



IN THE SMALL CLAIMS TRIBUNAL

Adjudicator: Dr. Claudio Żammit

Sitting of Monday 23rd August 2021

Claim Number: 8/20 CZ

John Lassar

vs.

Michael Stockdale

The Tribunal,

Having seen the Notice of Claim filed in virtue of Regulation (EC) 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure, filed on 7th May 2020 in virtue of which claimant premised that:

“I am a landlord with a 1 bed property in Qawra, Malta. My agent is Michael Stockdale at Blue Lagoon Real Estate. He collected my tenants’ rent (€550) and payment for utilities (€50) at the end of November and the tenants moved out on 16th December. He was unable to return the tenant’s deposit (€550) which I refunded from my own funds so that the tenants could return home for Christmas. Since then he has failed to forward on this money (€1,150) to my account. He is also charging me €300 as an agents fee for a service that has clearly not been provided. I have been emailing Mr. Stockdale but he refuses to engage in any dialogue.”

Defendant, filed his reply on 23rd October 2020 wherein he stated that he partially accepted the claim ‘because although I do owe Mr. Lissan as per his request, Mr. Lissan owes me money as per my counter-claim’.

In his counter-claim, defendant declared:

“ I am a British national and have been residing in Malta for the last eighteen years, providing Real Estate Services for the last six (6), and up until this day I have never had any issues with my clients.

I have had a good working relationship with Mr. and Mrs. Lissan for over three (3) years and I was very disturbed when the summons arrived. I was also very upset by the false and damaging stories posted on Facebook groups (Expats Malta and Are you being Served) by Mr. Lissan and other people he has spoken to, without these people ever knowing me or making use of my services.

I would like to point out Mr. Lissan and myself signed a property management agreement (copy attached and marked as Doc. A) for his apartment at Crusoe Court, Andrew Cunningham Street, Qawra. This agreement is automatically renewable on expiry as per clause six (6) of said agreement and cancellable by either party upon giving three months’ notice. The agreement has several clauses; of which two (2) clauses I do not think Mr. Lissan seems to be aware of:

1. The owner has to pay Blue Lagoon Real Estate five per cent (5%) of all rent money collected plus eighteen per cent (18%) VAT.
2. All tenancies are subject to a check in and check out fee of twenty-five (€25) per hour, plus eighteen per cent (18%) VAT – minimum of one (1) hour. It would appear from Mr. Lissan's calculations he has not taken these payments into account when making his claim against me.

The following four (4) tenancies occurred while I was managing the properties. The monthly rents were all five hundred and fifty Euro (€550) per month. I was paid the agency fees every time there was a new tenant however I was not paid the percentage cuts as set out in the Management and Maintenance Agreement.

1. Ref (Nathan) May 2017 signed a six (6) month contract but subsequently left the property before the September rent was due. The check in fee and check out fee for this contract was fifty-eight Euro (€58) including VAT. The total amount of rent collected for the four (4) months was two thousand, two hundred Euro (€2,200) – meaning one hundred twenty-nine Euro and eighty cents (€129.80) are due to me for the five per cent (5%) commission on all rents collected.
2. Ref (Simona) May 2018 signed a six (6) month contract and left at the end of the contract. The check in and out fee for this contract was fifty-eight Euro (€58) including VAT. The total amount of rent collected for the six months was three thousand, three hundred Euro (€3,300) – meaning one hundred and ninety-four Euro and seventy cents (€194.70).
3. Ref (Ervin) 19 November 2018 signed a six (6) month contract but subsequently left on January 19th 2019 after paying only two (2) months' rent. The check in and out fee for this contract was fifty-eight Euro (€58) including VAT. The total amount of rent collected for the two months was one thousand and one hundred Euro (€1,100) – meaning sixty-four Euro (€64) are due to me for the five per cent (5%) commission on all rents collected.
4. Ref (Predrag) 25 January 2019 signed a twelve (12) month contract and left on 24 December 2020. The check in fee for this contract was twenty-nine Euro (€29) including VAT. The total amount of rent collected for eleven months was

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six thousand and fifty Euro (€6,050) – meaning three hundred and fifty-six Euro and ninety-six cents (€356.96) are due to me for the five per cent (5%) commission on all rents collected.

There is also the six (6) month management fee of three hundred and fifty-four Euro (€354) including eighteen per cent (18%) VAT starting when Mr. Lassar gave notice in September 2018.

	Check-in Check-out	5% Commission	6 month management fee
Nathan	€58	€129.80	
Simona	€58	€194.70	
Ervin	€58	€64.00	
Predrag	€29	€356.96	
Subtotals	€203	€745.56	€354
Total	€1,302		

So after deducting Mr. Lassar's claim of one thousand one hundred and fifty Euro (€1,150) there is a balance due to me of one hundred and fifty-two Euro (€152) which as a gesture of good will I am willing to write-off together with my legal costs, only if Mr. Lassar removes all damaging and slanderous Facebook comments (as per the attached marked Doc. B), against my Agency and myself. Failure of which I hold the right to institute separate civil proceedings for moral damages and loss of business and profits.

Also I would like to point out I only issue invoice/receipts when Mr. Lassar is in Malta so this is why there was a delay in me presenting his final invoice due to the pandemic. I have not transferred Mr. Lassar his money because as Mr. Lassar knows, I am owed money by him.

Plaintiff replied to this counter-claim through a reply which he filed on the 6th January 2021, whereby he stated:

I am in receipt of Mr. Stockdale's counter-claim, a lot of which I would question based on the supporting evidence in the attached documents which are transcripts of various messages exchanged between Mr. Stockdale and myself.

- 1) 30/10/19 – Mr. Stockdale states that he is the only company that does not charge commission on rents which implies that at some point between the contract being signed and 30/10/19 he stopped charging a commission so why am I now being charged for the whole tenancy periods?
- 2) 28/01/20 – His representative states that he has read a paper where he admits to owing me €1,100 less €354 agency fee and rounded up to owing me €750.
- 3) On numerous occasions during January and February I asked for my money to be returned as I was in Malta and wanted to carry out improvements to my apartment. I asked for a bank transfer which Mr. Stockdale was unable to do as he was in France with no internet access and also no Maltese bank account due to an on-going legal case dating back to 2006 so he had to do everything in cash. I then suggested we could meet up while I was in Malta, or if not, I offered a 3rd party contact to whom he could have given the money. Neither of these offers was taken up with no satisfactory explanation as to why not. At no time was there any mention of me actually owing him any money.

After approximately three months it became apparent that Mr. Stockdale had no intention of repaying me and with no explanation as to why not I was left with no alternative but to pursue it through the courts. I have already stated that this seemed so unnecessary had Mr. Stockdale responded positively to my messages.

Mr. Stockdale states that he only issued invoices/receipts when I was in Malta. I cannot understand this as they could easily be sent by email, or even on Facebook, before he blocked me. Also, we had not further dealing with Mr. Stockdale once our tenants moved out on 19th December 2019, as already mentioned I was over twice in January and February and at no time did I have any contact with Mr. Stockdale, despite my attempts to do so. I do not really think the pandemic is an excuse as sending an email is not contagious and to date I have still not received any invoice.

At the very least I think I should be repaid the tenants deposit (€550). This was made from my own funds as a gesture of goodwill toward both Mr. Stockdale at the time attending to his elderly mother and unable to repay it himself, and to my tenants so that they could return home for Christmas. This was done with the, not unreasonable expectation that I would be reimbursed upon Mr. Stockdale's return to Malta. This is still less than half of my claim and if it is acceptable to Mr. Stockdale then I will drop the case and remove my Facebook posts.

The Tribunal considered:

From a review of plaintiff's claim, it results that plaintiff and defendant had concluded an agreement on 7th May 2017, whereby defendant bound himself to conduct a property management and maintenance service for plaintiff's apartment, under the conditions laid therein. Over and above the fee for the management and maintenance service, the agreement also provided for an administration fee calculated as 5% of the rent receivable throughout the term of the lease, together with VAT.

Defendant, through his reply, confirmed that the two deposits of five hundred and fifty Euro (€550) each and the utilities bill payment of fifty Euro (€50) was paid by plaintiff himself, directly to the lessees. Plaintiff's claim is therefore founded and valid and merits being upheld.

Defendant, as a defence to the original claim, claimed that he was also owed money by plaintiff, and that is why he did not pay plaintiff. For the Tribunal, and at law, this is not a valid reason for the defendant not to honour his obligations, and this particular defence is not justified. This is being declared also because it will have a bearing on the apportionment of costs payable for the original claim. Plaintiff is therefore clearly owed one thousand one hundred and fifty Euro (€1,150) by defendant.

The Tribunal also considered the counter-claim, where defendant is making three claims; he's requesting a check-in and check-out fee for four of the lessees, a 5% commission on the amounts of the rent received from these four lessees, and a six-month management fee for the apartment in question. The agreement of 7th May 2017 in fact does stipulate for a management fee to be paid, and also for the check in/out fees, and for the commission to be paid.

As regards the commission claimed by defendant, there was no contestation that these four lessees effectively leased the apartment and paid the rent as explained by defendant. Regarding the management fee, this is clearly an obligation in clause two (2) of the agreement between the parties, and this is also due. Regarding the check-in and check-out from the property, it does not result to the Tribunal that these specific words are mentioned in the contract. However, clause four (4) provides:

“ Inventory checks upon new occupancy and vacancy of property by each tenant at a charge of €25 plus VAT per hour, maximum of €100 plus VAT.”

It does not result to the satisfaction of the Tribunal that these inventory checks were executed and no documentation was provided by defendant for every check in/out point. The Tribunal deems that this particular claim has not been proven, and therefore declares that the sum due to defendant is only that of €1,099.56, relative to the commission and the management fee.

On the basis of all these considerations, the Tribunal is upholding plaintiff's claims and thus orders defendant to pay to plaintiff the sum of one thousand one hundred and fifty Euro (€1,150), with interest due as from the date of the filing of this claim till the date of effective payment. Regarding the counter-claim the Tribunal is partially upholding defendant's claims, and thus orders plaintiff to pay to defendant the sum of one thousand and ninety-nine Euro and fifty-six cents (€1,099.56) , with interest due as from the date of the filing of this claim till the date of effective payment.

Defendant shall pay all the costs of the original claim. The costs of the counter-claim shall be paid as to four-fifths (4/5) by plaintiff and one-fifth (1/5) by defendant.

Dr. Claudio Żammit

Adjudicator

Susanne Fenech

Deputy Registrar