STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

[Filed: April 9, 2019]

EMMA PELTON; ABIGAIL SCHMIDT	**:**	
	:	
v.	**:**	**C.A. No. WD-2019-0011**
	:	
PIER REALTY, LLC	**:**	

DECISION

McGUIRL, J. Before this Court is a non-jury trial arising from an appeal of a District Court ruling in favor of tenants Emma Pelton and Abigail Schmidt (Plaintiffs) brought by Pier Realty, LLC (Defendant) regarding a lease of an apartment. Jurisdiction is pursuant to G.L. 1956 § 9-12-10.1.

Plaintiffs filed their claim on July 26, 2018, seeking return of a security deposit held by the Defendant. The District Court conducted a non-jury trial, returning a verdict in favor of the Plaintiffs after hearing testimony and reviewing photographic and documentary evidence. Defendant invoked its right to appeal and parties waived the right to a jury trial. In addition, the Defendant filed a counterclaim on February 21, 2019, seeking compensatory damages for breach of the lease agreement by the Plaintiffs when they allegedly failed to leave the rental unit in rentable condition.

This Court conducted a trial in the instant matter on February 22, 2019. The Court heard testimony from Plaintiffs, as well as from Defendant's Property Manager, Sandra Kashouh. In addition, multiple photographs of alleged damages, email communications between the parties,

and assorted bills were entered into evidence during the trial. Furthermore, the lease agreement entered into by the parties was entered as evidence and reviewed by the Court.

It is well-settled that an appeal to the Superior Court in landlord tenant actions proceeds on a *de novo* basis. *See* § 9-12-10; *see also Bernier v. Lombardi*, 793 A.2d 201, 202 (R.I. 2002). Moreover, in a subsequent non-jury trial in Superior Court, '"[t]he trial justice sits as a trier of fact as well as of law."' *Parella v. Montalbano*, 899 A.2d 1226, 1239 (R.I. 2006) (quoting *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984)). Furthermore, "[w]hen rendering a decision in a non-jury trial, a trial justice 'need not engage in extensive analysis and discussion of all the evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case."' *Parella*, 899 A.2d at 1239 (quoting *Donnelly v. Cowsill*, 716 A.2d 742, 747 (R.I. 1998)).

Upon review of all submitted evidence and testimony, the Court makes the following findings of fact:

1. The parties entered into a written agreement in which Plaintiffs would rent and reside in an apartment unit located at 174 A South Pier Road, Narragansett, Rhode Island, owned by the Defendant, for the 2017-2018 academic year running September 6, 2017 to May 23, 2018.
2. By written agreement, Plaintiffs paid Defendant $3600 upon acceptance of the agreement, with $1200 of this initial amount deemed a security deposit. *See* Pls.' Ex. 1, at 1.
3. Within the agreed upon rental contract, paragraph four details the nature of the security deposit. Specifically, section 7 of the aforementioned Paragraph indicates

"[a] reasonable cleaning expense provided [Plaintiffs] do not leave the premises in a clean and rentable condition at the time you vacate." *Id*. at 2.

4. Plaintiffs vacated the unit upon completion of the 2017-2018 school year.
5. Plaintiffs requested a walkthrough of the apartment in May prior to the end of the rental term but the request was denied by the Defendant.
6. Defendant was at the unit in early May prior to the expiration of the lease term and did not inform the Plaintiffs of any issues relating to the "rentable" condition of the unit. Defendant later conducted a post-tenancy inspection. The Plaintiffs were not present.
7. Following the inspection, the Defendant withheld the security deposit including: a $502.50 "cleaning fee," a $100 "rearrangement fee," a $100 fee for cleaning four rugs, a $160 fee for painting the living room due to scratches, a $24.80 fee for an outstanding oil bill, a $3 fee for a missing salad fork, an $8 fee for two missing steak knives, a $150 fee for painting the back bedroom due to smoke damage, and a $4 fee for a missing short shot glass. Thus, the total withheld by the Defendant amounted to $1052.30 of the $1200 deposit. *See* Def.'s Ex. A at 1, 2; *see also* Def.'s Ex. B.
8. Plaintiffs do not contest soot on the wall of the back bedroom caused by a candle and agree to pay the $150 fee associated with repainting. Further, the Plaintiffs agree to pay $4 for a missing shot glass and $24.80 for the outstanding balance of their oil bill.
9. The Court finds a lack of specificity and definition of many of the terms and clauses within the lease agreement particularly within section 7 regarding "reasonable cleaning expense" and "clean and rentable condition."

10. The Court finds alleged damage by the Plaintiffs unsubstantiated by the evidence provided during the hearing. The only evidence was for normal wear and tear of everyday use.
11. The Court finds the scratches in the living room and unclean rugs—presented via photographs taken before and after the rental period—to be reasonable wear and tear that was not addressed in the lease agreement and probably there at the time the rental period began.
12. The Defendant imposed a $502.50 cleaning fee—amounting to thirty-five hours of labor—onto Plaintiffs who resided within an approximate 886 square foot apartment. The Court finds that to be an unreasonable cleaning expense.
13. The Defendant admitted they generally retain all security deposits to clean and prepare the rental units for subsequent rental. These cleaning services and fees are not included in the lease agreement.
14. The Defendant has the right to require the Plaintiffs to clean the unit or pay a fee for professional cleaning services at the termination of the lease. That cleaning fee provision should be included in the lease and identifiable to all parties.
15. Plaintiffs left the unit in a clean and rentable condition.

It is well-settled that ordinary wear and tear means deterioration which is the result of a tenant's normal nonabusive living. *See* G.L. 1956 § 34-18-11(8). As such, this Court is satisfied that the Plaintiffs did not deliberately or negligently destroy, deface, or damage any part of the premises during their rental term excluding agreed upon compensation for limited damage. *See* §34-18-24.

This Court finds the Plaintiffs are entitled to the balance of the security deposit ($1200) minus agreed upon amounts to paint a back bedroom ($150), replace a missing glass ($4), and pay an outstanding balance of an oil bill ($24.80). Accordingly, Plaintiffs are entitled to judgment in the amount of $1021.20 and costs of $120.75, for total judgment of $1141.95. The Defendant's counterclaim is denied.

Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Emma Pelton; Abigail Schmidt v. Pier Realty, LLC
CASE NO:	WD-2019-0011
COURT:	Washington County Superior Court
DATE DECISION FILED:	April 9, 2019
JUSTICE/MAGISTRATE:	McGuirl, J.
ATTORNEYS:	
For Plaintiff:	Emma Pelton, *pro se*; Abigail Schmidt, *pro se*
For Defendant:	Donald R. Lembo, Esq.