



Compliance in the Maltese Private Residential Rental Sector

Four Years on from the Introduction
of the Private Residential Leases Act

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Executive Summary

The Private Residential Leases Act (PRLA) has been introduced with the goal of ensuring that among other elements, this sector is rendered more secure and transparent. This was done by: (i) first of all, ensuring the visibility by government of all the residential leases currently in force in order to ensure the better management of the sector and increasing the legal certainty of the contracting parties; (ii) secondly, by ensuring adherence to both the legal and contractual terms by the respective parties to the lease agreement. The present contribution aims to analyze these two aspects by first looking at the enforcement action conducted by the Housing Authority in order to ascertain compliance with the lessor's duty to register the agreement and then by looking at how lessor and lessees have been respecting their duties towards each, in an exercise that can be considered as the continuation of the analysis contained in the Housing Authority's 2022 Residential Rental Study.

While there were 56,720 registered agreements in September of 2023, there was also a total of 886 notifications issued to non-compliant landlords, 78 of which led to a criminal complaint to the Police force. There has been a total of 22 decisions delivered by the Court of Magistrates (Criminal

Judicature), with 3 decisions of the Court of Appeal (Inferior Jurisdiction) over this time-period. Although the fine established in the PRLA can range from two thousand five hundred euro (€2,500) to ten thousand euro (€10,000), out of the 15 cases in which the accused was found guilty, the Court imposed the minimum fine permissible by law in 12 appealed before the court cases.

The analysis of the Adjudicating Panel decisions between early 2022 until late 2023 reveals the underlined importance of the inventory in attesting to the true state of the property upon entry. Claims as to damages following the termination of the lease, or overcharging of utilities, have to be backed by adequate proof, consisting of not mere photographic evidence but also of documents, such as quotes or invoices, capable of quantifying such damage. The same applies for tenants claiming overcharging of utility bills. In general, there also seems to be a strong case for the competence of the Panel to be extended to, at least, cases of rent and utility arrears and expenses related to the common parts.



01.

Introduction

This article sets out with the dual aim of investigating whether and in which way has the introduction of the Private Residential Leases Act in 2020 served to render the Maltese private rental sector more transparent and accountable. This is done by looking, first of all, at the manner in which the duty to register lease agreements has been enforced over the first four years since the law's coming into force and, secondly, by continuing the exercise carried out in 2022, of looking at the decisions of the Adjudicating Panel for Private Residential Leases (Panel) which has been settling monetary claims of up to €5,000 between the parties to a private residential lease agreement.

In an effort to ensure proper visibility of the sector by the State without intruding unnecessarily in the parties' contracting freedom, and to increase legal certainty between the parties, the Private Residential Leases Act introduced an obligation for lease agreements to be registered with the Housing Authority within 10 days of the commencement of the lease (article 4(2)). The Housing Authority was tasked with the monitoring and enforcement of this duty. Failure by the lessor to regularize his or her position in accordance with this newly introduced obligation, would trigger a criminal complaint before the Court of Magistrates. While the data gathered up to September 2023 suggests that the sector is largely compliant with this obligation (there were 56,720 registered agreements in September of 2023), there have also been a total of 818 notifications issued to non-compliant landlords, 78 of which led to a criminal complaint to the Police force. There have been a total of 22 decisions delivered by the Court of Magistrates (Criminal Judicature), with 3 decisions being appealed to the

Court of Appeal (Inferior Jurisdiction) over this time-period¹. Notwithstanding the significant lag, in the vast majority of cases, the Courts have shown to be increasingly receptive of the legislative spirit that gave rise to the obligation to register lease agreements and by extension of the offence of non-registration incorporated in Article 22 of Cap. 604, as may be encapsulated in the following pronouncement of the Court of Magistrates (Criminal Judicature):

Certainly, the scope behind the introduction of the registration of the lease agreements is multi-faceted as this serves as a method of protecting both landlords and tenants, insofar as to prevent the abuse of rights and naturally also on the part of the public authority to have more oversight on the income of individuals and companies².

In the meantime, another objective of the Private Residential Leases Act was to ensure a greater degree of fairness and accountability within the sector through the introduction of a simplified procedure before the newly constituted Adjudicating Panel for Private Residential Leases. This quasi-judicial entity was set up with the objective of resolving any monetary claims which mostly arise at the end of the agreement, particularly those relating to the rightful retention of security deposits, damages to the property and the correct charging of water and electricity expenses. The analysis of the first eighteen months of the Panel's operation, conducted in 2022, had revealed that the Panel was working efficiently while ensuring proper observance of the parties' respective duties towards each other³. This second review of the Panel's decisions which, this time covers the twenty-month period between February of 2022 and September 2023 shows that while the Panel has sustained the standards that it had set in the first months, it has also elaborated on other points which had previously not been, or had only been partially, addressed.

¹Both the national enforcement agencies and the judicial system have been somewhat been lagging behind the Authority's enforcement initiatives. This may be attributed to increasing workloads and other structural deficiencies in the justice and policing system that have been noted across multiple sectors and segments of society (European Commission, "2023 EU Justice Scoreboard" https://commission.europa.eu/document/db44e228-db4e-43f5-99ce-17ca3f2f2933_en)

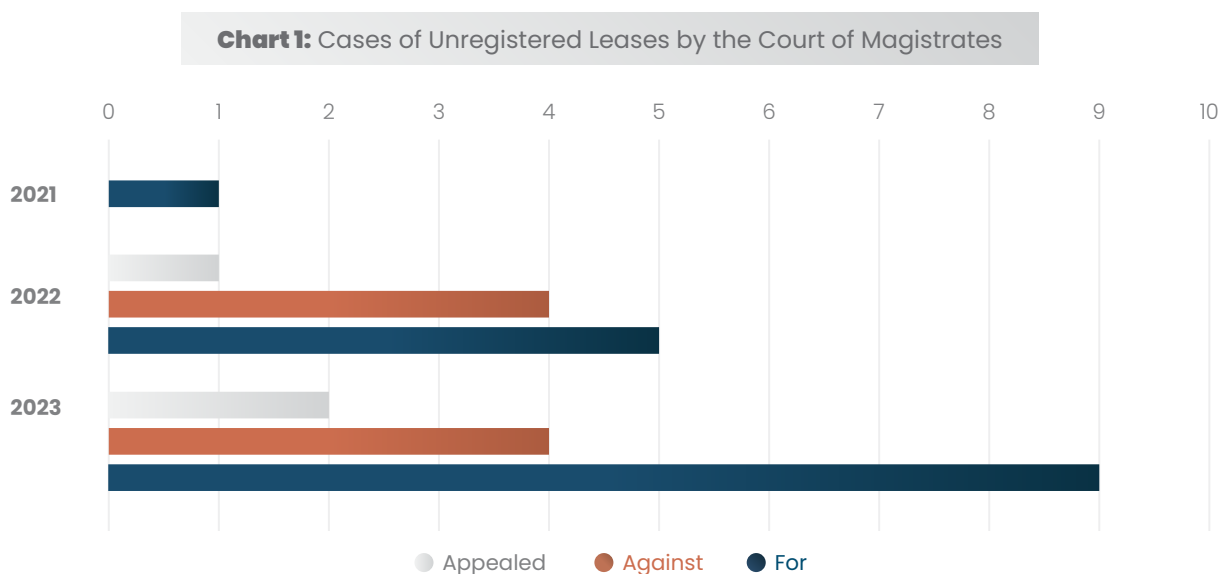
²Pulizija v Sacha Said, Court of Magistrates (Malta), 20th October 2022

³K. Xerri & S. Cutajar, "The Adjudicating panel on private residential leases: A review of the first eighteen months" in: Housing Authority, The Annual Malta Residential Rental Study: Second Edition, 2022, p. 60.

02.

The Enforcement of the Duty of Registration before the Court of Magistrates

Until the end of September 2023, the Court of Magistrates decided twenty-two (22) cases of unregistered leases (see Chart 1). Although this is a relatively small number, it does not necessarily mean that these are the only defaulting lessors, as many other cases are ongoing, being investigated or awaiting to be appointed for a hearing. Out of the decided cases, in fifteen (15) cases the accused was found guilty of not registering the lease and in 8 cases the accused was acquitted. Of all these cases only 3 cases were appealed and in each case the decision of the court of first instance was confirmed.



Although the fine established in the PRLA can range from two thousand five hundred euro (€2,500) to ten thousand euro (€10,000), out of the 15 cases in which the accused was found guilty, the Court imposed the minimum fine permissible by law in 12 of the court cases (see Table 1). The Court rarely exceeded the minimum and, in fact, only two of the accused were condemned to pay a fine of three thousand euro (€3,000). . In most cases, especially those where the accused registers a guilty plea, the Court even allowed the accused to pay the fine in monthly instalments in payments ranging from €100 to €250 a month. In fact, this stance of the Court of Magistrates, as presided over by various Magistrates, is mainly a result of a lot of admissions by the accused who failed to register the lease agreement. However, it is also possible that the Court does not consider this crime as being a grave criminal offence, so that in these cases, it opted to go for the minimum penalty.

Table 1: Fines established by the Court of Magistrates

	Minimum	€2,501 - €4,999	€5,000 - €9,999	Maximum
2021	1	-	-	-
2022	4	1	-	-
2023	8	1	-	-

Going through the judgments one can see five main interesting themes that shall be discussed in further detail. These are the level of proof required, the nature of the offence (strict liability and continuing), timing, the validity of contracts and the Attorney General's right of appeal or its non-existence.

2.1 Level of Proof

It is an established principle in criminal proceedings that the accused is presumed innocent until proven guilty and, as a consequence, the prosecution has the duty to prove the accused's guilt beyond reasonable doubt. Therefore, even in these cases of non-registration of a lease the level of proof required for the Court to find the accused guilty of not registering a lease is beyond any reasonable doubt.

Several factual circumstances and facts have been taken into consideration by the various Magistrates presiding over the Court of Magistrates when considering whether the evidence brought forward sufficiently proves that the accused failed to register the lease beyond any reasonable doubt and, or whether a lease agreement and/or relationship in fact exists. It can be deduced that these circumstances are mainly the written contract, the testimony of the tenant, the receipt of rent and the lessor's testimony himself when he chooses to testify.

The testimony of the tenant is always deemed to be crucial in these proceedings. In fact, in *Pulizija v Mario Debono* the Court acquitted the accused since the prosecution did not produce the testimony of the tenant and instead relied solely on the testimony of the Housing Authority's representative who received the complaint, which testimony was not considered to be the best form of evidence to confirm the existence of a lease agreement⁴. In these cases, the court will only be satisfied of the accused's guilt if and only if the tenant testifies, he is expected to recognize the accused as his landlord, he is expected to confirm the lease agreement. A problem arises therefore where the tenant would have departed from Malta. In these cases, the prosecution tries to have tenants give evidence by videoconferencing. However, this is not always practicable as it may be difficult to have the tenant recognize the lessor or the document of the lease agreement.

⁴ *Pulizija v. Mario Debono*, Court of Magistrates (Malta), 7 March 2023.

Moreover, proof that rent was actually paid by the lessee to the lessor is crucial to establish the level of proof beyond any reasonable doubt and when there is no clear evidence that the accused received rent from the alleged tenant, the Court decided to acquit the accused⁵.

Similarly, the prosecution must provide sufficient evidence that the accused is in fact the lessor. In *Pulizija v Neville Arpa*, the Court acquitted the accused because the lessor was a company rather than the accused in his personal capacity⁶.

Moreover, the Court of Appeal made it clear that when there is any form of doubt, this doubt should favour the accused⁷, and this in line with the general axiom of “in dubio pro reo”.

2.2 The Nature of the Offence

2.2.1 *Strict Liability*

The offence of failing to register a lease has been often defined by our Courts as one of a strict liability nature. This concept was defined by Professor Mamo as an offence which does “not require proof of fault, and provide for a defence of an honest and reasonable mistake of fact. It is generally considered justified to impose strict liability to protect public health, safety and the environment. It may also be imposed for regulatory offences. The general principle is that strict liability may be imposed where a person is placed on notice to guard against the possibility of inadvertent contravention.”⁸

⁵ *Pulizija v Kenneth Camilleri*, Court of Magistrates (Malta), 21 November 2022.

⁶ *Pulizija v Neville Arpa*, Court of Magistrates (Malta), 25 May 2022, H 1/22, H 2/22, H 3/22.

⁷ *Pulizija v Ruth Galea Vella*, Criminal Court of Appeal, 12 December 2022, Appell Nru 3/2022.

⁸ *Pulizija v Mariella Calleja*, Court of Magistrates (Malta), 27 March 2023, Rik Nru 9/2022; *Pulizija v James Sammut, Joseph Sammut and Kulis Company Limited (C-10210)*, Court of Magistrates (Malta), 27 March 2023, Rik Nru 22/2022; *Pulizija v Manuela Tabone Micallef*, Court of Magistrates (Malta), 14 July 2023.

In fact, the Court established that in order to prove an offence under Article 22(a) (Private and Residential Leases Act, Chapter 604 of the Laws of Malta, 2020), it is enough that the lease has not been registered, thus the material element takes place. There is no need to prove the criminal intent as well.⁹

This is an exception to the latin *maxim actus non facit reum nisi mens sit rea*, generally adopted in criminal offences. Taking into consideration, Professor Mamo's definition, together with the reasoning of the Court of Magistrate, such classification by the Court, highlights that such offence of non-registration of leases is seen more as a regulatory offence.

In fact, when in his defence an accused pleads that he was compliant with his tax obligations and always paid any relevant taxes due on the rent received, the court never accepted this defence.

2.2.2 Continuing Offence

The Court of Magistrates delved into this issue in order to be able to decide on a plea of prescription as raised by the accused.¹⁰ In its decision the Court examined the elements of the nature of the offence of the non-registration of the lease and classified it as a continuing offence because it deemed that when the lessor fails to register the lease, the interest of the lessee and lessor remains prejudiced, but at the same time this illegality can be stopped at any point in time simply by registering the lease, even if such registration is done after the ten days stipulated by the law.

As a result of the continuing nature of the offence of non-registration of leases, as established in Article 691 of the Criminal Code, Chapter 9 of the Laws of Malta, where the identity of the offender is known, prescription starts to lapse from the day when the "continuance ceased", that is from when the lessor ceases to have a non-registered lease and registers such lease

⁹ Ibid.

¹⁰ *Pulizija v Wayne Lee Mario Cassar*, Court of Magistrates (Malta) 7 October 2022, H 10/22.

agreement. However, where the offender is unknown, the period of prescription in respect of crimes shall not commence to run until the identity of the offender is known.¹¹

2.3 Timing

Article 4(2) obliges the lessor to register a lease within ten days from the commencement of the lease (Private and Residential Leases Act, Chapter 604 of the Laws of Malta, 2020). Thus, the time frame stipulated by the law is an essential element when considering whether the offence has been committed or otherwise. In fact, the Court decided that, in the event where the lease relationship terminated before the lapse of these ten days, the lessor's obligation to register the said lease does not exist any longer.¹²

2.4 The Legal Effect of a Contract

One crucial and conflicting theme is the legal effect of a lease agreement and its impact on whether an offence was created or otherwise.

In *Pulizija v Ruth Galea Vella*, the Court of Magistrates exceeded its competence to decide on the criminal elements constituting the offence and delved into the merit of whether the contract itself was null and void in civil terms. The Court considered that, in light of Article 4 of the Private Residential Leases Act which stipulates that where a lease contract is not registered it is null and void, then the accused cannot be guilty of the offence of not registering a lease agreement which was null.¹³ This was also confirmed by the Court of Appeal in the Attorney General's appeal.¹⁴

¹¹ Article 692, Criminal Code, Chapter 9 of the Laws of Malta.

¹² *Pulizija v Rowena Fenech*, Court of Magistrates (Malta), 9 January 2023, H 4/22, H 5/22, H6/22.

¹³ *Pulizija v Ruth Galea Vella*, Court of Magistrates (Gozo), 21 July 2022, Rik Nru 169/2022.

¹⁴ *Pulizija v Ruth Galea Vella*, Criminal Court of Appeal, 12 December 2022, Appell Nru 3/2022.

This notwithstanding, other Magistrates have argued that the Court of Magistrates cannot delve into the issue of whether a lease agreement is valid or otherwise, since the competence of the Court of Magistrates in such cases is to decide whether the lease agreement was registered or not.¹⁵ The Court of Magistrates in another judgment went further and even described the defence counsel's pleas of the impossibility of the offence since a null and void lease agreement cannot be registered, as a fallacious argument since the obligation to register the lease agreement falls on the landlord and even when this registration is done by the tenant, it is done at the expense of the landlord.¹⁶ The Court also differentiated between the civil action and the criminal action in the sense that when a lease agreement is not registered it is considered as null and void, which is a civil consequence but failure to register such a lease leads to a criminal action and civil consequences.¹⁷

The interpretation of the Courts in the latter judgments better reflects the intended purposes of the legislation. In fact, the conclusion of the court in *Pulizija v Ruth Galea*,¹⁸ risks allowing the lessor to escape from his responsibility of registering the lease agreement by intentionally preparing a contract which is not according to the law and which is therefore not registerable, leading to impunity of the landlord from the criminal consequences as established for in the same legislation.

2.5 Attorney General's Right of Appeal

The Attorney's General right to appeal from judgements delivered by the Court of Magistrates (Criminal Judicature) is generally regulated by article 413 of the Criminal Code, unless a more specific right to appeal is found in any other law containing criminal offences or contraventions. The Private

¹⁵ *Pulizija v Joseph Zammit*, Court of Magistrates (Malta), 27 February 2023, H 14/2022.

¹⁶ *Pulizija v Sacha Said*, Court of Magistrates (Malta), 20 October 2022.

¹⁷ *Ibid.*

¹⁸ Criminal Court of Appeal, 12th December 2022, Appell Nru 3/2022.

Residential Leases Act does not specifically regulate the Attorney General’s right to appeal decisions delivered in terms of offences under Article 22 of the Act and therefore appeals by the AG must be made in terms of the limitations imposed by the Criminal Code.

In *Pulizija vs Wayne Lee Mario Cassar*,¹⁹ the Court of Criminal Appeal scrutinized the limits of the AG’s right of appeal from judgements delivered by the Court of first instance in terms of Chapter 604, and given that the procedure under Article 22(2) of the PRLA is considered a summary procedure, the Court subsequently went on to describe the necessary elements for a valid appeal to subsist by listing the various sub-sections of Article 413(1)(b) of the Criminal Code. Specifically, the Court of Appeal zoomed into sub-sections 413(1)(b)(iv) and 413(1)(c), which formed the legal basis of the AG’s appeal application. Whilst the Court quickly dismissed the latter sub-section (c) as it remarked that this only applies to those criminal cases which do not fall under the classification of ‘summary proceedings’, the Court went into greater detail into the applicability or otherwise of sub-paragraph (iv)(i) that speaks of such instances wherein:

“*(iv) the accused or defendant is acquitted on the ground –
(i) That the fact does not contain the ingredients of an offence*”.

The Court disagreed with the AG’s complaints on the fact that the Court of First Instance deemed that the rental agreement was the strongest piece of evidence and dismissed other evidence presented by the prosecution in the judicial proceedings. In that case the accused had chosen to give evidence, wherein he had admitted of having rented the property to the tenants. The Court of Appeal argued that the appeal was erroneously filed on the basis of an incorrect appreciation of the facts by the lower Court instead of the ‘*error iuris*’ (mistake on a point of law) as should have been the case. The Court cited jurisprudence and the writings of a prominent criminal law jurist to substantiate its considerations, whereby it very clearly declared that the AG is only allowed to appeal on a wrong interpretation or

¹⁹ Criminal Court of Appeal, 28th July 2023, Appell Nru 99/2023.

'construction' of the law made by the inferior court on the facts contained in the charge apart from the evidence, and not the fact as it subsequently appears from the evidence. Therefore, the AG may only use this provision in the Code if the Magistrate, considering the fact or facts as deduced in the charge only, decrees that that fact or facts do not constitute an offence – giving rise to a clear and obvious '*error iuris*' (a question of Law) and not a debate on a question of fact decided by the inferior court.

Basing itself on the aforementioned principles, the Appellate Court dismissed the AG's appeal by declaring the AG's appeal as void and abstained from taking further cognizance of it and therefore confirmed the judgement of the Court of Magistrates in its entirety. This appeal judgement might indicate that the legislator overlooked the limitations of the AG's right of appeal when drafting Chapter 604 of the Laws of Malta, as he did not anticipate the possibility of the inferior courts being selective in their appreciation of proof presented by the prosecution.

03.

An Analysis of the Panel Decisions

(February 2022 to September 2023)

The Adjudicating Panel's function is mainly that of determining monetary claims, which arise mainly due to disputes relating to the retention of the deposit, amounts due by way of utility payments and damages claimed following the departure of the lessee. Similar to the assessment carried out in 2022, a fact that needs to be underlined is the strengthening of the degree of proof required for the demand or retention of any amount. In the meantime, the need for the competence of the Panel to be extended to areas such as rental and utility arrears has also emerged strongly.

3.1 Reiteration of the General Principle with regard to the Retention of the Deposit

An important statement regarding damages entitling the retention of the deposit in case of alleged damages was made in the case of *Brandamente v. Zammit*:

“The Panel observes that in its opinion it should be a general principle that whoever rents out a property for a period of time cannot expect to take it back in the exact same state in which he or she would have originally delivered it to the lessee. One must certainly expect a certain

wear and tear and that some objects given as part of the lease, along a period of time will extinguish their natural lifetime.”²⁰

In other instances, it has held that: “the security deposit is to be retained only as a security for the non-fulfilment of obligations in the contract of lease and as such its retention is to be the exception and not the rule”.²¹

This rule seems to have provided the basis of the presumption that unless the lessor was able to prove the reason behind the withholding of the deposit, the lessee would be entitled to its restitution. This seemed to imply that any challenge by the lessee did not need to present any evidence together with the demand for the restitution of the deposit.²² The position during the first months was that if challenged by the lessee for the return of the deposit, the lessor’s right to retain it would be dependent on his or her justification to do so.²³ This position seems to have prevailed even during the period under study.²⁴ It is also very probable that if a claim is filed for the retention of the deposit and the lessor does not file a reply or contest to the claim in any manner, the Panel is likely to order the reimbursement.²⁵ It was also confirmed that a claim could include both a demand for the retention of the deposit as well as a demand for damages due to repairs made necessary by the lessee’s negligence.²⁶

²⁰ *Enrico Brandamante et v. David Zammit*, 27 April 2022, ADJ/0207/21.

²¹ *Emma Margaret Baxendale et v. Joseph Muscat*, 25 July 2023, ADJ/0061/23. See also: *Milda Sirtautaitė et v. Celan Ltd et*, 18 January 2023, ADJ/0132/22. It has also been re-asserted by the Court of Appeal, however, that the lessor did not require the Panel’s permission in order to retain the deposit (*Martin Borg v. Choudery Mohammad Zahid et*, Court of Appeal (Inferior), 18 May 2022, App. Inf. Nr. 52/2021).

²² This was even more so where the lessor would have failed to respond to the claim (*Sohin Ozdogan et v. Michelle Pullicino*, 12 May 2022, ADJ/0042/22; *Krista Maria Raitamaki et v. Christopher Pace*, 12 May 2022, ADJ/0034/22).

²³ *Vincent Scicluna et v. Matthew Borg*, 10 November 2021, ADJ/0147/21. See also: K. Xerri & S. Cutajar, “The Adjudicating panel on private residential leases: A review of the first eighteen months”, in Housing Authority, *The Annual Malta Residential Rental Study. Second Edition*, 2022, p. 65.

²⁴ *Dawid Krzysztof Oleksinski v. Gaetano Bonnici*, 7 February 2023, ADJ/0136/22; *Anita Zafirova et v. Maria Concetta Attard*, 2 March 2023, ADJ/0005/23; *Lorenada Hasanbelliu et v. Jessica Chetcuti*, 1 June 2023, ADJ/0031/23. It is, however, important to underline one exception to this trend where the case was decided against the claimants (lessees) since they had failed to bring forward any evidence with their claim (*Nahid Khosh Vadoud et v. Lawrence Cassar et*, 14 June 2023, ADJ/0027/23). In this latter case the Panel was presided by an acting Chairperson.

²⁵ *Jordan Mark Ledger v. RM Installations Ltd*, 25th March 2022, ADJ/0019/22.

²⁶ *Matthias Mallia et v. Kevin Michel Obert*, 25 March 2022, ADJ/0011/22.1; *Marcella Sullivan v. Akash Solanki*, 30 March 2022, ADJ/0021/22.

3.1.1 Evidence Required to Prove One's Case

Photographic evidence of damage is not enough since a deposit cannot be withheld without proof of receipt showing the entity of damage²⁷; the panel would not decide blindly²⁸ even if the claim would have remained uncontested by the lessee.²⁹ In fact, proof of damage should always be accompanied by an invoice³⁰ although the Panel would also accept estimates.³¹ From this it follows that the Panel would only award the claim up to the amount which the landlord proves to have spent.³² Where proof of damage is brought without any proof of expenses, the Panel is only likely to concede minor costs such as those related to cleaning.³³

The same applies to the lessee, particularly when filing claims for overcharging of utility expenses. The Panel has asserted that “[t]he duty to apply the correct tariff applicable for the provision of electricity and water is the lessor’s”.³⁴ The Panel held that the “bona fide” required of the contracting parties binds the lessor to take active steps towards ensuring that the lessee would be paying the most efficient rate.³⁵ Nevertheless, lessees would always need to file evidence as to the undue amount paid.³⁶ If the claimant does not provide sufficient proof, the Panel would not be able to accede to the demand.³⁷ In such cases the lessor would need to present

²⁷ *Grzegorz Konrad Rarak et v. Gzira Properties et*, 9 February 2022, ADJ/0003/22; *Luke Camilleri v. Cesar Augusto Davilla et*, 17 February 2022, ADJ/0004/22; *Victoria Zammit v. Izabela Biskupska*, 10 March 2022, ADJ/0179/21; *Renata Dubus v. Omar Bugeja*, 27 July 2022, ADJ/0063/22;

²⁸ *Romina Caruana v. Ushas Mathew et*, 2 March 2022, ADJ/0007/22

²⁹ *Leeanne Bartolo v. Krishnanand Raveendran et*, 14 June 2023, ADJ/0017/23

³⁰ *Francesco Sammut v. Ederhoubi Saad et*, 12 May 2022, ADJ/0215/21; *Larisa Andreea Capatina et v. Gat Ltd et*, ADJ/0010/23.

³¹ *Fiona Borg Bonello v. Samsun Asagunia et*, 23 February 2022, ADJ/0009/22

³² *Nerissa Bonavia Gatt v. Helen Vardas*, 12 January 2022, ADJ/0119/22.1. In this case the Panel considered that “after having seen the submissions of the claimant whereby two quotations were presented in the amount of €475 and €610 respectively, representing the alleged damages caused in the leased tenement, it cannot be satisfied that the whole amount claimed by the claimant is justified”. See also: *Lukan Borg v. Andra Apostol et*, 23 March 2023, ADJ/0129/22; *Melinda Namath v. Giancarlo Fava et*, 20 April 2023, ADJ/0111/22;

³³ *Ismailaj Enada v. Leo Gove*, 22 February 2022, ADJ/0209/21; *Jeffrey Calleja v. Qiu Xingyuan*, 3 May 2022, ADJ/0201/21; *Ryan Schembri v. Leo Macia et*, 15 December 2022, ADJ/0103/22.

³⁴ *Katrina Lee Deidun v. Ellul Enterprises Ltd et*, 15 September 2022, ADJ/0083/22. See also: *Frank Guerts et v. Catherine Brincat*, 12 January 2022, ADJ/0127/22. In this latter case it was also held that the Panel would only hear disputes which contested an actual monetary claim rather than the mere fact that the lessees would not have been placed on the proper rate.

³⁵ *Javier Parra Sanchez et v. Albert Muscat*, 10 March 2022, ADJ/0193/21

³⁶ *Stephen Peter White et v. Seija Orvokki Anttonen*, 25 May 2022, ADJ/0049/22.

³⁷ *Helen Vardas v. Nerissa Bonavia Gatt*, 12 January 2022, ADJ/0119/22; *Dora Berkesi v. Victoria Sammut*, 11 May 2023, ADJ/0032/23; *Oleksandr Proshkin et v. Claudienne Miceli*, 1 June 2023, ADJ/0044/23; *Anke Enzmann et v. Maria Dimech*, 22 June 2023, ADJ/0075/22; *Palacios Paredes Imer Abdill v. Romeo Camilleri*, 24 August 2023, ADJ/0018/23; *Javier Parra Sanchez et v. Albert Muscat*, 10 March 2022, ADJ/0193/21;

a computation showing the difference between the actual bills and the 'billing calculator' computation.³⁸ This could be further reinforced by proof of the number of people who were actually residing inside the premises.³⁹ In case the lessor does not see to the application of the correct tariff, it remains unclear as to whether the lessee may withhold part of the payment; while the law provides for this remedy in the proviso to sub-article 17(3) of the PRLA⁴⁰ in one particular decision the Panel held that lessees cannot arbitrarily decide to make a partial payment.⁴¹ It is only exceptionally that the Panel would use its discretion to reduce the landlord's claim.⁴² The rule that utility expenses do not become due before a copy of the actual utility bill is presented to the lessee remains confirmed by Panel decisions⁴³ (a calculation based on the ARMS Bill Calculator would not be sufficient⁴⁴). Nevertheless, there appear situations where the Panel would not be able to decide claims such as in cases where one meter would be servicing more than one property. Should the lessee contest the manner in which the lessor would be splitting the bill among the occupants, the Panel would have no means upon which to decide on the matter,⁴⁵ although it seems likely to approve of equitable computations based on the number of lessees.⁴⁶

The same rule applies if the lessee contests the unlawful retention of the deposit after his premature termination of the contract. It would be up to

³⁸ *Marta Popko Szmidt et v. Maria Alessia Saffioti*, 8 June 2022, ADJ/0050/22; *Ashley Michael Davis v. Rudolph Cassar*, 14 June 2023, ADJ/0028/23.

³⁹ *Denise Buttigieg v. Michael Portelli*, 11 May 2023, ADJ0030/23. However, evidence of the incorrect number of people listed on the account, without proof of the difference in the amount payable, would not be sufficient for the Panel to uphold the claim (*Jeffrey Calleja v. Qiu Xingyuan*, 3 May 2022, ADJ/0201/21).

⁴⁰ The proviso to sub-article 17(3) of the PRLA which lays down that: "... the lessee may retain part of the rent due for the purpose of reimbursement of such [amounts incurred by the lessee as a result of the lessor's default to acknowledge the number of persons residing in the tenement for the purpose of calculating the correct tariff applicable for electricity and water supply]." The Panel made reference to this principle in: *Marta Popko Szmidt et v. Maria Alessia Saffioti*, 8 June 2022, ADJ/0050/22.

⁴¹ *Jefry Herrera et v. Highend Properties*, 23 February 2022, ADJ/0012/22. While having alleged that the lessor had refused to enable them to switch to a residential tariff, the lessees were penalised by the Panel for having failed to express their objection by replying to a number of emails from the lessor in which he was identifying the applicable tariff. It is submitted that this decision singles itself out as decision which goes in contradiction to the principles enunciated in other decisions.

⁴² *Elaina Florina Cristina Vella v. Malmberg Maria Charlotte Akeddotter*, 3 May 2022, ADJ/0028/22. In this case the Panel accepted that the amount requested by the lessor included a period during which the lessee was not registered with ARMS as a resident in that apartment. It therefore declared that only two-thirds of the arrears were due.

⁴³ *Laura Catalina Angulo Paez et v. Valley Properties (Fran Schembri) et*, 24 August 2023, ADJ/0057/23. See also the proviso to sub-article 17(4).

⁴⁴ *Darren Said v. Sharni Aidi Vella*, 19 May 2022, ADJ/0026/22.

⁴⁵ *Dawid Krzysztof Oleksinski v. Gaetano Bonnici*, 7 February 2023, ADJ/0136/22.

⁴⁶ *Krista Katarina Mikkonen v. Malcolm Pace noe*, 25 May 2023, ADJ/0020/23.

the lessee to prove that due notification would have been made in accordance with the terms of article 11(2) of the PRLA i.e. by registered letter.⁴⁷ The Panel elaborated that in the absence of due notification, made exclusively in the form required by law, the lease would remain in force.⁴⁸ This would even be the case if the lessor would have verbally consented to the premature termination.⁴⁹ Lessees would only be excused from giving due notice in the cases of serious defects such as mould,⁵⁰ however, these could not have been evident before entry into the lessee's property.⁵¹

Certain recent decisions are indicating that the Panel seems to have adopted a greater degree of flexibility. Where no invoices would be presented, but damages were evident from the photos presented by the claimant, the Panel could consider awarding a discretionary amount.⁵² The Panel has in some instances stated that it was being driven to do so by "a sense of justice".⁵³ It could also be the case that the Panel would admit the lessor's claim (to either retain the deposit or to demand compensation) partially since while some damages would be found to have been the result of wear and tear, others would be the consequence of the lessee's negligence.⁵⁴ The Panel could proceed to supplement the amount backed

⁴⁷ *Kevin Michel Obert et v. Matthias Mallia et*, 25 March 2022, ADJ/0011/22; *Manar Yassine v. Vincent Cortis*, 19 May 2022, ADJ/0051/22; *Tristan Hauet et v. David Castillo*, 21 July 2022, ADJ/0045/22; *Anthony Catania v. Derick Feidel et*, 30 November 2022, ADJ/0085/22; *Mohan Lal et v. Saviour Frendo*, 22 June 2023, ADJ/0159/22; *Joao Manuel Salgueiro v. Joseph Falzon*, 24 August 2023, ADJ/0154/22; *Noemi Nagy et v. Sergio Falzon*, 24 August 2022, ADJ/0077/22; *Sandra Saliba Sergent v. Manalo De La Rosa Christine*, 7 April 2022, ADJ/0190/21 (in this latter case the Panel held that damages of a minor nature could not justify the lessee's premature termination of the contract without following the stipulated procedure).

⁴⁸ *Nury De Lourdes Fernandez Florez et v. Jeffrey Pace*, 21 July 2022, ADJ/0070/22.

⁴⁹ *Daniel Damiao v. Dr John Seychell Navarro*, 13 October 2022, ADJ/0027/22; *Sina Vatanparast v. Sandra Galea*, 16 February 2023, ADJ/0138/22. These cases were both decided in favour of the lessors despite the fact that the Panel deplored the same lessors for their bad faith in consciously omitting any mention of the formal requirements of article 11(2) prior to the lessee's departure, so that they could raise the lessee's inobservance of the legal formalities as the basis behind the retention of the deposit. These decisions do not seem to disturb the reasoning that the lessee would, however, be entitled to claim the deposit back if the lessor would have expressly agreed to release it in his or her favour, particular if the lessee would be able to bring evidence of such declaration (*Andre Pio Catania et v. Sdrjan Vincic*, 28 April 2021, ADJ/0070/20; see also: *Xerri & Cutajar* (ibid), p. 65).

⁵⁰ *Alona Serstneva v. Miriam Spiteri*, 23 March 2023, ADJ/0007/23.

⁵¹ *Daniel Galea v. Roderick Borg*, 23 March 2023, ADJ/0128/22.

⁵² *Laura Martinez et v. Helen Dalli*, 6 July 2023, ADJ/0050/23

⁵³ *Ryan Cauchi v. Michelle Cassar*, 11 November 2022, ADJ/0107/22; *Bollicine Ltd et v. Antonella Bartolo*, 11 November 2022, ADJ/0087/22 (in these cases the lessee had not responded to the claim filed by the lessor).

⁵⁴ *Eldho Rajan et v. Ismael Gatt*, 3 February 2022, ADJ/0169/21; *Lukan Borg v. Andra Apostol et*, 23 March 2023, ADJ/0129/22; *Martin Guangua Quitumba et v. Juliana Abela Romeiko*, 24 August 2023, ADJ/0048/23 (in this case the damage had been clearly caused by the lessees' pets); *Jordan Giachino et v. Aprilia Ltd*, 20 July 2023, ADJ/0060/23.

by receipts and invoices by a discretionary amount where evidence of extensive damage would be brought forward.⁵⁵ On the contrary, a discretionary moderation of the amount demanded by the claimant would also be made by the Panel where it would find that the damages claimed would be the basis for reparatory works rather than replacement in whole.⁵⁶

3.1.2 *The Importance of the Inventory*

One significant element that stands out in the assessment of the period under study is the importance that the Panel has been attributed to the inventory. Following the introduction of the PRLA, the inventory has started to represent one of the necessary elements for the contractual validity of leases. The Panel has underlined how: “the inventory is not merely a formalistic requirement, but it has the practical function of aiding the understanding [of whether the damages pre-existed the commencement of the lease or otherwise]”⁵⁷ and to “have an official record of the state of the property prior to the commencement of the lease”.⁵⁸ On other occasions it also made the reproving remark that the parties do not often give the inventory the vital importance that it is due.⁵⁹

This poses a significant burden for both lessors and lessees. Lessors must make sure that any items of value are included in such document since if any claim is going to be made with respect to missing items, these need to be shown in the inventory.⁶⁰ Lessees, on the other hand, must keep in mind that any anomalies are to be pointed out immediately in the inventory itself. In fact, any declaration attesting to that the fact that there would be no

⁵⁵ *Reuben Scicluna et v. Jayachandran Jayaprakas et*, 23 March 2023, ADJ/0015/23; *Mark Rapa v. Vanessa Camilleri*, 14 June 2023, ADJ/0026/23

⁵⁶ *D Peak Ltd et v. Elmer Esteban Liwanag*, 7 February 2022, ADJ/0112/22

⁵⁷ *Enrico Brandamante et v. David Zammit*, 27 April 2022, ADJ/0207/21. See also: *Abril Itzel Narvaez Moreno et v. Ryan Attard*, 20 April 2023, ADJ/0013/23

⁵⁸ *Sandra Saliba Sergent v. Manalo De La Rosa Christine*, 7 April 2022, ADJ/0190/21

⁵⁹ *John Borg v. Ahmad Hej Semu*, 17 February 2022, ADJ/0188/21.

⁶⁰ *Lisa Lepplomb-Hostein et v. Josette Faure*, 19 September 2023, ADJ/0063/23. In *Baharul Islam v. Margaret Petersen* (19 September 2023, ADJ/0086/23) the inventory was decisive in having the case decided in favour of the lessor since it clearly showed a number of items which had gone missing following the lease.

considerable damages to the property upon entry could not be defeated by any subsequent declaration that such damages would have been in existence even before the start of the lessee's occupation.⁶¹ Lessees are, therefore, responsible for ensuring that all the necessary verifications are performed prior to their entry into the property.

3.2 Grounds for the Retention of the Deposit

Damages caused by wear and tear need not be compensated by the lessee⁶² although, where the lessor presents proof of the damages incurred along with the documents such as receipts and invoices in order to back the demand, the Panel is very likely to award the claim in its entirety.⁶³

Having said this, the borderline cases where the lessee claims that repairs would not be of an ordinary nature while the lessor maintains otherwise are particularly problematic. A broken kitchen mixer tap and a broken float valve in the water tank were held to be repairs for which the lessee was responsible.⁶⁴ An interesting case related to a claim made by a lessee wherein he demanded a reduction of the rent due to the fact that the water heater and the washing machine in the apartment were not in operation for a period of time.⁶⁵ The demand was not upheld since the Panel was satisfied that the lessor had reacted to the matter and done his utmost to resolve it. The principle to be drawn from this case is that prompt action by the lessor would reduce the chances of a successful claim by the tenant for

⁶¹ *Enrico Brandamante et v. David Zammit*, 27 April 2022, ADJ/0207/21; *Katrina Lee Deidun v. Ellul Enterprises Ltd et*, 15 September 2022, ADJ/0083/22

⁶² *D Peak Ltd et v. Elmer Esteban Liwanag*, 7 February 2022, ADJ/0112/22; *Lisa Leplomb-Hostein et v. Josette Faure*, 19 September 2023, ADJ/0063/23.

⁶³ *George Muscat v. Honey Mohan*, 27 July 2022, ADJ/004722; *Manuel Borg v. Brandon Grech*, 7 February 2022, ADJ/0130/22; *Paula Fitzgerald v. Andrew Tabone*, 20 April 2023, ADJ/0144/22; *Rose Fenech v. Rana Dimpul*, 6 July 2023, ADJ/0041/23

⁶⁴ *Frederique Buonomo et v. James Psaila*, 25 March 2022, ADJ/0018/22.

⁶⁵ *Pawel Czapula et v. Anthony Bugeja et*, 14. June 2023, ADJ/0040/23. In this case tenant was himself responsible for delay in repairs by only making himself available on weekends. Interestingly, the abatement of rent is expressly provided for in article 1545 of the Civil code, which reads that: "1545. (1) The lessor is bound to warrant the thing let against the faults or defects which prevent or diminish the use thereof; and, where the existence of such faults or defects is proved, the lessee may demand at his option either the dissolution of the contract or an abatement of the rent." This article, however, was not discussed in the Panel's decision.

the reduction of the rent: “While the Panel understands the frustration experienced by the lessees in not having basic facilities for some time, it must also consider what had been done by the lessor in order to resolve the problem, naturally within the parameters of what is to be reasonably expected.” In another interesting case, it was decided that the absence of a clause prohibiting lessees from repainting the wall to another colour meant that the lessor had no right to retain the deposit on the basis that the lessees had painted the walls pink.⁶⁶

In case of conflicting declarations by the parties the Panel would then decide on a balance of probabilities, particularly whether the damages would be due to the wrong use of the premises or the furniture.⁶⁷ It is likely that the Panel will presume that the damage was sustained during the lease.⁶⁸

In the meantime, the Panel has decided that the deposit could also be recovered in cases where the lessee would have been made to leave the property without the lessor having adhered to notice of non-renewal.⁶⁹ It has also been emphasized how a mere delay in payment, which does not translate into a pecuniary damage is not a valid reason on which the lessor could retain the deposit.⁷⁰ Moreover, if the notice period is given before the end of the following month, there would be no reason to keep the deposit for remaining period until the end of the month.⁷¹

⁶⁶ *Catherine Cassar Farrugia v. Julie Sheid et*, 13 July 2022, ADJ/0068/22.

⁶⁷ *Janusch Kowalczyk v. Brian Decesare*, 15 December 2022, ADJ/0123/22. In this case the parties were agreeing as to the damages that had occurred but not as to the responsibility. The Panel gave more credibility to the lessor’s version that the damages to the hob that were caused by soaked wires were the result of the lessee’s failure to wipe overflowing water which was seeping underneath the hob. The Panel similarly found that the amount held for the shampooing of a carpet and the refinishing of a wooden table to be justified (lessor had also presented invoices backing his claim). In *Yu He v. Maria Camilleri*, 16 February 2023, ADJ/0140/22 the lessee was found to have used a passenger lift to move her belongings, thereby causing unnecessary damage to the lift.

⁶⁸ *Jessica Bianchi et v. Angela Fenech*, 6 July 2023, ADJ/0045/23. This is in line with article 1560 of the Civil code: “1560. Where no description of the condition of the thing let has been made, it shall, in the absence of any proof to the contrary, be presumed that the lessee received the thing in good condition.”

⁶⁹ *Stanley Hibbitt v. Gevimida Ltd et*, 19 September 2023, ADJ/0087/23.

⁷⁰ *Eldho Rajan et v. Ismael Gatt*, 3 February 2022, ADJ/0169/21.

⁷¹ *Michael Camilleri v. Joseph Cassar*, 9 February 2022 ADJ/0202/21. In this case the lessor would only accept the notice period until 31st December 2021 rather than the 17th December 2021.

3.3 Competence and Procedural Matters

The Panel confirmed that it has no competence with regard to expenses related to common parts or internet bills,⁷² agency fees.⁷³ It has also held that it has no competence over rent arrears⁷⁴ or amounts in excess of €5,000⁷⁵ although the rejection of such claims would not prejudice the lessor's right to resort to the adequate forum.⁷⁶ In one case the Panel accepted a claim for arrears on utility payments while rejecting that on rent.⁷⁷ Competence was also declined where the Panel was requested to determine demands for the termination of lease agreements,⁷⁸ contractual amendments⁷⁹ or rent increases.⁸⁰ Demands for punitive damages due to the lessee's alleged violation of a contractual clause have also been rejected since actual financial loss would have to be proven in every case.⁸¹

Another interesting decision relates to whether the lessor could make a claim after having released the deposit. This was answered in the affirmative since the lessor had not agreed to return the deposit "in full and final settlement" of any claim.⁸² However, the Panel does not consider requests for reimbursement of deposit, until contract would have been

⁷² *Mario Vella noe v. Felicia Solomon et*, 17 February 2022, ADJ/0187/21.

⁷³ *Jeffrey Calleja v. Qiu Xingyuan*, 3 May 2022, ADJ/0201/21.

⁷⁴ *Daren Peplow v. Juan Antonio Serna Castejon*, 7 April 2022, ADJ/0162/21; *Maria Anna Pace v. Yoana Abella Sanz*, 19 April 2022, ADJ/0032/22; *Frederick David Harington et v. Philippe Guillocl*, 27 April 2022, ADJ/0005/22; *Josef Mansueto v. Daniela Mifsud*, 3 May 2022, ADJ/0194/21; *Paul Gauci v. Donnalee Mangion*, 25 January 2023, ADJ/0153/22. Such demands could be made before the Rent Regulation Board, see, for instance: *Spinney Ltd v. Christie Farrugia*, RRB, 27 September 2023, Rik. Nr. 134/2021).

⁷⁵ *Annabel Fenech v. Florian Hohenleitner*, 13 October 2022, ADJ/0095/22; *Margaret Petersen v. Baharul Islam*, 18 January 2023, ADJ/0142/22; *James Abdilla v. Jibin Puthiyadathukuzhiyil George et*, 1 June 2023, ADJ/0042/23.

⁷⁶ *Elise Aquilina v. Charles Ryan Vella et*, 13 April 2022, ADJ/0035/22; *Jonathan George Attard v. Clifton Gatt et*, 13 April 2022, ADJ/0167/21; *Tibor Strum v. George Schembri*, 27 April 2022, ADJ/0013/22.

⁷⁷ *Anthony Cutajar v. Charles Fenech Jr et*, 6 July 2023, ADJ/0131/22.

⁷⁸ *Saviour Degiorgio v. Elsaid Reda*, 16 February 2023, ADJ/0142/22; *Graham Rowland William Blythe v. Didier Daniel Robert Ranchon*, 1 June 2023, ADJ/0212/21.

⁷⁹ *Alexandre Cesar Rodrigues Pereira v. Paul Ciantar*, 24 August 2022, ADJ/0076/22.

⁸⁰ *Reinhold Muller et v. Belu Ltd et*, 20 July 2023, ADJ/0066/23. See also: *Martin Chetcuti v. Haitao Liu et* (19 September 2023, ADJ/0089/23) where the lessor claimed the sum of €4,500 on the basis of the fact that the lessee permanently added two occupants in the apartment despite the contract stating that the lease was for four people rather than six. The lessor additionally demanded the right to be allowed to make regular inspection visits and to terminate the agreement if the issue were not resolved. The Panel decided that it had no competence to decide any of his claims.

⁸¹ *Zhivko Petkov v. Anthony Caruana*, 24 August 2022, ADJ/0079/22; *Felix Mauricio Suarez Vega v. Andras Turczer*, 15 September 2022, ADJ/0094/22; *Vukasin Ilic v. Dr James Carabott*, 15 September 2022, ADJ/0080/22; *Carolina Castaneda Leon et v. Richard Colombo*, 24 August 2023, ADJ/0047/23.

⁸² *Fredianne Azzopardi v. Derya Rusuk*, 10 March 2022, ADJ/0164/21. In this case the retention of €350 from the deposit by the lessor was followed by an additional request for €400 following the completion of the repair works that needed to be made on the sofa following the lessee's departure.

terminated.⁸³ In case of any side agreements, the Panel would not rely on anything but the registered contract and the terms of law should be reproduced in the lease agreement in order to be applicable.⁸⁴

One very important point on which the Panel has shed light during the period under study relates to when the party would want to respond to a claim by making their own claim in return. It is very important that in such cases a proper counterclaim to be filed rather than simply a mere reply⁸⁵ (a statement contained in the reply that the respondent would be “counterclaiming” the demand is not the valid method to file a counter-claim in terms of the law).⁸⁶ If the defendant does not opt for a counterclaim, however, he or she would still have the possibility of filing a separate claim. For instance, a lessor may successfully defend the retention of deposit and subsequently proceed with separate claim if amount held is not sufficient.⁸⁷ However, the Panel would not hear afresh a claim on which it would have already pronounced itself.⁸⁸

The Court of Appeal has upheld an appeal on a point of law based on the Panel’s failure to take into consideration certain documentation which the claimant had presented. The Court of Appeal found that the Panel had not taken certain evidence into consideration and found the decision to be “manifestly wrong”. The Court annulled the decision and the records of the acts were referred back to the Panel.⁸⁹ Nevertheless, the Court of Appeal would not re-examine the facts presented by the parties, particularly the veracity of the works purported in the invoices.⁹⁰

⁸³ *Lucinda Falzon v. Miriam Guadalupe Riestra Castillo et*, 16 November 2022, ADJ/0116/22.

⁸⁴ *Claudia d’Angelo v. Malcolm Pace noe*, 21 July 2022, ADJ/0015/22.

⁸⁵ *Joann Gerard Du Jardin et v. Raymond Fenech*, 23 February 2022, ADJ/0205/21.

⁸⁶ *Roberta Borg v. Matthias Michael*, 15 December 2022, ADJ/0069/22; *Chrysilla Mangion v. Mdina Road Showroom Ltd*, 16 February 2023, ADJ/0009/23; *Reuben Scicluna et v. Jayachandran Jayaprakas et*, 23 March 2023, ADJ/0015/23; *Krista Katarina Mikkonen v. Malcolm Pace noe*, 25 May 2023, ADJ/0020/23;

⁸⁷ *Jibin Puthiyadathukuzhiyil George et v. James Abdilla*, 1 June 2023, ADJ/0037/23.

⁸⁸ *Alexander Smith v. Fakhira Khurshid*, 1 June 2022, ADJ/0195/21; See also: *Nerissa Bonvia Gatt v. Helen Vardas*, 18 January 2023, ADJ/0125/22.

⁸⁹ *Victoria Zammit v. Izabela Biskupska*, Court of Appeal (Inferior), 7 July 2023, App. Nr. 2/2022.

⁹⁰ *John Borg v. Ahmad Hej Semu*, Court of Appeal, 8 March 2023, App. Inf. Nr. 18/2022.

04.

Conclusion

The above investigation illustrates how while the legislator's goal of increasing transparency, legal certainty and contractual fairness have been reached, the implementation of the Private Residential Leases Act has also been tested by certain challenges. Further legislative action would appear to be necessary in ensuring greater compliance within the sector.

Until September 2023, 22 criminal cases in front of the Court of Magistrates (Criminal Judicature) have been filed by the Police, with 3 of them appealed in front of the Court of Criminal Appeal (two by the AG and one by the accused) have been concluded. The Police and the AG have acted upon the instructions of the Housing Authority, against landlords, or their representatives, who had allegedly failed to abide by the obligation to register a lease agreement in terms of Chapter 604 of the Laws of Malta. On the two occasions that the Attorney General appealed the judgements delivered by the Court of Magistrates, it was unable to overturn the decision taken against the prosecution, whilst the same applies to the landlord who instituted an appeal against his conviction. The general sentiment of the Courts of Justice deduced by an analysis of the cases handed down so far is that the offence of non-registration of a lease agreement is not considered as a grievous crime, so much so that the court generally has, in the cases examined, always given the minimum fine permissible by law and, in very few cases, even ventured outside the realm of the criminal court by declaring a contract null in order to decree the impossibility of the crime. In the vast majority of cases where the prosecution was successful in proving the guilt of defendant, the minimum fine available at law was imposed, also hinting towards the general sentiment described above. In the Bill submitted to the House of Representatives by the Minister

responsible for Housing in December of 2023,⁹¹ the legislator is seeking to address some of the substantive and procedural deficiencies that have been highlighted by these judgements. The bill would, for instance, eliminate the possibility of landlords being acquitted by making the argument that their draft agreements lacked certain constitutive elements while extending the right to appeal to the Attorney General.

From a private law perspective, the increased accountability of the sector is also requiring parties to pay better attention to details which may have previously been overlooked, both at the start as well as the end of the lease. Lessors and lessees entering private residential lease agreements must make sure to draft a proper inventory which attests to the true state of the property upon entry. The contents of the inventory are likely to be decisive in determining a claim that could arise following the termination of the lease. Any such claim would have to be backed by adequate proof, consisting of not mere photographic evidence but also of documents, such as quotes or invoices, capable of quantifying such damage. The same applies for tenants claiming overcharging of utility bills. Finally, there also seems to be a strong case for the competence of the Panel to be extended to, at least, cases of rent and utility arrears and expenses related to the common parts.

⁹¹ Discussed on Monday the 11 December 2023 following the tabling of motion No. 201 during Sitting No. 188 (Plenary Session) presented by Minister for Social and Affordable Accommodation Hon. Roderick Galdes MP - <https://parlament.mt/en//14th-leg/motions/motion-no-201-private-residential-leases/>

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