

Case name (date):
The “ASD” case (12/2019- 01/2020)

KEYWORDS:

Competence of the Legal clinic; unfair commercial practices (Directive 2005/29/EC) ; duty to inform (Directive 2011/83/EU); lack of consent; rental contract

FACTS:

In 2017, a user entered into a rental contract with fixed duration that was renewed annually, in 2018, 2019 and 2020.

In November 2018, the agency imposed renewal fees (117€) to be applied yearly, which was paid.

In October 2019, the agency imposed an increase of the renewal fees (a total of 234€) and a 50€ increase for the monthly rent. The tenant asked to the agency if it was possible to enter a 2 years long contract, so that he would not pay the fees each year. The agency refused, arguing that the Luxembourgish legal provisions forbade them to do so.

Since the tenant refused to pay the administrative fees, the agency directly deducted the 234€ from the rent and told the tenant that his landlord did not receive the whole rent.

Moreover, both contracts and exchanges of emails between the tenant and the agency tended to make it appear as though the landlord was in fact the agency and not an owner on behalf of which the agency was acting.

The user would like to know if he can legitimately contest the imposed fees and the rent increase.

LEGAL ANALYSIS:

In that case, there is at stake a breach of information duty, a possible lack of consent and unfair commercial practice. The issue was if the user can challenge the imposed administrative fees and the increase of the rent.

Competence of the Clinic

The Clinic is only competent in cases in which the user can be considered a consumer and the other party can be defined as a trader, in accordance with article L.010-1 of the Luxembourgish Consumer Code (LCC). The problem here was that the landlord was not a professional landlord, while the agency could be considered a trader. Thus, the Luxembourgish Consumer Code could only be applied to the relationship between the tenant and the agency. The Clinic was incompetent as to the relationship between the tenant and his landlord.

Duty to inform

The article L. 111-1 of the Luxembourgish Consumer Code entails a general duty to inform. The article L. 113-1 gives a precise list of all information that business should provide consumers with, which includes the overall price of the service provided or, if the total amount may not be calculated, the modalities of the calculation.

The agency did not inform the tenant beforehand that additional administrative fees would be due and neither it explained what the additional fees were referring to.

Aside from the fees, the agency also failed to disclose the real identity of the landlord there were acting on behalf of.

It could then be argued that a breach in the duty to inform was done by the agency.

Lack of consent

Under article 1135-1 of the Luxembourgish Civil Code, for standard form agreements, general terms and conditions are enforceable if the other party has been able to take notice of them at the moment the contract was signed.

In the contract at stake and in previous contracts, no mention of the renewal fees was made.

Thus, there were no contractual basis for the agency to claim those administrative fees.

Unfair commercial practices

In Luxembourgish law any kind of unfair commercial practice is prohibited under article L. 122-1 of the Luxembourgish Consumer Code. More specifically, article L. 122-2 of the Code forbids misleading actions whereas article L. 122-3 forbids misleading omissions.

In this case, the agency failed to inform the tenant about the administrative fees that were due for each annual renewal, which could be considered as a misleading omission if the fees were to be considered essential to the tenant's consent.

The agency also wrongfully told the tenant that forming a 2 years contract was illegal under Luxembourgish law.

LEGAL SOLUTION:

Regarding the breach of duty to provide information, failing to comply with the requirements could result in a fine amounting to 251 up to 15.000€ according to the article L. 113-1 of the Luxembourgish Consumer Code.

Regarding the lack of consent, it could be claimed that no valid agreement has been made on those charges and therefore, that there no legal basis on which the agency may claim these fees, thus entitling the tenant to refuse to pay them.

Regarding the unfair commercial practices, both misleading actions and omissions by businesses could result in a fine amounting to 251, up to 120.000 EUR, as stated in the article L. 122-8 of the Luxembourgish Consumer Code.

SOLUTION SUGGESTED BY THE CLINIC:

As the Clinic was incompetent to provide the tenant with legal information on his rental contract with his landlord, the latter not being a trader under the article L.010-1 of the Luxembourgish Consumer Code, no information could be given on the increase of the rent.

The Clinic suggested him to reach out to the Commission des Loyers, a Luxembourgish entity whose mission is to tackle issues between landlord and tenants regarding the amount of the rent.

For the relationship between the agency and the tenant concerning the fees, the Clinic suggested him to first write a registered letter stating in which he explained the legal arguments provided. And, to contact a lawyer or the Union Luxembourgeoise des Consommateurs (Luxembourgish Consumer's Association), in order to seek assistance in case he wants to take the issue before court.