RENT REGULATION BOARD

MAGISTRATE DR. SIMONE GRECH

Application Number 170/2018

Av. Jonathan Abela Fiorentino (KI 555482M) bhala mandatarju specjali ta' Janne Mikael Hainari-Maula, detentur tal-karta tal-identità Finlandiza numru 514080464

vs

Audrienne Spiteri Gonzi (KI 517264M)

Today, the 15th day of November, 2021

The Board,

Having seen the application presented by applicants on 26th October 2018, whereby this Board was requested to:

(i) Jiddikjara li l-intimata ghandha thallas lura lir-rikorrenti l-ammont ta' tlett elef u mitejn ewro (EUR 3,200) rapprezentanti depozitu mhallas mir-rikorrenti lill-intimata fil-bidu tal-lokazzjoni u rifondibbli lura fl-gheluq tal-lokazzjoni;

(ii) Jordna lill-intimata thallas lura dan id-depozitu fl-ammont ta' tlett elef u mitejn ewro (EUR 3200) bl-imghaxijiet skond il-ligi;

(iii) Jiddikjara li l-intimata naqset mill-obbligi taghha fil-konfront tar-rikorrenti u li hija naqset milli tosserva l-ftehim ta' lokazzjoni u li bhala konsegwenza ta' tali agir, ir-rikorrenti sofra danni;

(iv) JIllikwida d-danni hekk sofferti, okkorrendo bil-hatra ta' periti nominandi;

(v) *Konsegwentement jordna lill-intimata thallas lir-rikorrenti kwalunkwe ammont hekk likwidat jew kwalunkwe ammont iehor li dan il-Bord joghgbu jistabbilixxi.*

Bl-ispejjez inkluzi dawk ta' l-ittra ufficjali numru 965/2018 datata 21 ta' Marzu 2018 u tal-mandat ta' sekwestru pprezentat kontestwalment mar-rikors odjern, kontra l-intimata li hija minn issa ngunta ghas-subizzjoni.

Having seen the reply presented by respondent, whereby it was stated that:

i. *Preliminarjament illi r-rikorrenti ghandu jinforma lill-Bord jekk il-mandant tieghu hux residenti gewwa Malta jew jekk hux assenti minn Malta minhabba l-implikazzjonijiet li dan jista' jkollu fuq l-ispejjez gudizzjarji;*
ii. *Fit-tieni lok u fuq il-mertu, mhux minnu illi l-kirja giet terminate minhabba xi inadempjenza kuntrattwali daparti tal-esponenti izda ser jirrizulta li r-Rikorrenti ittermina l-kirja fuq serje ta' pretesti frivoli biex jevita l-konsegwenzi provvduti fil-kuntratt ta' lokazzjoni. Illi l-eventi li sehhew kif ukoll l-attitudni rragjonevoli tar-rikorrent ser jirrizultaw mill-faxxiklu ta' korrispondenza bejn il-kontendenti li qieghed jigi hawn ezebit u markat bhala Dok ASG1 (konsistenti fi 32 pagna). Ma' dawn jizdiedu wkoll hames affidavits hawn ezebiti w markati minn ASG5 sa ASG9.*
iii. *Illi ghalhekk ma jezistux l-estremi rikjesti mill-ligi sabiex jigi terminat kuntratt ta' kera sond kif provvdut fl-artikoli 1539 u 1570 tal-Kap 16.*
iv. *Minhabba f' hekk it-talbiet tar-rikorrenti ghandhom jigu michudin bl-ispejjez.*
v. *Illi l-agir tar-rikorrenti fil-fatt iwassal ghall-kontrotalba li qeghda ssir prezenzjalment.*

Having seen the counter-claim presented by respondent, wherein the Board was requested to:

i. *Jiddikjara illi l-kirja in kwistjoni giet abuzivament itterminata mir-rikorrent minghajr ebda raguni valida fil-ligi;*
ii. *Illi konsegwenzjalment tidhol in vigore il-klawzola 'r' tal-kuntratt ta' lokazzjoni tas-sebgha (7) ta' Lulju 2017;*
iii. *Illi ghalhekk ir-rikorrent huwa passibbli ghat-telf ta' depozitu minnu maghmul kif ukoll passibbli ghall-hlas ta' tletin jum kera lill-esponenti;*

iv. *Illi r-rikorrenti jinstab responsabbli ghad-danni u nuqqasijiet li nstabu wara l-abbandun minnu tal-fond in lokazzjoni;*
v. *Illi jigu hekk likwidati s-somom kollha dovuti mir-rikorrenti lil esponenti;*
vi. *Illi r-rikorrenti ikun ikkundannat ihallas lill-esponenti s-somom hekk likwidati (filwaqt li l-esponenti tapproprja ghaliha d-depozitu msemmi) bl-imghax sal-hlas effettiv u bl-ispejjez kontra ir-rikorrent li jibqa' ngunt ghas-subizzjoni.*

Having seen the reply presented with regards to the counter-claim, wherein it was stated that:

1. *Illi preliminarjament it-talbiet tal-intimata huma intempestivi stante li hija qatt ma ressqet il-pretensjonijiet taghha lill-esponenti lanqas meta kellha opportunita' taghmel dan fl-ittra ufficjali numru 1919/2019 ipprezentata minnha fil-Prim' Awla tal-Qorti Civili fl-1 ta' Gunju 2018 b' risposta ghall-ittra ufficjali pprezentata precedentement mill-esponenti;*
2. *Illi l-klawzola r tal-kuntratt ta' lokazzjoni de quo datat sebgha (7) ta' Lulju 2017 mhijiex applikabbli u lanqas enforzabbli fic-cirkostanzi ta' dan il-kaz.*
3. *Illi mhuwiex minnu li l-esponenti abbanduna l-kirja minghajr raguni valida fil-ligi, tant li qabel ma ttermina l-lokazzjoni huwa ghamel diversi tentattivi sabiex jipprova jsolvi l-vertenza ta' bejn il-partijiet;*
4. *Illi lanqas ma huwa minnu li l-esponenti halla hsarat u nuqqasijiet fil-fond in kwistjoni;*
5. *Illi fi kwalunkwe kaz il-pretensjonijiet tal-intimata huma infondati fil-fatt u fid-dritt;*
6. *Illi ghalhekk it-talbiet tal-intimata maghmula fil-kontrotalba mressqa minnha ghandhom jigu michuda bl-ispejjez.*
7. *Salvi eccezzjonijiet ulterjuri permissibbli skond il-ligi.*

Having seen that this case was assigned to this Board as presided;

Having seen all the acts of the case;

Having seen that this case has been adjourned for judgement;

Considers:

From the evidence brought forth, it transpires that a lease agreement was signed between the parties on the 7th July 2017, with regards to the residential property numbered, 57, Triq il-Bies, San Gwann. The applicant claims that the lease agreement was terminated on the 15th December 2017, due to breaches by the respondent of the said agreement, and of her obligations at law as lessor. It was claimed that due to respondent's actions, the applicant was no longer in a position to enjoy the property peacefully.

The applicant's action basically rests on two issues:

i. The failure of respondent to secure the lessee in the enjoyment of the object of lease;
ii. The damages found on the property.

The failure of respondent to secure the lessee in the enjoyment of the object of lease

The applicant also makes reference to the articles upon which he instituted this case, namely Article 1539(c) of the Civil Code and to Article 1548A of the Civil Code, together with Article 1570 of the Civil Code.

These read as follows:

> Article 1539: *The lessor is bound, by the nature of the contract, and without the necessity of any special agreement –*
>
> *(a) to deliver to the lessee the thing let;*
>
> *(b) to maintain the thing in a fit condition for the use for which it has been let;*
>
> *(c) to secure the lessee in the quiet enjoyment of the thing during the continuance of the leas*

Article 1548A: *During the running of the lease of an urban, residential or commercial tenement, the lessor has right of access to the tenement in such times and in such manner agreed upon with the tenant in order that the lessor may fulfil his duties or to verify whether the tenant is performing his obligations, as well as to show the tenement to prospective buyers:*

Provided that in the absence of an agreement between the parties, the Rent Regulation Board may, if need be, after hearing the parties summarily, fix days, times and conditions, after an application filed by the lessor for that purpose. The Board may give a decree during the sitting or in the chambers without hearing theparties. The decree shall be given within five working days from the date when the tenant is served with a notice. The Rent Board may order the inspection to be done under the supervision and in the presence of a court marshal. In this function, the Rent Regulation Board shall also take into account the tenant's right to privacy and shall verify that no abuse is made of the lessor's right as provided in this sub-article. In such case, no appeal may be made from the said decree

Article 1570: *A contract of letting and hiring may also be dissolved, even in the absence of a resolutive condition, where either of the parties fails to perform his obligation; and in any such case the party aggrieved by the non-performance may elect either to compel the other party to perform the obligation if this is possible, or to demand the dissolution of the contract together with damages for non-performance:*

Provided that in the case of urban, residential and commercial tenements where the lessee fails to pay punctually the rent due, the contract may be terminated only after that the lessor would have called upon the lessee by means of a judicial letter, and the lessee notwithstanding such notification, fails to pay the said rent within fifteen days from notification.

With regards to Article 1539 (c) of the Civil Code, the Board makes reference to the judgement given by the Court of Appeal on 12th June 2020, in the names of Victor Vella (K.I. 361066M) u martu Marisa Vella (K.I. 394170M) (l-appellanti) vs. Brian Micallef (K.I. 479086M), Spiridione sive Dione Chetcuti (K.I. 266265M), u martu Isabelle Chetcuti (K.I. 454469M) in solidum bejniethom (l-appellati). In its judgement, the Rent Regulation Board stated that:

"Inoltre, hawn huwa rilevanti wkoll u għandu jiġi applikat l-Artikolu 1539 tal-Kap. 16 li jgħid hekk: "Sid il-kera hu obbligat, min-natura stess tal-kuntratt, u mingħajr ma jinħtieġ ebda ftehim speċjali – (a) Jikkunsinna

lill-kerrej il-ħaġa mikrija; (b) Iżomm din il-ħaġa fi stat li wieħed jista' jagħmel minnha l-użu li għalih ġiet mikrija; (ċ) iqis li l-kerrej ikollu t-tgawdija bil-kwiet tal-ħaġa, għaż-żmien kollu tal-kiri." U ċioe illi s-sid ma għandu jagħmel xejn li jippriva lill-inkwilin mit-tgawdija tal-fond mikri, anzi għandu jieħu ħsieb li l-inkwilin jista' jgawdi l-fond mikri lilu u dan għaddurata kollha tal-perijodu tal-kiri. Dan ifisser li s-sid ma għandux jagħmel ostakoli għat-tgawdija sħiħa mill-inkwilin tal-fond mikri."

Subsequently the Court of Appeal stated that:

L-artikolu 1539 tal-Kodiċi Ċivili jispeċifika x'inhuma l-obbligazzjonijiet tas-sid ta' fond firrigward tal-inkwilin, u fost l-oħrajn jistabbilixxi li:

"Sid il-kera hu obbligat, min-natura stess tal-kuntratt, u mingħajr ma jeħtieġ ebda ftehim speċjali:

...

(ċ) iqis li l-kerrej ikollu t-tgawdija bil-kwiet tal-ħaġa, għaż-żmien kollu tal-kiri."

Il-kelma "iqis" f'dan is-subartikolu tal-liġi tpoġġi fuq is-sid l-oneru li jassigura li l-inkwilin qiegħed igawdi l-oġġett tal-kirja bil-kwiet, mingħajr ebda tip ta' molestja, u dan għaż-żmien kollu tal-kirja. Inkwilin li jikri fond sabiex joperah bħala stabbiliment minn fejn jisserva x-xorb, ma jistenniex li jkun is-sid li krielu dak l-istabbiliment li joħloqlu ċerti problemi, jew li jagħmel rapporti kontinwi lill-Pulizija kull darba li fuq is-sit ma jarax il-vettura tal-persuna li għandha liċenzja f'isimha jew li hija rikonoxxuta bħala substitute fuq il-liċenzja. Sid il-fond għandu obbligu pożittiv li jassigura li l-inkwilin tiegħu jieħu l-benefiċċju massimu mill-fond minnu lokat, u li fejn il-fond jinkera għal skopijiet kummerċjali, dan mhux biss ikun jista' jintuża għall-iskop li għalih inkera, iżda wkoll l-inkwilin ikun f'pożizzjoni li jimmassimizza l-potenzjal tal-fond.

Dwar id-disturb fit-tgawdija ta' fond, f'deċiżjoni fl-ismijiet Alfredo Zammit vs. P.L. Giuseppe Mangion noe et (Kumm. 11.03.1932), intqal:

"In caso di turbativa nel godimento del fondo, l'inquilina ha diritto alla garanzia del locatore, quindi anche tale turbativa proviene dalla amministrazione o per il fatto del principe, se il fondo fosse stato locato per l'esercizio di un commercio o di una industria fossati ai termini dalla convenzione."

Fid-deċiżjoni fl-ismijiet Luigi Cini vs. Giorgio Ciappara (P.A., 13.06.1935), il-Qorti spjegat lobbligu pożittiv li għandu sid il-kera b'dan il-mod:

"Il-lokatur għandu jagħmel mod li l-inkwilin ikollu l-godiment paċifiku tal-fond fiżżmien kollu tal-lokazzjoni."

Fir-rigward tal-każ odjern, meta jiġi analizzat jekk l-inkwilini tħallewx igawdu l-fond mikri lilhom bil-kwiet, din il-Qorti taqbel mal-Bord sa fejn ikkonkluda li l-appellanti għamlu minn kollox biex jivvessaw u jimmolestaw lill-appellati fit-tgawdija tal-fond mikri lilhom, b'rapporti, uħud minnhom fiergħa u bla bażi, b'nuqqas ta' ftehim, u b'azzjonijiet sistematiċi maħsuba biex ifixklu lill-appellati fit-tgawdija tal-kirja, bħall-episodju meta l-appellanti niżel għal wieħed mill-appellati b'mannarett f'idu meta fl-istabbiliment in kwistjoni kien hemm ħafna nies. Mill-assjem tal-provi prodotti, jirriżulta li l-imsemmija atti tal-appellanti mhumiex ta' sidien li qegħdin jagħmlu dak kollu li jistgħu sabiex l-inkwilini tagħhom igawdu l-fond mikri lilhom bil-kwiet. Jirriżulta għallkuntrarju li sa mill-ewwel ftit ġranet tal-kirja, l-appellant beda jagħmel dak kollu li jista' sabiex l-inkwilini jiddejqu u jiġu ddisturbati fit-tgawdija tal-fond."

The Board examined in detail the evidence given by applicant, whereby he stated that there were numerous occasions where the respondent would enter the leased premises without having previously informed him. He testified that on one occasion, workers came to the premises when he was not informed previously that they would be coming. There were other occasions where workers would turn up due to some works to be done in the garden. Applicant also mentioned the occasion when he was informed by respondent, that the Water Works Department had contacted her about a leak on the roof, and when he himself contacted the Water Works Department, he was informed that there were no reports lodged on their system. It resulted from the testimony given by Guy Bonello and Mark Appel, that it was the neighbour who had informed respondent of the leak, and not the Water Works Department.

The applicant also claimed that the water main is located in an area of the premises accessible from the main road, and that therefore, an entry into the leased property could have easily been avoided. The Board also took note of the footages which were exhibited, and from which it results that respondent entered into the premises, and also to the testimony given by the applicant, wherein he confirms on oath that respondent entered during these occasions without his prior consent.

The Board also refers to the evidence given by Inka Elina Haatainen, who also confirmed these surprise visits, which were constantly made by respondent or workers sent by respondent's instructions.

Applicant also made reference to the issue which arose, as he declared that he was informed that the premises were pet friendly, whereas it transpired that he encountered trouble when he had a pet in the property. He also claimed that he had never provided respondent with a copy of his identity card, and therefore, the copy which respondent presented together with Dok JH4, could only have been obtained without the applicant's permission on one of her unauthorized entries in the property.

After reviewing all this, the Board is of the opinion that from the evidence brought forth, it results that what respondent was trying to do, was to assist the applicant and ensure that whatever she had agreed to on the lease agreement, be satisfied and adhered to by herself.

The Board notes that on the occasion of the overflow of the water tank, the lessor was contacted by a neighbour, and after that, several attempts were made to reach the lessee who was abroad, the lessor had no other alternative, but to enter the property to close the mains and the pressure pump. This was an emergency situation, which most definitely, could not wait.

Another incident was when workers were sent to do works in relation to the overgrown plant in the outside area. Although a short notice was given to applicant, he complained that practically, he ended up having workers continually entering his property to deal with this issue. However, the Board notes that these workers were being sent, in order for the respondent to fulfill her obligation to resolve the issue that there was in the garden.

The other incident occurred when the intruder alarm needed to be checked due to complaints by the neighbours, that it was going on without it being switched off again. Yet again, the lessor tried to contact the lessee, but receiving no response, had to enter the property to disconnect the alarm battery.

Applicant also mentioned an incident when he caught respondent in the outside part of the leased premises. What resulted was that respondent had called the lessor and also rang the doorbell, but when she had no reply, she opened the gate and left the pool net behind the pool garden door. It was at this point that applicant emerged from the leased property, and ordered lessor to leave, as she was trespassing. The Board notes that yet again, the intentions of respondent were simply to deliver the pool net to applicant.

The Board, in view of all this, notes that the entry of the respondent into the leased premises were limited to maintenance visits, which were done in fulfilment of the obligation of respondent, to maintain the garden and the pool during the continuation of the lease, and to emergency visits when the tank overflowed, and when the alarm was not being switched off.

The Board thus concludes that the applicant's claims, in the sense that his quiet enjoyment of the premises' let was disturbed, are unfounded. It transpires that respondent was simply doing her utmost to fulfil her obligations as lessor. Applicant, on the other hand, was many a times not present on the island when emergency situations occurred, and thus the respondent had to act to prevent damage to her property. If the applicant was so displeased with respondent's assistance, he could easily have appointed a person residing in Malta to represent him when he was absent from the islands. In that way, respondent could communicate with applicant's representative.

The damages found on the property

Applicant claims that the property leased, was not maintained in a good state of repair for the applicant's enjoyment. The applicant also stated that he found several damages in the property let. He argued that during the first week, he noticed that the microwave, and neither of the ovens, were working. He also complained that there was water damage and there was a problem with the filter in the water tap in the kitchen. Applicant stated also, that the alarm system was broken. He also outlined problems with maintenance that he encountered, in an email marked as Doc ASG1. The applicant also presented pictures of the damages caused by water percolation and humidity (Dok JH 6), and also to the photos of various items which were already damaged when he entered the leased property. All this was also confirmed by the testimony of Inka Elina Haatainen.

Nonetheless, applicant did not bring forth proof that the respondent did not provide assistance to his complaints. Moreover, the lease agreement itself stipulates, that the property was being accepted by applicant as lease to him, *tale quale* (as seen). The same agreement in clause 'd' outlined also, that major repairs shall be the responsibility of the lessor, unless caused through the fault or negligence of the lessee.

The Board is not satisfied that enough proof was presented to uphold the applicant's claim that that the property was not in a good state of repair for his enjoyment, and that the situation was such that it gave rise to a valid reason at law to applicant, to terminate the lease before the twenty four months agreed upon in the lease agreement.

Consequently, the Board shall proceed to reject the third, fourth and fifth claims brought forth by applicant.

As regards to the first and second claims made by the applicant, the Board notes that according to clause 'q' of the lease agreement, the deposit equivalent to one month's full rent is refundable at the termination of this lease after the said dates, and only if there are no breakages or damages (except through fair wear and tear). It is also stipulated that if the damages exceed one month rent, the lessee must pay extra.

The Board notes that it had been expressly agreed by the parties, that the deposit is refundable (i) at the termination of this lease after the said dates, and (ii) only if there are no breakages or damages. The Board outlines that in this case, the lease was ended abruptly by applicant, and thus the first condition certainly does not result. Indeed, the clause itself highlights that this is refundable not simply at the termination of this lease, but also after the said dates mentioned in the lease agreement, i.e. after the lapse of the 24 month period for which the property was leased for (from 15/07/2017 to 14/07/2019).

Consequently, the Board shall also proceed to reject the first and second claims of the applicant.

The Counter claim made by respondent

Respondent also presented a counter claim, whereby she argued that the lease had been terminated without a valid reason at law, and that thereby clause 'r' of the lease agreement should be applied, and therefore applicant is to be ordered to pay for 30 days rent, and to forfeit the deposit paid him.

The Board has already examined the circumstances which led to applicant deciding to vacate the premises prior to the agreed term. It has also arrived to the conclusion to reject applicant's claims.

What needs to be examined is whether clause 'r' is to apply in the circumstances of the case. Clause 'r' stipulates that:

> *In the eventuality of the lessee requiring to vacate the premises before the end of this agreed lease, the lessee is required to inform the lessor in writing at least 30 days in advance. In this case, the lessee will forfeit the deposit, pay the rent covering the 30-day notice together with any pending bills.*

The Board deems that this clause was inserted in the agreement, so that in the event that the lessee would wish to terminate the agreement before the stipulated time, he would be able to do so. In the case before the Board, since it did not transpire that the applicant had a valid reason at law to terminate the said lease agreement, the lessee had to adhere to the procedure outlined in clause 'r'. As a result, the Board shall uphold respondent's claim, in that this Board shall order that the deposit be forfeited, and that the rent covering a 30-day notice be paid.

The respondent also claimed that damages were left by the applicant in the property, and that thus, she is to be refunded of all damages sustained.

After examining the evidence brought forth, the Board considers that it was not proven by respondent, that the alleged damages were indeed caused by the applicant. Moreover, the Board notes that applicant presented a recording of the situation in which he vacated the premises. Although the ideal situation would have been that a check-out procedure be done in the presence of both parties, on the other hand the respondent did not prove her allegation of damages.

Indeed, only quotations were presented, but no person was brought forth to confirm that these amounts were actually paid by respondent. No invoices of works were presented, except one dated 2015, which was thus referring to two years prior to the commencement of this particular lease. Moreover, some of these quotations were obtained by respondent in November 2018, which as the applicant's legal counsel rightly points out, were thus obtained almost a year after that the applicant vacated the premises, and at a time when this case had already been instituted.

The Board shall thus proceed to reject the fourth and fifth claim, whereas it shall uphold the sixth claim in relation to the first three claims, but reject it in relation to the fourth and fifth claim.

Decide

Thus for the reasons stated above, this Board decides this case in the following manner:

(i) Abstains from taking any further cognizance of the first plea brought forth by respondent;
(ii) Upholds the second, third and fourth pleas brought forth by respondent;
(iii) Rejects all the claims made by applicant in his application presented on 26th October 2018;
(iv) Accedes to the first, second and third claims brought forth in the counter claim presented on 10th December 2018 by respondent;
(v) Rejects the first, second and third pleas brought forth by applicant in lieu of the counter-claim presented by respondent;
(vi) Rejects the fourth and fifth claims brought forth in the counter claim presented on 10th December 2018;
(vii) Upholds the fourth plea brought forth by applicant in lieu of the counter-claim presented by respondent;
(viii) Accedes partly to the sixth claim of respondent, and condemns applicant to forfeit the deposit paid previously by applicant amounting to €3,200 and to pay the sum of €3,200 amounting to the rent covering the thirty-day period outlined in clause 'r' of the lease agreement signed between the parties on 7th July 2017. With legal interest from the date of this judgement up until the effective date of payment.

(ix) The expenses are to be borne by applicant, with exception of the expenses relating to the fourth and fifth claims brought forth in the counter claim presented on 10th December 2018, which are to be borne by the respondent.

Magistrate Simone Grech
Chairperson

Janet Calleja
Deputy Registrar