



**THE SMALL CLAIMS TRIBUNAL
EUROPEAN SMALL CLAIMS PROCEDURE**

**Adjudicator
AVV. JULIANA SCERRI FERRANTE**

Delivered today, 6th July 2021

Claim number 25/2020SFJ

Amaury Marichal (EN647883)
Kastanjelaan 1-08
5616LH Eindhoven
The Netherlands

vs.

Georgina Bugeja (582591M)
"Victory", Flat 1,
Triq Grosseto,
Birkirkara BKR4303

The Tribunal:

Saw the Notice of Claim filed by the Claimant on 21st December 2020 in which the Claimant contended:

"We rented this apartment from 24-11-2019 till 23-11-2020. Deposit was not returned due to a scratch in the oven and we have no clue whether it was there before we moved in or not. We did notice however that Ms Bugeja's representative who checked the apartment went directly to the oven. Ms Bugeja did not want to meet us in the middle but insists she requires a new oven. We disagree and will evidence that fact. When we decided to take this issue further Ms Bugeja then decided to come up with other alleged damages in the property. We have a live checkout done by a 3rd party and copious pictures of the excellent condition the apartment was left. We are also claiming back X overpayment of utilities including the failure of Ms Bugeja to register us on the ARMS. She is registered as living here which gives us only one person registered via ARMS billing as opposed to 2 which has caused us unnecessary expense."

Saw that according to the Notice of Claim, the Claimant was claiming the amount of **one thousand and three hundred and eighty-five Euros and twenty-seven cents (€1,385.27)** including costs of these

proceedings but without any interest. However, interest on costs was claimed too and it was to run from 20th November 2020 to the date of payment of costs.

Saw that the Defendant was served with the Notice of Claim on 23rd April 2021 as appears from the notice of service.

Saw that the Defendant filed a reply on 13th May 2021 and stated that she was not accepting the claim for the following reasons:

“Deposit should be forfeited due to several damages caused as per clause 4.3 of our Lease Agreement. Damages to oven 509€, chairs 108, glasses 7 and to stainless steel kitchen border and removal of their items of desk, fan and chair.”

Saw that in the section 8 of the Reply, titled “*Other information*”, the Defendant wrote:

“Claim was filed by only one tenant. Lease Agreement was with 2 tenants. Deposit was paid by 2. They also vacated a few days prior to expiration – clause 4.5 of Lease Agreement.”

Saw that both parties opted to dispense with a hearing; and

Read all the documentation.

Exposition

The Tribunal notes, first of all, that although the Claimant asked that the Defendant be condemned to pay them the principal amount of one thousand and three hundred and eighty-five Euros and twenty-seven cents (€1,385.27), he did not explain how he calculated this amount.

In support of the claim, the Claimant presented several WhatsApp chat messages and several photographs, but noted that at no point did these chat messages and photographs explain how the Claimant calculated the amount claimed by him.

The Tribunal observes that Article 9(1) of Regulation 861/2007 states: “*The court or tribunal shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties. It may also admit the taking of evidence through video conference or other communication technology if the technical means are available.*”

The Tribunal further notes that Article 559 of Chapter 12 of the Laws of Malta holds that in all cases, the court (in this case, the Tribunal) shall require the best evidence that the party may be able to produce. Having seen this provision of the law, the Tribunal observes that the Claimant did not substantiate his claim through a witness statement sworn on oath.

The only thing that has been proved beyond reasonable doubt is that the parties had a major disagreement related to what damage was or was not caused to the apartment, particularly to the oven and the kitchen.

The Tribunal further observed that the Preamble to the Regulation delegates to national law questions relating to the standard of proof. However, the Preamble emphasises that the objective of the Regulation is “*to simplify and speed up litigation concerning small claims in cross-border cases*”.

On her part, the Defendant opposed the Claimant’s claim but also fell short of substantiating her claims through a sworn statement.

The Tribunal refers to the judgment of the Court of Appeal ***Miriam Cremona et vs. Eucharist Bajada et*** (decided on 5th December 2014) in which it was explained that although the onus of proof rests with the Claimant, the best evidence rule should not apply in an absolute manner but should apply such that the evidence required shall be the best evidence which can be produced after one takes account of the circumstances of the case.

Even if one were to take into account the circumstances of this case, principally that the Claimant does not reside in Malta, the Tribunal considers that it would still have been possible for him to draw up a sworn statement according to Dutch law, get it duly apostilled and then transmit it to Malta to be filed in the records of this case.

In this case, the Defendant correctly states in her similarly unsworn statement that the Claimant “*did not provide a breakdown for the sum he is asking for.*”

Although Chapter 380 of the Laws of Malta provides that cases before this Tribunal shall be tried principally according to equity and hence, the strictness that is usually applicable shall be tempered in cases before this Tribunal, such strictness cannot be reduced to a point where witness statements need not be sworn on oath and amounts claimed need not be broken down and explained in detail.

It is due to these failings on the Claimant’s part that this Tribunal has no choice but to reject the Claimant’s claim in full.

Decision

Therefore, the Tribunal rejects the Claimant’s claim in full and orders the said Claimant to pay the costs of this case.

Avv. Juliana Scerri Ferrante
B.A., L.P., Mag. Jur. (Int. Law), LL.D.
Adjudicator