

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1522**

Jermaine Smith,
Appellant,

vs.

Broadway Flats LLLP,
Respondent.

**Filed August 2, 2021
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CV-19-19452

Nicholas J. Edlefsen, Minneapolis, Minnesota (for appellant)

Morgan Okney, Law Offices of Morgan Okney, LLLP, St. Paul, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Reilly, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this landlord-tenant dispute, appellant-tenant challenges the district court's finding that appellant damaged his apartment beyond "ordinary wear and tear" and the conclusion that respondent-landlord therefore complied with the language of Minn. Stat. § 504B.178 (2020) by withholding a portion of appellant's security deposit. Because the

amount of appellant's damage deposit withheld was necessary to restore the apartment to its pre-tenancy condition, ordinary wear and tear excepted, we affirm.

FACTS

Appellant Jermaine Smith was the first tenant in a newly-constructed apartment (the unit) leased from respondent Broadway Flats LLLP from August 2016 to July 2019. After appellant vacated the unit in July 2019, employees at Broadway Flats conducted a move-out inspection of the unit which revealed that extensive expense would be required to clean, refurbish, and restore the unit to its original condition.¹ Broadway Flats estimated \$700.00 to be the expense for repairs and cleaning of the unit, withheld that amount from appellant's \$799.00 security deposit, and delivered appellant a check for the balance plus interest.

Appellant commenced this action against Broadway Flats in conciliation court to recover the withheld portion of his security deposit. After the conciliation court ruled in favor of Broadway Flats, appellant removed the matter to district court. Following a court trial, the district court ruled in favor of Broadway Flats, finding that various parts of the unit had been damaged beyond "ordinary wear and tear" such that the withholding from appellant's security deposit was justified. This appeal follows.

DECISION

Within three weeks after termination of a tenancy, a landlord must return a security deposit to a tenant or provide a written statement showing specific reasons for withholding all or a portion of the deposit. Minn. Stat. § 504B.178, subd. 3(a)(1). A landlord may

¹ Though Broadway Flats typically conducted such inspections prior to move-out, they did not do so in this matter because appellant refused them access to the unit.

withhold from the security deposit “amounts reasonably necessary . . . to restore the premises to their condition at the commencement of the tenancy, *ordinary wear and tear* excepted.”² *Id.*, subd. 3(b)(2) (emphasis added). The burden of proving a reason for withholding, by a fair preponderance of the evidence, is on the landlord. *Id.*, subd. 3(c).

The evidence provided at trial and found by the district court as credible, clearly reflects that the damage (i.e. “wear and tear”) to the unit was not “ordinary” and that it was beyond the damage typically encountered in a unit upon move-out. These findings of fact “shall not be set aside unless clearly erroneous.” Minn. R. Civ. P. 52.01. “To conclude that findings of fact are clearly erroneous [appellate courts] must be left with the definite and firm conviction that a mistake has been made.” *See Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotation omitted). Appellant argues the district court’s findings were clearly erroneous. We disagree.

The testimony most influential to the district court among the four management-company employees who testified was that of the Broadway Flats property manager. The property manager indicated that he had been one of two individuals—the other being the building maintenance supervisor, who also testified—to conduct the move-out inspection

² Appellant, in order to “ascertain and effectuate the intention of the Legislature” regarding the language in section 504B.178, invites this court to “apply rules of [statutory] construction” to this statute. *See Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012) (explaining general rules and purpose of statutory interpretation). We decline this invitation. The statute plainly and unambiguously provides that, for a withholding of damage deposit to be justified, any damage (or “wear and tear”) must be beyond “ordinary.” Minn. Stat. § 504B.178, subd. 3(b); *see also Current Tech. Concepts, Inc. v. Irie Enter., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995) (“When the language of a statute, so construed, is not ambiguous, a court must apply its plain meaning.”).

of the unit. The property manager took the photographs of the apartment condition upon move-out and he was in charge of calculating the withholding of appellant's deposit. The district court explicitly found the property manager's testimony to be "credible" and found that "[Broadway Flats] ha[d] demonstrated . . . damages with credible testimony and competent evidence." The district court relied on such testimony and exhibits in making its findings of fact, which incorporated and accepted the actual costs as described by the property manager. Ultimately, the district court found that

[w]hen [appellant] vacated the Unit on August 2, 2019, he returned the unit with: 1) a damaged and inadequately cleaned refrigerator; 2) rusted and moisture damaged bathroom light fixtures, fire suppression sprinklers, and towel racks; 3) damaged and inadequately cleaned kitchen cabinets; and 4) damaged and inadequately cleaned carpeting.

The district court found that "the total out-of-pocket expenses incurred by [Broadway Flats] for cleaning and repair of the unit was \$1,120.57," far more than the \$700.00 actually withheld from appellant's security deposit. The district court found that the \$700.00 withholding was proper under section 504B.178, subdivision 3, which may be used to cover "restora[tion] [of] the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted."

The record supports these findings. The property manager described the damages to the unit, including damage to the kitchen cabinets, refrigerator, bathroom fixtures, and fire suppression systems, as well as the general state of the unit. Testimony from the maintenance supervisor corroborated the property manager's testimony. Broadway Flats provided the court with photographs of the unit reflecting these damages, as well as records

indicating the cost of repair parts for the refrigerator and bathroom fixtures and the cost of additional third-party cleaning and painting. Both the property manager and the maintenance supervisor indicated that these damages were not typical in units upon move-out—in other words, they were beyond “ordinary wear and tear.” This record supports the district court’s findings and directs us to the conclusion that those findings were not clearly erroneous.

Appellant argues that, because the witness testimony was “discredited by contradictions and bias, and uncorroborated by physical evidence,” the photographs provided were “limited,” and the “receipts of expenditures . . . remain unverified,” the district court clearly erred. As an example of this claimed error, appellant points to a confrontation between the property manager and appellant during which appellant called the property manager a “liar” after the property manager failed to make a previously-scheduled meeting between the two. Appellant’s claimed error fails, as “due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01. Additionally, “[appellate courts] view the evidence in the light most favorable to the verdict.” *See Rasmussen*, 832 N.W.2d at 797. The district court explicitly found that “[Broadway Flats] ha[d] demonstrated . . . damages with *credible* testimony and *competent* evidence.” (emphasis added). The record supports the district court’s factual findings.

Affirmed.