Khew Kim Kee *v* Sim Jo-Lin
[2012] SGHC 235

Case Number : Suit No 215 of 2011 (Registrar's Appeal no 260 of 2011)
Decision Date : 26 November 2012
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Ross Tan (Rodyk & Davidson LLP) for the plaintiff; Defendant in person.
Parties : Khew Kim Kee — Sim Jo-Lin

Landlord and Tenant

26 November 2012

Judith Prakash J:

Introduction

1 This is an appeal by the defendant against the summary judgment entered against her in August 2011.

2 The plaintiff is the owner of the building known as 697 East Coast Road and the defendant was the tenant of units #02-01, #03-01 and #04-01 (collectively "the premises") which formed part of the building. Under the terms of the judgment made against the defendant, she was ordered to:

(a) immediately deliver vacant possession of the premises to the plaintiff;

(b) pay the following to the plaintiff:

(i) the sum of $1,875 being the outstanding rent for March 2011;

(ii) mesne profits and/or double rent at the rate of $18,000 per month for holding over from 31 March 2011 till the date of delivery of vacant possession;

(iii) interest; and

(iv) costs fixed at $12,000 excluding reasonable disbursements.

The background

3 The building known as 697 East Coast Road, Singapore, is a 5-storey shophouse development. The first floor is a shop-front and at the time the action was commenced, it was let out to a general practitioner and a dentist. Access to the second, third and fourth floors is by way of a lift and a stairwell. The building was only completed in 2010 and the temporary occupation permit was issued on 26 August 2010 whilst on 22 October 2010 the relevant authority issued the certificate of statutory completion in respect of the construction.

4 The defendant is a young woman who carries on business as, *inter alia*, an instructor in

creative clay work. At all times, she acted for herself. In late 2010, the defendant visited the premises in the company of the plaintiff's property agent one Ms Jasmine Lim ("Ms Lim"). Subsequently, on 25 December 2010, the plaintiff and the defendant entered into a tenancy agreement ("the agreement") in respect of the premises. Under the agreement, the premises were let to the defendant for a term of 24 months, commencing on 15 March 2011. The monthly rent was $9,000 payable monthly in advance.

5 The premises were let on an unfurnished basis and the defendant was given possession of the same on 24 December 2010 to enable her to conduct such renovation and fitting out works as she desired. It was agreed that the defendant would not have to pay any rent until 15 March 2011. On the same day, the defendant delivered three cheques to the plaintiff, each in the amount of $9,000. The first two cheques which were dated in December 2010 were given as two months security deposit pursuant to cl 2(a) of the agreement. The third cheque which was dated 15 March 2011 was for the first month's rental.

6 In due course, the plaintiff presented the third cheque for payment. The defendant, however, stopped payment on the third cheque and it was therefore dishonoured by non-payment. The defendant did not pay the first month's rental in any other fashion on or before 15 March 2011.

7 By a solicitor's letter dated 24 March 2012, the plaintiff gave the defendant written notice of her failure to pay the rent in breach of contract. Clause 4(a) of the agreement provided that if the rent or any part thereof should remain unpaid for seven days after becoming due, the agreement would determine and it would lawful for the plaintiff to immediately re-enter the premises. The plaintiff invoked this clause and requested the defendant to vacate and return all keys to her. The defendant, however, did not do so.

8 On 29 March 2011, the plaintiff commenced the present action.

The defence

9 The defendant filed a defence and counterclaim on 9 May 2011. The defence is a fairly lengthy document and repeats the defendant's complaints several times. Basically the defendant asserted that the plaintiff as landlord had a legal obligation to provide basic needs to house live-in tenants and to provide a "conducive operational building" and further that there were structural defects in the premises and the building.

10 Among her allegations were the following. She asserted that the plaintiff was in breach of the agreement for the following reasons:

(a) The building housing the premises was not "Conducive Operational Manner";

(b) There were structural defects in the building leading to flooding, leaking and loose aluminium sliding panels. The plaintiff did not provide the basic electrical and light points or connect the water heater in the bathroom to the electricity supply; and

(c) The plaintiff had remained anonymous and had not provided a contact number or an address at which the defendant could contact her and Ms Lim only gave the defendant an email address for the plaintiff after much persuasion.

11 In para 4 of the defence, the defendant dealt with the dishonoured cheque. She said that payment on the cheque was stopped on her instructions to the bank which were given because of

the following complaints:

(a) The DB Riser for the premises was completed on 16 February 2011, more than a month after the defendant took possession;

(b) The problems with lift security were not dealt with until 15 March 2011;

(c) The plaintiff had failed to provide basic fixtures and fittings for the premises;

(d) Due to the lack of connections, the defendant was unable to install telephones or other devices in the premises; and

(e) The plaintiff had failed to provide a StarHub Cablevision ("SCV") connection which was promised in cl 2(c) of the agreement.

12 The defendant's counterclaim was for the plaintiff's case to be dismissed for breach of the agreement and for the defendant to be given damages for:

(a) Loss and damage suffered by reason of the structural defects;

(b) Her loss of the status of an SCV Platinum card member and loss of use of SCV Cable Network and entertainment;

(c) Breach of the agreement including the expenditure incurred to put the premises into good and tenantable condition.

The agreement

13 The agreement is in a fairly standard form for residential premises. The material clauses of the agreement for present purposes are paraphrased below.

14 Pursuant to cl 2(b), rent was to be paid without any deduction. Pursuant to cl 2(f), the defendant was also not to withhold, defer or refuse punctual payment of the monthly rent by reason of any inadequate or total breakdown of services such as lift, power, light or water.

15 Under cl 4(a) if rent or any part thereof remained unpaid for seven days, the agreement shall absolutely determine and it shall be lawful for the plaintiff to immediately re-enter upon the premises without prejudice to the right of action of the plaintiff in respect of any antecedent breaches of the agreement by the defendant.

16 The plaintiff was to provide the premises rent free for a period of two months to the defendant pursuant to cl 3(c). In addition, there is also a covenant for quiet enjoyment under cl 3(e).

17 The agreement provides that the defendant has to bear various responsibilities and exempts the plaintiff from certain responsibilities:

(a) Under cl 2(c), the obligation to pay all charges for the telephone or other devices installed at the premises to SingTel, SCV or other authorities lies with the defendant.

(b) Under cl 2(e), the onus is on the defendant to keep the premises in tenantable condition at her own cost.

(c) Under cl 2(p), the plaintiff is entitled to enter the premises to execute repairs but any cost incurred shall be a debt from the defendant to the plaintiff and shall be recoverable by legal action.

(d) Under cl 5(a), the plaintiff is not liable to the defendant for any damage, injury or loss arising out of any leakage or overflow due to any defect or want of repair to the piping, wiring, air-conditioning, fire-fighting or sprinkler system and/or any sanitary installation in the premises.

The decision below

18 The plaintiff applied for summary judgment and her application was heard by the Assistant Registrar ("AR") on 19 August 2011. The AR found that the defendant had breached the agreement by not paying rent in accordance with its terms. She did not accept the defendant's complaints as establishing a breach of contract on the part of the plaintiff and held that there was no triable issue. Accordingly, summary judgment was entered in favour of the plaintiff. The AR also stated that the defendant was free to pursue any claim for loss or damage arising from the tenancy in her counterclaim or in a separate action.

19 The defendant lodged an appeal. She surrendered possession of the premises to the plaintiff on 9 September 2011. The appeal proceeded, however, and the defendant prosecuted the same vigorously. She filed further affidavits setting out her allegations and these were responded to by the plaintiff.

The appeal

20 The main arising in the appeal is whether the defendant has been able to show a triable issue entitling her to leave to defend.

21 It was not disputed that under the terms of the agreement, the defendant had to pay $9,000 per month in advance on the 15th day of each month. The defendant having furnished a cheque for payment of the rent due on 15 March 2011 personally instructed her bank to stop payment of the cheque. Thus, the defendant failed to pay the rent on its due date. She did not make up that failure within seven days of the due date. It was not until 29 March 2011 that she made a payment in the amount of $7,125 toward satisfaction of the rent. This amount was not the full rental payment. Under the terms of the agreement, the rent had to be paid without any deduction whatsoever. Accordingly, *prima facie*, the defendant was in breach of the agreement and the plaintiff was entitled to re-enter the premises pursuant to cl 4(a) of the agreement.

22 The defendant's position was that the plaintiff was in breach because the premises were not habitable and because there was no SCV connection. It was on account of a purported agreement relating to the SCV connection that she had paid a reduced rent of $7,125.

The law

23 In the absence of express stipulation, a landlord is generally under no liability to the tenant to put the demised premises in repair at the commencement of the tenancy, or to do repairs during the continuation of the tenancy. Similarly, there generally is no implied warranty on the part of the landlord that the demised premises are fit for the purposes for which they are taken.

24 These principles are set out in *Tan Sook Yee's Principles of Singapore Land Law* (3rd Ed, LexisNexis) as follows:

Fitness for Human Habitation

17.95 There is no implied term that premises are fit for human habitation as the lease is an estate; implied terms generally only affect the estate granted. But where the premises are let furnished, then there is such an implied covenant. Thus, where a furnished house was let bug-infested, it was held that the implied term was breached.

To Keep in Reasonable State of Repair the Lifts and Common Staircases

17.96 On the landlord's part, there is no duty to tenant to keep the premises in repair unless he has so agreed at the time of letting.

25 Similarly, *Halsbury's Law of Singapore* (vol 14(2), 2009 Reissue) ("*Halsbury's*") states at para 170.0905:

> There is *no general implied warranty on the part of the landlord that the demised premises are fit for the purposes for which they are taken; and therefore on the letting of an unfurnished house or flat, there is no implied warranty on the part of the landlord that it is in a reasonably fit state for habitation ... The intending tenant is presumed to make his own inquiries as to its condition, and, in the absence of a special stipulation, he takes the house as it stands*. This is notwithstanding that the house is, to the landlord's knowledge, required for immediate occupation. If the house is, in fact, uninhabitable, then, after accepting the lease, the tenant is without remedy except where he has obtained a warranty of fitness, or where he has been induced to take the lease by misrepresentation on the part of the landlord, in which case the tenant may be entitled to rescission or damages. The mere omission of the landlord to disclose such defects is not misrepresentation ... (emphasis added)

26 *Halsbury's* also indicates at para 170.0874 that:

> Unless the lease contains express provision to the contrary, the tenant takes the demised premises subject to any defects existing in them at the time of the letting, and to any events which subsequently affect their value. Hence, it has been *the general rule that the rent continues to be payable notwithstanding that, in the case of a house or flat, it is at the time of letting, or subsequently becomes, unfit for habitation*. (emphasis added)

Analysis

27 The defendant was aware from the beginning that the premises were located in a recently completed building which had just received its temporary occupation permit. She was taken to see the premises two times though she averred that on one occasion she had not been able to go in because the agent, Ms Lim, did not have the key. She did not dispute, however, that on the other occasion, she had seen the premises.

28 The defendant herself described the premises as being "bare, unfinished and unfurnished" at the time that she first saw them. Accordingly, since she took a tenancy of unfurnished premises, under the law, there was no implied term that the premises would be fit for human habitation. The agreement did not provide any express warranty of fitness either. Accordingly, legally, the plaintiff cannot be made liable for the "basic structural defects" which the defendant alleged existed, even if they did actually exist.

29 Further, the evidence showed that the defendant had willingly undertaken the obligation to renovate the premises and put them into a state which suited her. In an email from Ms Lim to the defendant dated 23 February 2011, the context in which the defendant accepted the premises was set out. It appeared that during the initial stages, the plaintiff was considering renovating the upper storey of the premises. The plaintiff's contractors estimated that it would take one month and cost $70,000. However, the defendant did not want to use the plaintiff's contractors. Instead, the parties agreed on a rent free fitting out period of two months during which the defendant could carry out renovations at her own cost. The defendant in fact used her two months' rent free period to undertake substantial works in the premises.

30 The defendant had claimed that a large crack had appeared on the ceiling of the second storey unit. This crack appeared after the defendant hacked down a wall in order to install another entrance to a room on the second floor. The defendant complained to the Building Control Authority ("BCA") about the crack and as a result engineers from BCA and the plaintiff's contractors visited the premises to address the defendant's complaint. They took the view that the cracks were due to the defendant's hacking down of the wall without providing adequate support to what remain of the wall. Subsequently, a structural engineer employed by the plaintiff's contractors opined that the structural integrity of the premises had not been compromised by the crack on the ceiling and the crack that the defendant had pointed out on the floor was not a structural defect either. They certified the structural integrity and safety of the building. The defendant did not adduce any evidence to contradict this professional opinion.

31 Regarding the defendant's contention that the plaintiff had failed to provide fittings such as electrical and light points, a 60 AMPS earth leakage circuit breaker, power and water supply meters and a SingTel distribution point, this is not meritorious because the agreement does not oblige the plaintiff to provide such fittings. The defendant took the premises as they were and if she found them wanting, she had to provide the fittings herself.

32 The defendant carried out quite a lot of work in the premises and she furnished them to her liking as photographs supplied by her indicated. Although the defendant complained about leakage and flooding, she was able to occupy the premises before the rent free period expired. The defendant appears to have been under the misapprehension that the plaintiff owed her a duty to provide premises which were habitable and completely defect free. As I have stated above, however, this is not the law that applies when premises are let on an unfurnished basis. The defendant should have spelt out all her requirements in the agreement so that it contained express duties on the part of the plaintiff to provide what the tenant needed. As no such clauses were included and the responsibility for maintenance was put on the defendant's shoulders, the defendant cannot complain of any breach of the agreement by the plaintiff. On the contrary, the agreement clearly spells out that the plaintiff is not liable for damage arising, *inter alia*, from leakage.

33 The other issue that the defendant raised was that of misrepresentation. She alleged that Ms Lim had misrepresented to her that the premises were fitted with an SCV connection. According to the defendant, this was important to her because she was an SCV platinum cardholder and wanted to continue to have the advantage of that status when using SCV's services. Apart from the defendant's assertion, however, there is no evidence that such a misrepresentation was made.

34 On 11 January 2011, Ms Lim sent the defendant an email stating that to provide SCV network cabling would cost approximately $40,000. The defendant was to make all the necessary arrangements and pay the expenses upfront. Thereafter, the plaintiff would bear the cost of the installation by deducting the cost from the monthly rent over a period of time. The defendant replied on 14 January 2011. In this reply she did not allude to any misrepresentation made by Ms Lim about

the status of the SCV network. Instead, she simply said that she did not agree with the proposal because the sum of $40,000 (which she said was actually $45,000) did not include the internal wiring and in total it would cost her $57,459 upfront of which $12,459 would go to the internal wiring and would not be underwritten by the landlord. The defendant's complaint at that point in time was this "I am renting a Residential units [*sic*] and why should I be paying for Commercial Cabling prices for the Landlord?"

35 On 23 February 2011, Ms Lim sent another email to the defendant and in that message, she asserted that the plaintiff had never promised that there was an SCV connection to the premises. She did not do so because the main cable had not yet been made available to the doorstep of the premises. The defendant did not respond to assert that Ms Lim had made the misrepresentation to her.

36 The defendant even made a police report on 6 April 2011. Her complaint was that the SCV connection was not provided by the plaintiff even though the agreement provided for it. She did not assert in her police report that Ms Lim had misrepresented the situation regarding the SCV connection. Instead, she purported to rely on the agreement. She may have thought that because the agreement provided for her to pay SCV whatever charges it levied in respect of its devices on the premises (cl 2(c)) that meant that the plaintiff had promised her such a connection. If that was her interpretation of the agreement, it was unfortunately the wrong interpretation. The defendant impressed me as a shrewd person who was able to look after her own affairs. I am sure that if Ms Lim had made such a misrepresentation at the beginning, the defendant would have had no hesitation in saying so at every opportunity. The fact that she did not do so in the email correspondence or in the police report is significant. It was only when the matter went to court that she brought up this allegation.

Conclusion

37 In the result, the defendant has not been able to raise a triable issue. There was no breach of the agreement on the part of the plaintiff. The allegation of misrepresentation is a bare allegation which has not been substantiated. Accordingly, the appeal must be dismissed with costs which I fix at $4,000 in view of the many adjournments and protracted hearing of the appeal. The defendant shall also pay the plaintiff's reasonable disbursements in relation to the appeal.

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