

IN THE HIGH COURT OF JUDICATURE AT MADRAS
THE HON'BLE MR. JUSTICE KWEK MEAN LUCK

SUIT NO. 943 OF 2019

13.05.2022

Hsu Hsueh Hui (alias Jenny Hsu)

... Petitioner

v.

Foong Yook Kooi & Ors.

... Respondents

FACTS. The plaintiff rented a studio unit from the defendants under a tenancy beginning 18 July 2018, paying a security deposit and monthly rent. Relations deteriorated as the plaintiff sought to use the security deposit to cover final rental payments. The defendants served notices alleging breaches, and on 22 May 2019 the plaintiff claimed she was locked out when the door code was changed and her belongings remained inside. The police were called, and the plaintiff contended forced eviction and later referenced health issues stemming from the episode. The defendants maintained that the plaintiff voluntarily surrendered the keys, that no access code was altered, and that the premises were vacant. The dispute moved from initial notices and potential Small Claims Tribunals proceedings to the High Court of Singapore, with liability and damages addressed in separate stages.

PRAYER.

ISSUES OF LAW.

Whether the tenancy was wrongfully terminated; whether the plaintiff was unlawfully evicted or voluntarily surrendered possession; whether the plaintiff's belongings were wrongfully detained; whether the security deposit could lawfully offset final rent; whether the defendants' actions amounted to a breach of the tenancy agreement.

SUMMARY. The dispute arose from a tenancy agreement for a studio unit. The plaintiff claimed she was locked out and that her belongings remained inside, alleging wrongful eviction and detention of property. The defendants argued she voluntarily relinquished the unit and that no codes were changed. The court found that she had vacated the premises on her own accord, negating her wrongful eviction claim, but required the defendants to return her security deposit as they lacked grounds to retain it.

HELD. The court rejected the plaintiff's claims of wrongful eviction and detention, concluding that she voluntarily surrendered possession of the property. However, the defendants had to return the security deposit because no valid basis existed for withholding it.

FINAL STATUS. Disposed with partial relief.

CASES REFERRED

Hsu Hsueh Hui v Foong Yook Kooi [2022] SGHC 108

Tan Soo Leng David v Lim Thian Chai Charles and another [1998] 1 SLR(R) 880 at [15]

The 'Posidon' and another matter [2018] 3 SLR 372

COUNSELS

Judgment Reserved on 13.05.2022 and Pronounced on

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 108

Suit No 943 of 2019

Between

Hsu Hsueh Hui (alias Jenny Hsu)

... Plaintiff

And

- (1) Foong Yook Kooi
- (2) Foong Khang Hoong
- (3) Lim Eng Yok
- (4) Foong Chiew Chieh

... Defendants

JUDGMENT

[Landlord and Tenant — Termination of leases]
[Tort — Conversion]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Hsu Hsueh Hui (alias Jenny Hsu)

v

Foong Yook Kooi and others

[2022] SGHC 108

General Division of the High Court — Suit No 943 of 2019

Kwek Mean Luck J

3–4, 8–11 February 2022, 26 April 2022

13 May 2022

Judgment reserved.

Kwek Mean Luck J:

Introduction

1 The plaintiff, a former tenant, claims that her landlord wrongfully terminated her tenancy on 22 May 2019 and wrongfully detained her belongings on the same day. She brought claims against her deceased landlord (the “first defendant”) and his daughter, who dealt with the plaintiff on his behalf (the “fourth defendant”). The second and third defendants are the executors of the first defendant’s estate.

Undisputed facts

2 The plaintiff became a tenant of a Studio Unit at 29 Simei Street 3, #09-10, My Manhattan, Singapore 529901 (the “Studio Unit”), pursuant to a 12-month tenancy agreement starting on 18 July 2018 and ending on 17 July 2019

(the “TA”). The Studio Unit is in a condominium, referred to as “My Manhattan”.¹

3 The Studio Unit is in a dual key apartment, which also has a main unit with two bedrooms (the “Main Unit”). The fourth defendant stayed in one bedroom in the Main Unit from time to time.² One Mr Nicholas Tan (“Nicholas”) was renting the other bedroom in the Main Unit at the material time.³ Nicholas was the real estate agent who arranged the plaintiff’s tenancy in the Studio Unit. He was called as a witness for the defendants in this suit.

4 Under the terms of the TA, the plaintiff agreed to lease the Studio Unit at a monthly rent of \$2,300, with payment to be made one month in advance, on the 18th of each calendar month via GIRO. The plaintiff paid a security deposit of \$4600 (the “SD”).⁴

5 Over the course of the plaintiff’s tenancy, her relationship with the fourth defendant deteriorated. The plaintiff highlighted several incidents of conflict with the fourth defendant, with each party offering contrasting accounts. These incidents are not germane to the plaintiff’s claim. I will focus on the key events leading up to, during, and after 22 May 2019, when the TA was allegedly wrongfully terminated.

¹ Plaintiff’s AEIC at para 50.

² Fourth defendant’s AEIC at para 16.

³ Fourth defendant’s AEIC at para 13.

⁴ Plaintiff’s AEIC at paras 54–55.

Events leading up to 22 May 2019

6 On or about 1 May 2019, the plaintiff sent a message to Nicholas, stating:⁵

“...I just have to tolerate for another 2 month. I am moving out once my contact (sic) is ended. I have already paid two months rental payment in advance. That will offset payment in advance. That will offset my June and July payment.”

7 The plaintiff’s position is that she indicated here that she did not wish to continue the TA after it ended on 17 July 2019.⁶ Nicholas’s testimony is aligned with the plaintiff’s position in this respect. He testified that the plaintiff called him on 6 May 2019. She said that she was moving out and did not want to pay rent going forward. She only wanted to use the SD to offset the remaining rental. She asked that this be conveyed to the landlord.⁷

8 Nicholas testified that the first defendant gave him instructions to prepare notices, to be issued to the plaintiff.⁸ In total, three notices were prepared (collectively the “Three Notices”).

9 The first notice is dated 5 May 2019 (the “1st Notice”).⁹ It states that the landlord would exercise the right to take back possession as of 18 May 2019. It referenced some events on 22 and 29 April 2019 where the plaintiff allegedly caused harm and nuisance to the fourth defendant. It also referred to the plaintiff’s indication on 1 May 2019 that she would not continue to make rental

⁵ Plaintiff’s AEIC at pp 177–178.

⁶ Plaintiff’s closing submissions at para 111.

⁷ Nicholas’ AEIC at para 44.

⁸ Nicholas’ AEIC at para 38.

⁹ Fourth defendant’s AEIC at pp 44–45.

payment and wished to use the SD as rental instead, and stated that the landlord regarded this as a breach of the TA. The plaintiff was also given notice to return the keys within seven days and to make payment of \$5,830 for default of rent and damages. Nicholas and the fourth defendant gave evidence that they slid the 1st Notice under the door of the Studio Unit on 5 May 2019, when the plaintiff did not answer her door.¹⁰

10 The second notice is dated 18 May 2019 (the “2nd Notice”).¹¹ The contents of the 2nd Notice are broadly similar to the 1st Notice. It repeats the references to the events on 22 and 29 April 2019. It also repeats the plaintiff’s indication on 1 May 2019 that she would not pay rental and wished to use the SD to offset the rental, which was regarded by the landlord as a breach of the TA. Notice was also given to the plaintiff to return the keys by 5.00pm on 18 May 2019 and to make payment of \$5,830 for default of rent and damages. Nicholas and the fourth defendant gave evidence that they slid the 2nd Notice under the door of the Studio Unit on 18 May 2019, when once again the plaintiff did not answer the door.¹²

11 The third notice is dated 21 May 2019 (the “3rd Notice”).¹³ It is broadly similar to the 1st and 2nd Notices. Once again, there are references to the events of 22 and 29 April 2019. It also states that the plaintiff’s indication on 1 May 2019 that she would not pay rental and wished to use the SD to offset the rental, was regarded by the landlord as a breach of the TA. It gave notice that the

¹⁰ Fourth defendant’s AEIC at para 34.

¹¹ Fourth defendant’s AEIC at p 47–48.

¹² Fourth defendant’s AEIC at para 37.

¹³ Fourth defendant’s AEIC at 50–51.

plaintiff was to return the keys within three days and to make payment of \$5,830. Nicholas and the fourth defendant gave evidence that they slid the 3rd Notice under the door of the Studio Unit on 21 May 2019, when the plaintiff did not open the door.¹⁴

12 It is undisputed that the usual GIRO payment for the plaintiff's monthly rental did not go through on 18 May 2019 for the month of June 2019. The plaintiff's explanation is that she stopped the GIRO payment as she intended to rely on the SD to pay for the rental for her final two months. Her evidence is that she did not receive any of the Three Notices and she was not told of the landlord's reply that he did not accept her proposed use of the SD.¹⁵ She said that if she was told, she would have made payment immediately.¹⁶ There is no evidence that the plaintiff sought to check that her landlord had agreed to her using the SD to offset the remaining rental, before she terminated the monthly GIRO payment.

Events on 22 May 2019

13 The events on the night of 22 May 2019 are material but disputed. From the available objective evidence, which are the CCTV recordings of the lift lobby and WhatsApp ("WA") messages and timings of calls, the following can be ascertained as having taken place in the lead-up to the alleged wrongful termination of the plaintiff's tenancy:

¹⁴ Fourth defendant's AEIC at para 38.

¹⁵ 4 February 2022 Transcript, p 19 lines 4 and 8–11.

¹⁶ 8 February 2022 Transcript, p 19 lines 17–22.

- (a) At 10.35pm, the plaintiff walked into the lift lobby. She entered the lift.
- (b) After the lift door closed, Nicholas and the fourth defendant walked towards the lift. The fourth defendant pressed the lift button. They did not enter the lift and walked out of the lift lobby.
- (c) At 10.37pm, the plaintiff called Nicholas on WA, but he did not pick up.
- (d) At 10.39pm, the plaintiff came out of the lift. She rummaged through her bag, before returning to the same lift with an unidentified couple just before 10.40pm.
- (e) The plaintiff called Nicholas two more times on WA at 10.39pm and 10.40pm, but he did not pick up.
- (f) At 10.40pm, a security guard walked to the lift lobby and took the lift. He walked out of the lift at 10.42pm.
- (g) At 10.44pm, the plaintiff sent a text message to Nicholas stating: “Why I can’t open the door”? Nicholas’ evidence is that he spoke to the plaintiff on the phone around this time.
- (h) At around 10.55pm (about 15 minutes after she entered the lift at 10.40pm), the plaintiff exited the lift while speaking with an unidentified man. She walked out of the lift lobby.

14 The plaintiff’s evidence is as follows. She returned to My Manhattan at about 10.30pm on 22 May 2019. She could not enter the Studio Unit because the access code to the main door had been changed without her knowledge. She

called Nicholas, who told her to go to the guardhouse of My Manhattan. The fourth defendant was waiting there with police officers and a security guard. The fourth defendant demanded the return of the keys to the Studio Unit. The plaintiff requested to return to the Studio Unit to take her cheque book to make payment of outstanding rent. The fourth defendant refused. The policemen who were there told the plaintiff that she had no right to go into the premises without permission. She “did not want to hand over” her keys but the police officer took the keys from her hand and handed them over to the fourth defendant.¹⁷ The plaintiff pleaded with the fourth defendant to allow her to retrieve her belongings, but the fourth defendant refused. The fourth defendant demanded payment of \$4,600 as outstanding rent for the months of May and June 2019. The plaintiff told the fourth defendant that she would pay the sums demanded the next day to enable her to enter the premises to collect her belongings.¹⁸

15 The fourth defendant’s evidence is as follows. At about 9.00pm on 22 May 2019, she chanced upon the plaintiff, who was with an unknown man. She feared for her safety when she tried to serve her Small Claims Tribunal (“SCT”) summons on the plaintiff. The fourth defendant called the police and waited at the guardhouse of My Manhattan. The fourth defendant requested one of the security guards to look for the plaintiff and to bring her to the guardhouse. At about 10.40pm, a security guard went to look for the plaintiff. The security guard returned and said he could not find her. The fourth defendant went to the lift lobby of Blk 29 of My Manhattan, where the Studio Unit was, and saw the plaintiff come out of the lift. At Blk 31 of My Manhattan, the fourth defendant served the plaintiff with the SCT summons. The security guard suggested that

¹⁷ 4 February 2022 Transcript, p 41 lines 6–9.

¹⁸ Plaintiff’s AEIC at paras 66–76.

they move to the carpark. The police spoke to the plaintiff. The plaintiff made a phone call. The security guard tried to advise the plaintiff to leave to keep the peace. The plaintiff handed over her keys and access cards to the security guard. The security guard then handed them to the fourth defendant.¹⁹

16 Nicholas' evidence is as follows. On the night of 22 May 2019, he received missed calls from the plaintiff saying that she could not open the main door. He told her the access code had never been changed. He also reminded her that she could use her access card to enter. She then hung up. He denies having told the plaintiff to go to the guardhouse. He was not around at the time of the confrontation between the plaintiff and the fourth defendant that night. He later found out that the plaintiff had returned the access cards and keys to the security guard, who had then passed them to the fourth defendant.²⁰

Events after 22 May 2019

17 On 23 May 2019, the plaintiff transferred \$4,600 to the account of the first and fourth defendants. The record shows a transfer at 10.34am.²¹ The plaintiff claimed that she did so because the fourth defendant demanded such payment before she would release the plaintiff's belongings to her. The plaintiff texted Nicholas at 3.04pm to inform him of this payment.²²

18 The fourth defendant and Nicholas' evidence is that around mid-day of 23 May 2019, they entered the Studio Unit and saw that it was vacant. There

¹⁹ Fourth defendant's AEIC at paras 45–54.

²⁰ Nicholas' AEIC at para 55.

²¹ Plaintiff's AEIC at pp 192–193 and 209–210.

²² Plaintiff's AEIC at paras 80–81 and 192–193.

were no personal belongings there. The fourth defendant took photographs of the Studio Unit using her handphone and later uploaded them to her daughter's laptop (the "Photographs"). She no longer has that handphone as she sold it to buy a new phone in 2020. The Photographs on her daughter's laptop were examined by a jointly appointed forensic expert, Mr Tan Swee Wan ("Tan S W") of TRS Forensics Pte Ltd.²³

19 The plaintiff was admitted to Mount Elizabeth hospital from 24 to 27 May 2019. She claims that she was admitted because of her heart condition, triggered by the stress of her eviction from her Studio Unit.²⁴ She claims for the medical expenses arising thereof.

The terms of the TA

20 The terms of the TA provides, *inter alia*, for the following:²⁵

1. ... [T]he Tenant agrees to take the premises known as [the Studio Unit] ... for a term of Twelve (12) months commencing from 18 July 2018 to 17 July 2019 ("the Term") at a calendar monthly rent of Singapore Dollars Two Thousand Three Hundred Only (S\$2300) ("Monthly Rent") ... which is payable monthly in advance without deduction whatsoever on the 18th day of each calendar month. Payment shall be made via GIRO to the following:

...

3. The Tenant hereby agrees with the Landlord as follows:

a. To pay the said rent and hiring charges at the times and in the manner aforesaid without any deduction whatsoever.

...

²³ Fourth defendant's AEIC at paras 55–58.

²⁴ Plaintiff's AEIC at para 85.

²⁵ Plaintiff's AEIC at pp 38–43.

5. PROVIDED ALWAYS and it is hereby agreed as follows:-
- a. ... [I]f the Tenant shall at anytime fail or neglect to perform or observe any of the obligations...herein contained ... it shall be lawful for the Landlord at any time thereafter to re-enter upon the premises ... and thereupon this tenancy shall absolutely terminate ...

The parties' cases

The plaintiff's case

21 The plaintiff's case is that she was wrongfully evicted from the Studio Unit on 22 May 2019. The access code to the main door was changed, preventing her from entering her Studio Unit that night. Her keys and access cards were forcefully taken away from her by the police and given to the fourth defendant. She was also prevented from retrieving her belongings on the night of 22 May 2019 and her belongings were wrongfully detained.

22 The plaintiff claims for the following reliefs:²⁶

- (a) damages for wrongful termination of the TA;
- (b) damages for wrongful eviction on 22 May 2019;
- (c) damages in the sum of \$4,600 being the SD wrongfully held and detained by the defendants;
- (d) damages in the sum of \$4,229.05 (pro-rated for occupancy for the period 18 to 22 May 2019) being monies paid to secure the release of her belongings;

²⁶ SOC at pp 19–21.

- (e) damages in the sum of \$1,049.67 being medical fees and expenses incurred by the plaintiff, consequent to the stress suffered by reason of the eviction and wrongful termination of the TA;
- (f) damages for the breach of the TA; and
- (g) delivery up of the plaintiff's belongings.
- (h) In the alternative, damages for conversion in respect of the defendant's refusal to return the plaintiff's belongings;
- (i) in the further alternative, damages for detinue in respect of the defendant's wrongful and/or unlawful retention of the belongings; or
- (j) in the further alternative, damages, for the defendants' trespass to the plaintiff's belongings, by reason of wrongful interference with the belongings.

23 The trial for the plaintiff's claims is bifurcated, with issues of damages, if any, to be determined at the next tranche of the trial.

Defendants' case

24 The defendants' case is that while the first defendant did intend to evict the plaintiff via the SCT for nuisance and breach of the TA, unbeknown to them, the plaintiff had already vacated the Studio Unit by 22 May 2019. The plaintiff had thus abandoned the Studio Unit in furtherance of her intention to terminate the tenancy prematurely. The plaintiff also willingly handed over her keys and access cards on the night of 22 May 2019. The defendants thus accepted abandonment by repossessing the vacant Studio Unit on 23 May 2019. The

plaintiff's belongings were not in the Studio Unit when they repossessed the unit.

Key Factual Issues

25 I begin with an examination of the material evidence relating to the key factual issues that are largely determinative of the plaintiff's claims. My findings on these issues are also relevant to the credibility of the various witnesses, which I will return to.

The Three Notices

26 It is the plaintiff's contention that the Three Notices were never slid under the door of the Studio Unit and were drawn up only after the fourth defendant had applied for the SCT summons around 22 May 2019.²⁷ It is also the plaintiff's case that the Three Notices were not intended by the defendants to serve as a warning to the plaintiff as to her future conduct, but to retake possession of the Studio Unit, in breach of the TA.²⁸ Both contentions of the plaintiff conflict with each other. Nevertheless, I will address them both.

27 With respect to the first contention, the plaintiff raises two points. First, the plaintiff questions why Nicholas and the fourth defendant slid the notices under the door instead of sending them to her *via* e-mail. However, there is evidence that Nicholas had previously slid the plaintiff's mail under her door and that the plaintiff was agreeable to this.²⁹ Second, the plaintiff points out that the amount sought in the Three Notices, *ie* \$5,830, is the exact same amount as

²⁷ PCS at para 483.

²⁸ PCS at para 504.

²⁹ Plaintiff's AEIC at pp 166–167.

that the fourth defendant claimed against the plaintiff in her SCT summons. This shows that the Three Notices were drawn up only after the SCT summons. However, Nicholas testified in his AEIC and on the stand, that the amount in the Three Notices was calculated with the possibility of a SCT summons in mind. I accept Nicholas' testimony. In my view, the similarity of amount in the Three Notices and the SCT summons does not in itself indicate that the Three Notices were made up after the event.

28 The plaintiff's second contention was that the Three Notices were not intended as warnings but were to retake possession of the Studio Unit in breach of the TA. I find that is also unsupported by the evidence.

29 Nicholas' explanation of the Three Notices is that they were meant "to tell [the plaintiff] to behave. If not, going down the line, if she wanted to terminate the tenancy, this was to put in place to ensure that the landlord's rights were preserved".³⁰ His evidence is supported by the fact that, although the 1st Notice stated that the landlord would exercise the right of repossession as of 18 May 2019 (see [9] above), this was not acted on. Instead, the plaintiff was served with the 2nd Notice on 18 May 2019, which reiterated that the landlord would exercise his right to repossession with immediate effect (see [10] above). Again, this was not acted on. When the plaintiff did not pay her rental on 18 May 2019, as required under her TA, the landlord did not take steps to exercise his right to repossession. Instead, the landlord gave the plaintiff the 3rd Notice on 21 May 2019 informing the plaintiff that she had three days to return the access cards and keys (see [11] above). The defendants did not take action to repossess the

³⁰ 9 February 2022 Transcript, p 133 lines 21 to 23.

Studio Unit on the basis of the Three Notices. Instead, they applied for a SCT summons and served it on the plaintiff.

30 I therefore find that the Three Notices were slid under the plaintiff's door on 5, 18 and 21 May 2019 respectively. I also find that they were not prepared for the purpose of retaking possession of the studio unit, but were meant to warn the plaintiff to behave and to make payment of the rent on time.

31 In any event, the defendants are not relying on the Three Notices for the termination of the TA. They instead rely on the plaintiff's surrender of possession of the Studio Unit on the night of 22 May 2019. In this regard, it is also the plaintiff's case that the wrongful termination occurred on 22 May 2019. It is to the events on the night of 22 May 2019 that I now turn.

Whether the plaintiff was able to enter the Studio Unit on 22 May 2019

32 The first key difference between the plaintiff's and the defendants' case about the night of 22 May 2019, relates to whether the plaintiff was able to enter the Studio Unit that night.

33 The plaintiff's evidence is that she was not able to enter the main door on the night of 22 May 2019, as the defendants had changed the access code. She denies being in possession of a Samsung access card, which the defendants claim would allow her entry through the main door, even if she did not remember the access code or even if the access code had been changed (the "Samsung access card").³¹

³¹ 8 February 2022 Transcript, p 66 line 29 to p 67 line 12.

34 The plaintiff pointed out that the inventory list of items handed over to her (the “Inventory List”) did not include the Samsung access card.³² Nicholas’ evidence is that the Samsung access card was omitted from the Inventory List, but he handed it over to the plaintiff later, on her request.³³ The defendants point out that clause 3(r) of the TA refers to such a card, as it requires the tenant to deliver up the premises at the expiration of the tenancy with, *inter alia*, the “keys [and] access cards” and that the tenant “shall be responsible for replacement of the main door electronic card reader in the event that they lost any of the main door access cards”.³⁴ Nicholas’ evidence is that he told the plaintiff, when he replied to her missed calls and WA texts on the night of 22 May 2019, that she could also use her Samsung access card to enter the main door.³⁵

35 The plaintiff’s claim that she did not have such an access card, runs contrary to her Reply, where she said that she was unable to open the main door of the apartment using her access card because the access code had been changed without her knowledge.³⁶ When this was pointed out to her, she replied that this was a typo, put in by her lawyer by mistake. However, it was then pointed out to the plaintiff that she said the same in her supplemental AEIC, which is a sworn statement from her.³⁷ The plaintiff did not explain the presence of this statement in her supplemental AEIC. Instead, she simply maintained that she never used her access card.³⁸

³² 1AB 24.

³³ 9 February 2022 Transcript, p 58 lines 26–29.

³⁴ Plaintiff’s AEIC at p 39.

³⁵ Nicholas’ AEIC at para 55.

³⁶ Reply at para 11C(d).

³⁷ Plaintiff’s supplemental AEIC at para 10.

³⁸ 8 February Transcript 2022 p 66 lines 19–30.

36 The unexplained contradictions between the plaintiff's oral testimony and her pleadings, raises questions about the credibility of her evidence, in particular that she did not have the Samsung access card in her possession.

37 Another area of evidence that is relevant to whether the plaintiff was able to access the main door, is the fact that she spent about 15 minutes on the higher floors of her condominium block, between 10.40pm and 10.55pm on 22 May 2019. From the CCTV recordings, the plaintiff entered the lift at the ground floor lift lobby at 22:39:51 and came out of another lift at the ground floor lift lobby at 22:55:11.³⁹ There was no reason for the plaintiff to spend 15 minutes in front of the main door leading to the Studio Unit, if indeed she was unable to open it. When the plaintiff was cross-examined on this point, she did not explain why she spent about 15 minutes outside the main door. Instead, she simply disagreed that she spent about 15 minutes there.⁴⁰

38 During her re-examination, the plaintiff changed her evidence to say that she did spend 15 minutes upstairs.⁴¹

Q: Okay, now, Ms Hsu, my learned friend also asked you that there was a point of time where you spent about 15 minutes up before you came down to the lift lobby. What were you doing up there? What is the duration?

A: Okay, I was on the seventh floor. I bumped into a family. There was a couple with a kid or with kids - they were staying on the seventh floor. And there was a lady in her 30s. I was, at that time, trying call---to make a call. I told her I was looking for my agent, and then she asked me who my agent is, so I told her it was Nicholas Tan. She said, oh, she knew him, and then we kind of talked a little about him. And because, at that time, I was still trying to call him, I was not in the mood to talk, I was

³⁹ CCTV Extract 37.

⁴⁰ 4 February Transcript 2022 p 58 lines 1–11.

⁴¹ 8 February Transcript 2022 p 48 lines 14–29.

also trying to call him, but the signal was not very good, so the lady said, “Why don’t you come up with me on the seventh floor, it might be better?” So I exited onto the seventh floor. And I continued trying to call, and the lady saw that I was very anxious, and then she asked me what happened, so I told her briefly. And still, I kept trying to call. I didn’t know I was up there for 15 minutes. And finally, eventually, Nicholas Tan called me, and then I went down. I was up there waiting for Nicholas Tan to call.

39 The plaintiff subsequently expanded on her evidence on this in response to some questions from the court:⁴²

Court: ... Who [were you] speaking [to] during that 15 minutes?

A: So there was a family who resided at 07-10. He or she looked like he or she was in his thirties because the child or children seemed quite young. I only spoke to him or her on the seventh floor. Her husband and children went back home. And then she kept me company and we talked about rental. She said we were both living in units ending with “-10”. And I can’t really recall what we had talked about because I was busy trying to make a call

Court: This was the family that [you were] talking to when [you] entered the lift?

A: Yes

Court: And there was a husband and how many children?

A: One husband, one wife and two children. But, strangely, from the video, when I entered the lift, I didn’t see them on the video. I can’t remember which floor they had entered --- on which floor they had entered the lift because I was very anxious and I was busy trying to make a call.

40 The plaintiff’s testimony on this is contradictory. She says that she bumped into a family with two children when she entered the lift and talked to them. However, the CCTV extract does not show a family with kids entering the lift with the plaintiff. It only shows an unidentified couple.

⁴² 8 February Transcript 2022, p 62 line 19 to p 63 line 5.

41 I find that the plaintiff has not provided a credible reason for staying upstairs for 15 minutes, when she was allegedly locked out.

42 Taken together with her own pleadings in her Reply and supplementary affidavit, where she said that she used the access card to try to open the main door and Nicholas' uncontroverted evidence that he told her to use the access card, I find it more likely than not that the plaintiff had the Samsung access card. I therefore find that the plaintiff was able to access the main door of the Studio Unit on 22 May 2019, whether with the access code (that the defendants maintained was not changed) or with the Samsung access card.

Whether the Police removed the access cards and keys from the plaintiff

43 Another key difference between the plaintiff's and the fourth defendant's version of events on 22 May 2019, lies in to how the plaintiff's access cards and keys were transferred to the fourth defendant.

44 The plaintiff's case is that she had no intention to terminate the tenancy prematurely. According to the plaintiff, she did not want to hand over her keys. She made her protest known to the police.⁴³ Despite this, the police took her access cards and keys from her hand and handed them over to the fourth defendant.⁴⁴ She was then denied entry to the Studio Unit. She was thus wrongfully evicted and unable to collect her belongings which were in the Studio Unit.

⁴³ 4 February 2022 Transcript, p 22 line 13–18.

⁴⁴ 8 February 2022 Transcript, p 43 line 18 to p 44 line 11.

45 According to the fourth defendant, the plaintiff handed her access cards and keys to the security guard who then passed them to her. This, together with her cancellation of the usual monthly GIRO payment and the vacant Studio Unit, evinced the plaintiff's intention to prematurely terminate the tenancy, which the defendants accepted by repossessing the vacant Studio Unit on 23 May 2019.

46 The plaintiff served subpoenas on both the police officers who attended to the incident on 22 May 2019 and the police officer who handled the investigation after the case was reported.

47 Inspector Steven Tan ("Inspector Tan"), attended to the incident on 22 May 2019. He testified that he did not recall the police officers removing the access cards and keys from the plaintiff. He said that they would probably have advised parties that since the keys were part of the property belonging to the owner, it was right that the tenant returned the keys to the owner, if the owner requested for it. Inspector Tan said that the police would not be in a position to and would not have forced the plaintiff to hand over the access cards and keys, which is what the plaintiff alleges they did.⁴⁵

48 The plaintiff testified that what the police did in taking the access cards and keys from her hand was wrong. However, this was not mentioned in any of her police reports. When she was asked about this, the plaintiff first said that she did report this. When the plaintiff was unable to locate the part in her police reports where she said this, the plaintiff said that she did tell Investigating Officer Joe Chua ("IO Chua") and asked him "why did [the police officers]

⁴⁵ 9 February 2022 Transcript, p 18 lines 9–21.

forcefully take my keys to return to [fourth defendant]”, but he did not record it.⁴⁶

49 This is not the only occasion where the plaintiff alleges that the police failed to record material aspects of her complaints. She said that she probably told the police, when she made her report on 2 June 2019, that she had a video of a security guard at My Manhattan saying that the fourth defendant sent her belongings to her ex-husband, but the police omitted this from the police report.⁴⁷

50 IO Chua, who handled the investigation, stated that he did not think that a recording officer would leave out information from the complainant, as it is against the Singapore Police Force (“SPF”) ethics for a police officer to do so. His testimony is that “whichever information that the complainant said, we will record it down. We do not leave out the details.”⁴⁸

51 Since the material time in 2019, the plaintiff has made no complaint against the police for taking the access cards and keys from her hand or for failing to record material aspects of her complaints. The police were not even aware of the plaintiff’s allegations about their behavior. The police classified this case as a civil matter of a tenancy dispute.⁴⁹ They are independent third parties who have taken no position in this dispute. Inspector Tan and IO Chua were professional on the stand. The plaintiff did not impute any bias to them. I found no reason to doubt the impartiality of the police officers who testified.

⁴⁶ 8 February 2022 Transcript, p 57 lines 2–29.

⁴⁷ 4 February 2022 Transcript, p 37 lines 18–21.

⁴⁸ 9 February 2022 Transcript, p 32 line 25 to p 33 line 31.

⁴⁹ Steven Tan’s affidavit p 26.

52 Assessing the plaintiff's evidence against that of Inspector Tan and IO Chua, I find the police officers' evidence to be more reliable. I hence reject the plaintiff's version of the events and find that the police did not forcefully take the access cards and keys from the plaintiff's hands. While the defendants did not call the security guard to corroborate the fourth defendant's evidence, it is for the plaintiff to prove her case on the balance of probabilities, *ie* that her access cards and keys were forcefully taken away from her by the police, rather than surrendered by her. In the premises, I find the fourth defendant's version to be more likely, which is that the plaintiff handed over the access cards and keys to the security guard, who then passed them over to the fourth defendant.⁵⁰

Whether the plaintiff left her belongings behind in the Studio Unit

The Photographs

53 The fourth defendant and Nicholas testified that the Studio Unit was vacant when they entered it around mid-day of 23 May 2019. They rely on the Photographs taken then to support their testimony. Tan S W, the joint forensics expert, provided a report on his examination of the Photographs (the "Expert Report"). The salient points of the Expert Report relate to the location where the Photographs were taken and the extent of modification of the Photographs.

54 The Expert Report states that the Photographs were created from 1:02:21pm to 1:04:30pm, at GPS coordinates for 31 Simei Street 3, Singapore 529902. Tan S W testified that the Photographs could have been taken at Blk 29 of My Manhattan, where the Studio Unit is, although the GPS coordinates

⁵⁰ Fourth defendant's AEIC at para 52.

stated 31 Simei Street 3. This is because this was within the error range of Google Maps, which is about 2%.⁵¹

55 The Expert Report also deals with the modification of the photographs. It states that 26 of the 27 photographs were modified on 8 June 2019 between 7.05pm and 7.07pm. Modification on image files can involve changing the resolution, size or content of the images. Due to the absence of the original photographs on the phone where they were taken, Tan S W was not able to perform any comparison to determine the exact modifications that took place on 8 June 2019. However, he examined the grain of pixel of the 26 image files and did not note any inconsistency.

56 Tan S W testified that he could not confirm that there was no modification of the creation date of the Photographs. However, he also testified that while it is possible that the creation dates of the Photographs were modified, it was technically difficult to do and not within a layman's skillset. It would require a vendor with the right software.⁵²

57 If the defendants had gone to the trouble and expense to hire a vendor, it is questionable why they would have the creation date modified to around mid-day of 23 May 2019, leaving a gap of over 12 hours from the time that the access cards and keys were transferred from the plaintiff on 22 May 2019 night.

58 One of the photographs, IMG_1030.jpg, did not have a modification date. Tan S W testified that it was possible for the creation date to be modified

⁵¹ 3 February 2022 Transcript, p 30 lines 23–24.

⁵² 3 February 2022 Transcript, p 34 lines 18–27.

such that there was no indication of modification.⁵³ Again, if the defendants had gone to the trouble and expense of hiring a vendor to do that for IMG_1030.jpg, there is little reason why this would not have also been done for the remaining 26 Photographs. That would have been the best way for someone to eliminate all traces of modification. But that was not done.

59 Given the above, on balance, I find it more likely than not that the Photographs were created on the date indicated in the metadata of the Photographs. The Photographs however, are not conclusive of the issue, as they only show the state of the Studio Unit at the time they were taken, which was around mid-day of 23 May 2019. They do not show the state of the Studio Unit on the night of 22 May 2019, after the plaintiff handed over the access cards and keys.

The plaintiff's evidence on the belongings

60 I turn now to the plaintiff's evidence that her belongings were left behind in the Studio Unit on the night of 22 May 2019. Beyond her oral testimony, the plaintiff was not able to offer any objective evidence showing that her belongings were indeed in the Studio Unit.

61 To examine this further, I turn to the plaintiff's evidence on her jewellery. Among the items that the plaintiff claimed were left behind, were jewellery and watches, that she values at around \$358,379. They form about 75% of the value of the belongings that the plaintiff claims damages for.

⁵³ 3 February Transcript, p 41 lines 3–17.

62 During cross-examination, the plaintiff testified as follows:⁵⁴

Q: ... Then there are other valuable things like your many items of jewellery which were---which ... you say that they are worth more than \$300,000. Where did you keep all these?

A: In the drawer.

Q: Okay. Were these things kept in your matrimonial home before?

A: They were---the jewelry were originally kept in a safety box with Cisco. **During the divorce mediation, my ex-husband said that he wanted to return the jewelry to me, so I took the safety box key from him, and then I kept all these jewelry in Fernwood Towers at that time.** And then because my ex-husband was not an honest person, I was also worried that he would take the jewelry from me, and then we would have a conflict. So, then I spoke to two of my friends, Lin Li Zhen and Pauline Tan, and then they said to keep the jewelry with them for the time being. **And then I thought it wouldn't be nice to keep the jewelry with my friends, so I took the jewelry back. And then when I moved house, I put them into the drawer of my unit at the Manhattan.**

[emphasis added]

Fernwood Towers (“Fernwood”) is where the plaintiff lived with her ex-husband.

63 During re-examination, the plaintiff testified that the divorce mediation that she referred to, took place around March or April 2018:⁵⁵

Q: Now, Ms Hsu, you mentioned that in respect of your divorce proceedings, there was a mediation. Remember this part of your evidence given just a few moments ago?

A: Yes, divorce mediation.

⁵⁴ 3 February Transcript 2022, p 99 line 25 to p 100 line 15; 8 February Transcript 2022, p 36 lines 2–8 and p 54 lines 1–16.

⁵⁵ 8 February Transcript 2022, p 37 lines 20–27.

Q: Okay. And **when this mediation took place?**

A: I can't remember. **Around March or April.**

Q: And the year?

A: **2018.**

[emphasis added]

64 The plaintiff testified that she “kept the jewelry in [her] friend’s safe for 6 months.” When she was preparing to move from Fernwood to the Studio Unit, she brought the jewellery to Fernwood and kept it with her. She said that she did not keep the jewellery with her in Fernwood for very long and that it was probably for about a month. After that, she found the Studio Unit and took the jewellery with her.⁵⁶

65 During the trial, the defendants obtained leave to ascertain the actual date of the divorce mediation. Counsel for the plaintiff thereafter made the inquiries with the plaintiff’s divorce lawyers and confirmed that the said mediation took place on 26 November 2018, not March or April 2018 as the plaintiff claimed.⁵⁷

66 Before the plaintiff testified in court as to the date of the divorce mediation, she did say that she “can’t remember”. However, the material discrepancy is not just in relation to the precise date of the divorce mediation. Her tenancy at the Studio Unit started around 18 July 2018. This means that she moved out of Fernwood by around 18 July 2018. The evidence that the plaintiff’s divorce mediation was on 26 November 2018, flatly contradicts her

⁵⁶ 8 February Transcript 2022, p 37 lines 20–27.

⁵⁷ DCS, Annex-1.

evidence that she took the jewellery back to Fernwood after her divorce mediation, then kept it with her friends for a significant period of time before bringing it back to Fernwood for a while before she moved out, and finally bringing it with her “when [she] moved house”.

67 The plaintiff’s only evidence that her jewellery was in the Studio Unit on 22 May 2019 is her oral testimony. However, her evidence that she brought her jewellery to the Studio Unit is undermined by serious inconsistencies.

The plaintiff’s payment on 23 May 2019

68 The plaintiff submits that the following facts support her case that her belongings were still in the Studio Unit: (a) she transferred \$4600 to the joint account of the first and fourth defendant at about 10.34am on 23 May 2019;⁵⁸ (b) her text to Nicholas at 3.02pm on 23 May 2019 attaching the payment receipt;⁵⁹ (c) her email on 23 May 2019 at 5.02pm to Nicholas that the fourth defendant locked up all the plaintiff’s belongings (the “23 May E-mail”);⁶⁰ and (d) the six voice messages that she sent to Nicholas after her discharge from hospital on 27 May 2019.⁶¹

69 I find that the plaintiff’s payment and text message to Nicholas on 23 May 2019 do not help to prove that her belongings were indeed in the Studio Unit. First, they do not provide direct evidence that any of the belongings were in the Studio Unit at the material time. Second, the main component of value of

⁵⁸ 1AB at pp 75 and 93.

⁵⁹ 1AB 75.

⁶⁰ 1AB at p 204.

⁶¹ PCS at paras 566 and 569.

the plaintiff's belongings is the jewellery, and her evidence on the jewellery is contradictory, as highlighted above. Taking her own evidence as it stands, it is not likely that the jewellery was in the Studio Unit.

70 Third, the plaintiff's text message to Nicholas at 3.02pm only attaches the receipt of payment and does not say more. There was an ongoing dispute over whether the plaintiff could use the SD to offset the remaining two months of rental payment. The first defendant's position there was that the use of SD for such purpose was a breach of the TA. Hence, the plaintiff's payment of \$4,600 equivalent to two months of rental, does not necessarily lead to the inference that the plaintiff's belongings were in the Studio Unit.

71 Fourth, the plaintiff's explanation of the 23 May E-mail raises more unanswered questions. The defendant's case is that Nicholas never received the 23 May E-mail. The defendants point to the series of voice messages sent by the plaintiff to Nicholas on 27 May 2019,⁶² wherein the plaintiff did not mention that she had sent the 23 May E-mail to Nicholas and that he had not responded to her.

72 When the plaintiff was asked why she did not mention the 23 May E-mail in her voice messages to Nicholas, no explanation was forthcoming. Instead, the plaintiff maintained that she did mention the 23 May E-Mail, and that Nicholas said not to look for him again or he would sue her for harassment:⁶³

Court: On the 28th of May, [you] sent Nicholas Tan a voice message.

A: Yes, Your Honour.

⁶² 1AB at pp 234–239.

⁶³ 8 February 2022 Transcript, p 59 lines 4–16.

Court: Why did [you] not mention to Nicholas Tan that [you] had already sent him an email on 23rd for which he did not reply?

A: I did mention it. He said not to look for him again. He would sue me for harassment.

Court: [You] did say to Nicholas Tan that [you] sent him an email on 23rd May?

A: I told him I sent him an email and also told him that I had already transferred the money.

Court: In [your] voice message?

A: Yes, Your Honour. Because he kept asking why I kept looking for him.

73 However, the transcripts of her voice messages show that she clearly did not mention the 23 May E-mail.⁶⁴ That the plaintiff has made false assertions of her communications with Nicholas about the 23 May E-mail, raises doubts about the credibility of her testimony that she did send out that e-mail.

The fourth defendant's police reports

74 The plaintiff also relies on the fact that the police reports lodged by Nicholas on 23, 24 and 25 May 2019, do not mention that he and the fourth defendant found a vacant Studio Unit. Nicholas explained that he had omitted that fact as “it was taken for granted that [the plaintiff] already acted on [the notices] and moved out on her own.”⁶⁵ Given that Nicholas helped the first defendant prepare the Three Notices and deliver them to the plaintiff, that the plaintiff had stopped her usual payment on 18 May 2019, and that Nicholas and the first defendant found the Studio Unit vacant on 23 May 2019, I find his explanation to be a fair one. Moreover, the plaintiff's text to Nicholas on 23

⁶⁴ 1AB 234–239.

⁶⁵ 10 February 2022 Transcript, p 33 lines 21–22.

May 2019 attaching her payment receipt for \$4,600 came in midst of the ongoing dispute over whether the plaintiff could use the SD to pay for the remaining two months of rental. There is also doubt over whether the plaintiff did send the 23 May E-mail to Nicholas. In these circumstances, I accept Nicholas' explanation that they did not think that the plaintiff's belongings not being in the Studio Unit would be an issue.

The plaintiff's heart condition

75 One of the plaintiff's claims against the defendants, is for the sum of \$1,049.67, which is the amount of her uninsured medical expenses incurred during her stay in Mt Elizabeth hospital from 24 to 27 May 2019. Her case is that she incurred these medical expenses after her health deteriorated due to the stress of being evicted from her Studio Unit. The plaintiff stated that she was admitted to Mt Elizabeth hospital on 24 May 2019 to be treated for her heart condition.⁶⁶

76 Leaving aside that the plaintiff has not explained how her medical condition was caused by her leaving her Studio Unit, the plaintiff's position that she was suffering from a heart condition is not even supported by her own documents.

77 The plaintiff testified on the stand that it was only after she was hospitalized that she realized that her heart condition was more serious than she thought. When defendants' counsel pointed out that the medical report from her doctor (the "Medical Report")⁶⁷ did not state that her condition was too serious,

⁶⁶ Plaintiff's AEIC at para 85.

⁶⁷ Plaintiff's AEIC at p 255.

the plaintiff responded that the doctor wanted her to do surgery, to put in heart stents, and that following a review a few months later, he maintained that she do surgery.⁶⁸

78 The plaintiff confirmed that it was Dr Wong Siong Sung (who had issued the Medical Report) (“Dr Wong”), who advised her to go for a heart stent surgery and he continued to suggest this during a review with her in late December 2019.⁶⁹

79 However, the Medical Report does not support the plaintiff’s assertions. The Medical Report does not mention that the doctor suggested heart stent surgery. Instead, Dr Wong indicated in the Medical Report that further evaluation was recommended, in the form of invasive coronary angioplasty. As the plaintiff was not keen, Dr Wong recommended in the alternative, a coronary MRI process. The plaintiff was also advised to undertake a further MRI of the spine if the coronary MRI was unremarkable.⁷⁰

80 Moreover, the Medical Report noted that the plaintiff did not undertake the coronary MRI upon discharge. The plaintiff also did not follow up with Dr Wong. Thus, the Medical Report contradicts the plaintiff’s testimony that Dr Wong continued to suggest that she undergo heart stent surgery during his review with her. As she did not follow up, there was no such review. When this was pointed out to the plaintiff, she sought to explain that this was because Dr

⁶⁸ 3 February 2022 Transcript, p 93 lines 10–22.

⁶⁹ 8 February 2022 Transcript, p 53 lines 20–23.

⁷⁰ Plaintiff’s AEIC at p 255.

Wong moved to a clinic in Somerset.⁷¹ However, Dr Wong’s Medical Report was from his clinic addressed at Somerset.

81 The plaintiff’s evidence on her heart condition, is flatly contradicted by the Medical Report that she herself produced.

82 In her voice message to Nicholas on 28 May 2019,⁷² the plaintiff told him that she “had a heart attack the last few days and was hospitalized”. However, the Medical Report did not state that she had a heart attack. The plaintiff, at the very least, grossly embellished the facts to Nicholas.

83 This was not the only occasion where the plaintiff showed a propensity to embellish and exaggerate. In her letter to the Prime Minister on 25 June 2019⁷³ and the Minister for Law on 25 June 2019,⁷⁴ she suggested that she was cast out on the streets following her eviction, saying: “The Public has given me clothings to wear and change”. However, during this time, she actually was staying with a friend.

Credibility of the witnesses

Credibility of the plaintiff

84 The plaintiff was, in her own words “highly educated”, with an MBA from St Mary University, Minnesota.⁷⁵ She gave her evidence in Mandarin

⁷¹ 8 February 2022 Transcript, p 75 lines 7–31.

⁷² Plaintiff’s AEIC at p 238.

⁷³ Plaintiff’s AEIC at p 298.

⁷⁴ Plaintiff’s AEIC at p 303.

⁷⁵ 4 February 2022 Transcript, p 1 lines 28–29.

through the assistance of an interpreter. I found the plaintiff to be an unreliable witness. Her evidence on the timing and sequence of how and when she moved her jewellery to the Studio Unit was exposed as false by the objective evidence that her divorce mediation took place after she moved into the Studio Unit (see [66] above). Her evidence that Dr Wong recommended that she undergo heart stent surgery, was flatly contradicted by the Medical Report that she herself produced (see [81] above). She made assertions that were contradicted by the CCTV extracts and by the transcripts of her voice messages (see [40] and [73] above).

Credibility of Nicholas

85 The plaintiff submitted that Nicholas was biased as he had helped the fourth defendant lodge online complaints to the police and was a witness for the defendants in their SCT claim. Nicholas did not deny that as a real estate agent, his first loyalties were to the landlord, the first defendant.⁷⁶ However, he also explained that it was in his interest to keep the tenancy operating smoothly through to the end. Thus, he sought to be impartial and cordial with both parties during the various incidents.⁷⁷ I find that this is supported by the tone and content of Nicholas' messages to the plaintiff.

86 The plaintiff submits that the police report that Nicholas lodged on 22 May 2019 on behalf of the fourth defendant,⁷⁸ contained a different version of events from the one in his police report lodged on 23 May 2019.⁷⁹ The plaintiff

⁷⁶ Nicholas' AEIC at para 18.

⁷⁷ 9 February 2022 Transcript, p 73 lines 14–18.

⁷⁸ 1AB at pp 197–203.

⁷⁹ 1AB at pp 210–214.

submits that this proves Nicholas to be an unmitigated liar.⁸⁰ The two paragraphs referred to by the plaintiff are set out below:

22 May 2019 police report

...

On 01/05/19, I closed the door and removed the stopper to protect ourselves. She then made a false claim that she had already paid two months rental in advance and that it would offset June and July Payment when this was not the case and the payment was for the security deposit as stated in the in the tenancy agreement which she paid at the start of the tenancy which was not to be used as rental as per contract.

...

23 May 2019 police report

...

... She did not listen to reason and shouted saying “I don’t want to rent this apartment any longer, do you understand, the rent is expense and I don’t want to pay you rent going forward. Refund me my security deposit and I will move out! Foong Chiew Chieh tried to explain that it was not up to her but her dad and then Mdm Hsu shouted saying then I will not pay rent and you already have my final two months in your hands. Foong Chiew Chieh tried to calm her down and explain that that was the security deposit and that rental should not be deducted from that sum according to contract ...

87 The plaintiff’s basis for alleging inconsistency of the reports is unclear. This is especially since the 22 May 2019 report was lodged by the fourth defendant (with the assistance of Nicholas) and not by Nicholas himself. In any event, both paragraphs are substantially similar. Both set out the defendants’ concern with the plaintiff’s intended use of the SD to offset the rental.

⁸⁰ PCS at paras 130–133 and 135.

88 I found Nicholas to be a credible and reliable witness. His answers were consistent and uncontroverted. He was also forthcoming in acknowledging when he did not take certain actions. For example, when pressed by plaintiff's counsel, he admitted after reflecting, that he did not tell the plaintiff that she could not offset the SD for the last two months of rental.⁸¹

89 There are several aspects of Nicholas' evidence which are material, that were not contradicted and which I accept. First, he slid the 3 Notices under the door of the Studio Unit. Second, on the night of 22 May 2019 he told the plaintiff to use the access card to enter the main door and that the access code had not been changed. Third, he and the fourth defendant found the Studio Unit vacant around mid-day of 23 May 2019. Fourth, he never received the 23 May E-mail.

Credibility of fourth defendant

90 The fourth defendant's highest level of education was Form 5 in Malaysia.⁸² The key elements of the fourth defendant's evidence that are in contention with that of the plaintiff relate to the handover of the access cards and keys on the night of 22 May 2019 and the vacant state of the Studio Unit on 23 May 2019.

91 The plaintiff's evidence on the first issue (in relation to the handover of the access cards and keys on 22 May 2019 night) is rebutted by the evidence of independent police officers whom I find no reason to doubt (see [52] above). The second issue (vacant state of the Studio Unit) is corroborated by Nicholas. The fourth defendant's evidence is reinforced by contradictions in the plaintiff's

⁸¹ 9 February 2022 Transcript, p 119 lines 22–24.

⁸² Fourth defendant's AEIC at para 5.

own evidence, for example in relation to whether the jewellery was brought to the Studio Unit. The fourth defendant's evidence on these key elements of the plaintiff's claim, is thus supported by independent third parties, by another witness whom I have found to be credible and whose evidence has not been controverted, and finally by the contradictions in the plaintiff's evidence.

92 The bulk of the plaintiff's submissions on the credibility of the fourth defendant involve earlier events which are not germane to establishing the plaintiff's claims. These include the fourth defendant's claims that the plaintiff had threatened to cause a gas explosion or to be violent towards the fourth defendant.

93 The plaintiff seeks to show that such threats were false by pointing out, in various degrees of detail, the absence of such threats from certain documents. These documents include the fourth defendant's AEIC, police reports made by the fourth defendant or Nicholas, and the SCT case statement. However, these threats do not underpin the defendants' case in this suit or the SCT claim. Thus, even if certain details relating to these threats were missing from the fourth defendant's or Nicholas' AEICs, or from the SCT case statement, it cannot be inferred that the threats were not made and that the fourth defendant lied in respect of them. Given that these alleged threats are not germane to the plaintiff's claims or the defence, I do not consider it necessary to make findings of fact in respect of them.

94 The plaintiff also asserts that the fourth defendant gave false evidence when she said that she had no control over the joint account held by the first

defendant and her.⁸³ However, the fourth defendant has never denied that it was a joint account, but instead maintained that she was using the account to help her father to make payment for matters such as maintenance fees and that she made payments on her father's instructions.⁸⁴ That is why she took the position that she did not control the account. The plaintiff may disagree with that characterization, but that does not mean that the fourth defendant gave false evidence.

95 The plaintiff submits that the fourth defendant was lying about the plaintiff's belongings, as the transcript of a video of a security guard indicated that the security guard was told to notify the plaintiff that her belongings had been sent to her ex-husband.⁸⁵ The plaintiff initially applied to adduce the video on the eve of the trial, but ultimately withdrew the application. The plaintiff did not call the security guard to testify as to what was allegedly said. Thus, even if the transcript were in evidence, its contents would have been hearsay and unreliable as evidence.

96 The plaintiff also submits that the allegations in the police report lodged on 22 May 2019,⁸⁶ where the fourth defendant stated that the plaintiff was banging on the doors the previous night, were lies. This was because the fourth defendant testified that she did not hear the commotion and that it was Nicholas who heard it.⁸⁷ However, the police report does not say who heard the banging. It also states that both the fourth defendant and Nicholas were the subjects

⁸³ PCS at para 190.

⁸⁴ 11 February 2022 Transcript, p 5 lines 1–22.

⁸⁵ PCS at para 383.

⁸⁶ 1AB at pp 197–199.

⁸⁷ PCS at paras 359 and 361; Fourth defendant's supplemental AEIC at para 8.

involved. Nicholas also testified that he heard such banging.⁸⁸ Hence, this aspect of the fourth defendant's evidence was consistent.

97 The plaintiff submits that there should be an adverse inference drawn against the fourth defendant for not revealing the text messages between her and Nicholas.⁸⁹ The fourth defendant explained that as they were living in the same apartment, they would talk to each other rather than text each other. In *The "Posidon" and another matter* [2018] 3 SLR 372 (*"The Posidon"*) at [92], the court held that "[a] party seeking to draw adverse inference must have a case to answer on the issue sought to be strengthened by the drawing of the inference", that is, "there must be a substratum of evidence that establishes a *prima facie* case because the court's ability to draw an adverse inference cannot displace a party's legal burden of proof". For the reasons set out above, the plaintiff has not established the substratum of evidence for a *prima facie* case, so as to justify drawing an adverse inference.

My decision

Claim for wrongful termination of the tenancy agreement

98 The first main issue is whether the defendants wrongly terminated the TA. I will summarize my key findings in relation to this issue:

- (a) The plaintiff had, by way of her message to Nicholas on 1 May 2019, indicated to the first defendant that she intended to move out at the end of the tenancy and that she wished to use her SD to offset the remaining 2 months of rental payment.

⁸⁸ 10 February Transcript 2022, p 11 lines 7–10.

⁸⁹ PCS [204].

(b) In response, the first defendant, through Nicholas, prepared the Three Notices, which state that the use of the SD for rental payment was regarded as a breach of the TA. Nicholas and the fourth defendant slid the notices under the door of the Studio Unit on 5 May 2019, 18 May 2019 and 21 May 2019.

(c) The plaintiff stopped the usual GIRO payment for the rental, that was to take place on 18th of each month, as payment of rent for the following month. While the plaintiff's intention was to offset the remainder of the rental payments from the SD, this was not provided for in the TA and she had not received any confirmation from the first defendant that he was agreeable, when she stopped the GIRO payment.

(d) The plaintiff was able to open the main door leading to her Studio Unit on the night of 22 May 2019.

(e) The police did not remove the access cards and keys from the plaintiff on the night of 22 May 2019. I accept the fourth defendant's evidence that the plaintiff handed them over to the security guard who then passed them to the fourth defendant.

(f) Other than her testimony, the plaintiff has not provided any evidence that her belongings were in the Studio Unit. Her evidence on her jewellery being in the Studio Unit was contradictory and strongly suggests that the jewellery was not in the Studio Unit at all. I accept the evidence of Nicholas and the fourth defendant that the first time they entered the Studio Unit after the plaintiff handed over her keys, was around mid-day of 23 May 2019, and that the Studio Unit was vacant, as evidenced by the Photographs.

(g) The fourth defendant sent an e-mail to the plaintiff on 23 May at 1:54pm informing that the Studio Unit would be repossessed.⁹⁰

99 On the totality of the evidence before me, I find that the plaintiff willingly surrendered her keys and access cards to the Studio Unit to the defendants on 22 May 2019. Prior to this, she was not denied entry to the Studio Unit. The defendants only took possession of the Studio Unit on 23 May 2019, after possession had been delivered to them by the plaintiff the night before. This being the case, I dismiss the plaintiff's claim for wrongful termination of the tenancy. For completeness, this means that the TA was not terminated by the defendants. It was terminated by the plaintiff when she surrendered her keys to the fourth defendant.

100 Accordingly, the plaintiff is not entitled to be compensated for losses arising from her alleged eviction, such as her claim of \$1,049.67 for medical expenses. In any case, the plaintiff adduced no evidence whatsoever of how such medical expenses were related to the alleged eviction or that she was indeed suffering from the heart condition claimed.

Claim for wrongful detention of belongings

101 In view of the above findings, I also reject the plaintiff's claims that she left her belongings in the Studio Unit as of 22 May 2019 and that they were wrongfully detained by the defendants. The plaintiff relied solely on her testimony to establish this claim. As I have found above, she was not a credible witness. Specifically with regard to the belongings, she was not truthful about her jewellery, which formed a large part of the total value of belongings

⁹⁰ 1AB 207.

allegedly detained. Thus, I dismiss the plaintiff's claims for wrongful detention of her belongings and valuables.

Plaintiff's other claims

102 The plaintiff also claims \$4,229.05 (pro-rated rental for the period from 23 May to 17 July 2019) from the sum of \$4,600 paid to the defendants on 23 May 2019, which was allegedly demanded by the fourth defendant in return for handing over the plaintiff's belongings. Following my findings above, I hold that the plaintiff prematurely terminated the TA as of 22 May 2019. This amounted to a repudiatory breach of the TA. As per *Tan Soo Leng David v Lim Thian Chai Charles and another* [1998] 1 SLR(R) 880 at [15], the defendants' acceptance of the plaintiff's keys and access cards and their subsequent retaking of possession of the Studio Unit on 23 May 2019 do not prejudice their right to seek damages for a repudiatory breach of the TA. The defendants are hence entitled to the pro-rated rent of \$4,229.05 as damages arising from this repudiatory breach. They are thus entitled to retain the \$4,600 that was transferred to them by the plaintiff on 23 May 2019.

103 The plaintiff also claims for her security deposit of \$4,600. As there is no evidence of damage caused to the Studio Unit, or other justification for the detention of the security deposit, the plaintiff will be entitled to the return of her security deposit of \$4,600.

Conclusion

104 In conclusion, I dismiss all of the plaintiff's claims, except for the security deposit of \$4,600, which is to be returned to the plaintiff.

105 Parties informed the court that they have agreed to fix by consent the party and party costs at a lump sum of \$140,000 excluding reasonable disbursements to be agreed or taxed.⁹¹ The defendants have substantially succeeded in defending against the plaintiff's claims, with the exception of the return of the SD, which parties did not spend time on at the trial. I will hence award to the defendants, by consent of parties, costs at \$140,000 plus reasonable disbursements to be agreed or taxed.

Kwek Mean Luck
Judge of the High Court

A Rajandran (A. Rajandran) for the plaintiff;
Quek Mong Hua and Chua Yi Ying (Lee & Lee) for the defendant.

⁹¹ Letter from Lee & Lee dated 10 May 2022.