

Handling Transaction Monies comprising of Security Deposit, Advance Rental and Monthly Rentals for Lease of HDB Flat

Facts of Case

The Accused was at all material times a registered salesperson.

In or around April 2018, a prospective tenant, X, chanced upon an advertisement of an HDB flat (the “**Property**”) being available for rent. This advertisement had been posted on a property listing portal by the Accused on behalf of his friend, Y, who was the owner of the Property. X then contacted the Accused and arranged to view the Property on the same day. Y was personally acquainted with the Accused and owed the Accused a personal debt.

After the viewing, X offered to rent the Property for 12 months at a monthly rent of \$1,400 without payment of commission to the Accused. The Accused rejected X’s offer. X then counter-offered on the same terms but additionally proposed the sum of \$700 as commission for the Accused. The Accused was agreeable to this. On the same night, the Accused met X at his then-residence. At this meeting:

- (a) The Accused furnished X with a tenancy agreement (the “**Tenancy Agreement**”) to sign. The Tenancy Agreement provided for lease of one bedroom in the Property for a period of 12 months from 19 May 2018 to 18 May 2019 at a monthly rent of \$1,400.
- (b) Upon X signing the Tenancy Agreement, the Accused informed X that as the landlord Y owed the Accused money, X was to make payment of the rental deposit and monthly rent for the months of May 2018 to October 2018 to the Accused directly; and
- (c) X also signed an exclusive estate agency agreement, prepared by the Accused, by which X engaged the Accused as his salesperson in relation to the lease transaction. The exclusive estate agency agreement provided that the commission payable to the Accused was \$700 (excluding GST).

The Accused reiterated to X that as Y had owed the Accused money, the Accused would be receiving payments on behalf of Y. At the material time, Y had owed the Accused a sum of \$4,120.40 pursuant to a personal loan.

After the Tenancy Agreement was signed, the Accused instructed X to effect a bank transfer of \$2,000 to the Accused’s personal bank account. Out of this \$2,000 received by the Accused, \$749 was applied by the Accused towards the payment of his commission, leaving \$1,251 as part of the aggregate sum of \$2,800 that X was contractually obliged to pay to Y under the Tenancy Agreement for the one-month security deposit and one-month advance rental for the lease. The Accused therefore handled the sum of \$1,251 on behalf of Y on this occasion.

X then moved into the Property sometime in May 2018. Between June 2018 and November 2018, X made payments of the monthly rentals amounting to \$1,400 into the Accused's personal bank account on 6 occasions in accordance with the Accused's instructions. The Accused received each of these payments on behalf of Y and would retain part of each payment on the basis that the amount retained by the Accused was a partial repayment of the personal debt that Y owed to the Accused.

In December 2018 and January 2019, X made payments of \$1,300 and \$1,000 respectively into the Accused's personal bank account. These amounts were slightly lesser than the monthly rental as the Accused informed X to set off certain amounts the Accused had to pay X. The Accused also received each of these payments on behalf of Y and continued to retain part of these payments as a partial repayment by Y of the said personal debt.

Charges

The Accused faced the following 9 charges for handling transaction money on behalf of Y, by receiving the following sums by way of bank transfer into the Accused's bank account, in contravention of Regulation 7(1)(b) of the Estate Agents (Estate Agency Work) Regulations 2010:

Charge 1 (Proceeded)

A sum of \$1,251, being part payment towards the one-month security deposit of \$1,400 and one-month advance rental of \$1,400.

Charge 2 (Proceeded)

A sum of \$1,400, being the monthly rent for the month of June 2018.

Charge 3 (Proceeded)

A sum of \$1,400, being the monthly rent for the month of July 2018.

Charge 4 (Proceeded)

A sum of \$1,400, being the monthly rent for the month of August 2018.

Charge 5 (Proceeded)

A sum of \$1,400, being the monthly rent for the month of September 2018.

Charge 6 (Proceeded)

A sum of \$1,400, being the monthly rent for the month of October 2018.

Charge 7 (Proceeded)

A sum of \$1,400, being the monthly rent for the month of November 2018.

Charge 8 (Proceeded)

A sum of \$1,300, being part of the monthly rent for the month of December 2018.

Charge 9 (Proceeded)

A sum of \$1,000, being part of the monthly rent for the month of January 2019.

Outcome

The Accused claimed trial to the 9 charges and was convicted of all 9 charges after a trial.

In sentencing, the Court noted that the Accused had not shown any sign of any remorse even after being convicted of the charges and instead insisted that he was not guilty of the offences. The Court also noted that the Accused was a first offender, there was no real harm or financial loss caused to Y, and the transaction monies handled by the Accused were handed over to Y within one to two days after he received the same from X.

Accordingly, the Court imposed the following sentence on the Accused:

Charges 1 to 9: A fine of \$5,500 (in default 10 days' imprisonment) per charge.

The Accused subsequently lodged an appeal against his conviction and sentence but his appeal lapsed as he had failed to comply with the procedural rules applicable to appeal proceedings. The Accused's application to rectify such failure was also dismissed as he had failed to provide sufficient explanation for his delay in complying with the procedural rules.