Lease agreement house: clause to the detriment of the tenant still valid

In rental law, tenants of dwellings are generally well protected. Even if a tenant has agreed to a clause in the general terms and conditions that is disadvantageous to him, there is a possibility by law to have this clause nullified afterwards if it is unreasonably onerous. In a recent judgment of the Court of Appeal of Arnhem-Leeuwarden, a clause that was to the detriment of the tenant was nevertheless accepted by the Court of Appeal.

Case study

The tenant in question, a lawyer, has agreed with his landlord on a rental agreement for one year with, among other things, the condition in the general provisions that interim termination is only possible with the intervention of the court.

"Unless the parties have agreed to this or otherwise, full or partial interim termination of the tenancy agreement and suspension of the obligations arising from the tenancy agreement shall only be possible with the intervention of the court".

It soon turns out that the tenant is not satisfied with the rented accommodation. The most striking complaint is a faulty fire alarm system that goes off unnecessarily more than once and thus keeps the baby awake. After having complained a few times about the accommodation, the tenant announces that he wants to terminate the rental agreement extrajudicially. The landlord does not accept the dissolution and refers to the recorded clause. The tenant, on the other hand, states that this clause is unreasonably onerous.

Legislation

On the basis of Article 6:233 of the Dutch Civil Code, a clause in the general terms and conditions may be annulled:

- If the clause is unreasonably onerous for the other party (Section 6:233(a) of the Dutch Civil Code)

- If the other party has not had a reasonable opportunity to take note of the clause (Section 6:233(b) of the Dutch Civil Code)

In principle, a private tenant of a dwelling is regarded as a consumer. This is important now that the law with respect to consumers considers a number of clauses in general terms and conditions to be unreasonably onerous in advance. These are included in the so-called 'black list' (Section 6:236 of the Dutch Civil Code). For instance, Section 6:236 sub b of the DCC explicitly states that exclusion or limitation of the power of dissolution must be considered unreasonably onerous. So far, the legislation seems to point in the tenant's favour.

Judgment of the Court of Appeal[1]

The Court of Appeal considered that in this case the tenant cannot be regarded as a consumer within the meaning of Section 6:236 of the Dutch Civil Code. However, the Court of Appeal ruled that in this case the clause can still be upheld because the clause does not exclude or limit an appeal for dissolution of the lease agreement. Therefore, it does not limit the possibility of dissolution, but only the manner in which it can be dissolved. In the opinion of the Court of Appeal such a restriction does not unreasonably burden the position of the consumer. According to the Court of Appeal, the contractual balance is maintained now that the lessor cannot dissolve the contract out of court either on the basis of the law (Section 7:231 of the Civil Code).

Comments

Although the Court of Appeal considers the fact that both parties cannot dissolve the agreement out of court does not lead to an infringement of the contractual balance, in our opinion there is something to be disputed. After all, the Court of Appeal seems to forget that it is generally assumed that consumers are the weaker party and that the legislation with, for example, Section 6:236 of the Dutch Civil Code tries to create a more balanced playing field. If a lessor can subsequently set these regulations aside by means of a clause, there is no question of a contractual balance, but the consumer is still in the weaker position.

Perhaps the fact that the tenant was a lawyer played a role in this case. The lawyer, who was also specialised in private law, will probably not be considered a weaker party in advance. However, the Court of Appeal did not explicitly take this factor into account in its judgment. In our opinion there is certainly something to be said that this clause should have been considered unreasonably onerous.

Would you like to know more? Feel free to contact us.

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1] In a judgment of the District Court of Middelburg in 2009, the court arrived at a different judgment in the same type of case. In this judgment, the court ruled that on the basis of Section 6:267(1) of the Dutch Civil Code, the consumer in question is expressly entitled to an extrajudicial dissolution authority. A provision that actually excludes reliance on that article can therefore be regarded as a restriction within the meaning of Section 6:236(b) of the DCC and would therefore be unreasonably onerous.