eur 1500 in full and final settlement to make good for damages and unpaid rents. Consequently, plaintiff is requesting defendant to pay Eur 5000.00 in damages caused to him.

On the other hand, defendant claims that plaintiff's allegations are unfounded and unjustified since plaintiff was always aware and informed of all matters related to the property.

The Tribunal notes that when plaintiff realized that the tenants, Sandro Bianchi and Klara Stankovic, had caused damages to his property, he had contacted a lawyer to take action against them. This process led to an amicable settlement, whereby the tenants agreed to pay the amount of Eur 1500 to cover for damages caused during their stay.

Plaintiff argues that he never consented to receive this amount of money in full and final settlement. Consequently, plaintiffs are requesting a refund of all the damages, which as a result of the defendant's decision to accept the amount offered in full and final settlement, were paid by the plaintiffs themselves.

It is the Tribunal's belief that, plaintiff was aware of the ongoing negotiations between the lawyer and the tenants. In fact, in one of the emails, defendant asks him whether they should accept the total amount of Eur 1360 or press for Eur 1500 and in case tenants refuse they would proceed with court litigation. Hence, this shows clearly that the Eur 1500 was plaintiff's acceptable minimum amount to close this dispute. (Fol.91)

The Tribunal disagrees with plaintiff's position that defendant has acted on her own accord since there is clear evidence that plaintiff had agreed that the amount of Eur 1500 was acceptable particularly when he states that *"Well 1.5k I would accept. Still a difference, but a middle optimal accordance"*

Notwithstanding the above, the Tribunal also notes that the agreement between plaintiff and defendant clearly states that: - *"full insurance of the property is at the owners discretion and any loss or damage of property contents is not the responsibility of the property manager."* Hence, any claim for damages should be addressed to the tenants.

Furthermore, there is no proof that defendant has not honored her obligations as listed in the property management agreement. The parties' relationship ended when plaintiff realized that he had to fork out more money to undertake certain works before he could accommodate new tenants. Given, that he could not turn upon Sandro Bianchi and Klara Stankovic, because of the full and final settlement declaration, he decided that defendant should then answer for these amounts of money.

The Tribunal notes also that notwithstanding that plaintiff has claimed Eur 5000 in total damages, he has not produced a shred of evidence to show how he arrived at this amount. In such cases, one would expect a breakdown of costs, backed up with evidence, such as receipts or invoices, to substantiate the amounts being claimed. The Tribunal should be morally convinced, through evidence produced, that the alleged damages equate to the sum being claimed. This exercise cannot be carried out by the Tribunal itself but by whoever is alleging, in this case, plaintiff.

Decide

Therefore, this Tribunal decides this case by rejecting all claims put forward by plaintiff and upholds defendant's pleas. Orders plaintiff to pay defendant the costs of this case according to the taxed bill of costs.

Avv. Duncan Borg Myatt

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