

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Jermaine Smith,

Plaintiff, COURT TRIAL

V.

COURT FILE: 27-CV-19-19452

Broadway Flats, LLLP,

Defendant.

The above-entitled matter came on for trial before the Hon. Joseph Klein, one of the judges of the above-named court, in Courtroom C-1659 Hennepin County Government Center, city of Minneapolis, county of Hennepin, state of Minnesota, on the 27th day of July, 2020, at 9:41 a.m.

APPEARANCES

NICHOLAS EDLEFSEN, Attorney at Law, appeared as counsel for and on behalf of the Plaintiff, who was also present.

MORGAN OKNEY, Attorney at Law, appeared as counsel for and on behalf of the Defendant.

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EXHIBITS

NO.	DESCRIPTION	1st Mention	RECEIVED
A	Multiple Documents	9	9
B	Multiple Documents	9	9
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1 THE COURT: This is the matter of
2 Jermaine Smith versus Broadway Flats, LLP [sic],
3 District Court File Number 27-CV-19-19452. Could
4 Counsel please state their appearances for the
5 record.

6 MR. EDLEFSEN: Nicholas Edlefsen
7 representing Mr. Smith.

8 THE COURT: Good morning, Mr. Edlefsen.
9 Good morning, Mr. Smith.

10 MR. EDLEFSEN: Good morning.

11 MR. SMITH: Good morning.

12 MR. OKNEY: Morgan Okney, O-K-N-E-Y,
13 representing Broadway Flats, LLLP.

14 THE COURT: Good morning, Mr. Okney. I
15 think I left one L out. I apologize for that.
16 Everybody knows who we are though.

17 This matter is before the Court for a court
18 trial today. It is my understanding that the
19 parties have been marking exhibits and, uh,
20 discussing potential resolution of this matter and
21 have been, I guess, organizing exhibits for the case
22 today. If we can just briefly pre-try this case on
23 the, um, on the record while -- on the record before
24 we get started.

25 How many witnesses does the plaintiff have

1 today?

2 MR. EDLEFSEN: Um, none that we've
3 listed, but we do plan to call some of defendant's
4 witnesses.

5 THE COURT: All right. Is Mr. Smith
6 testifying?

7 MR. EDLEFSEN: No, but --

8 THE COURT: All right. But you plan to
9 cross -- you plan to call witnesses in
10 cross-examination?

11 MR. EDLEFSEN: Yes. Exactly.

12 THE COURT: Got it. Do you have any
13 exhibits to offer?

14 MR. EDLEFSEN: Uh, no additional
15 exhibits other than the ones that were provided.

16 THE COURT: All right. And those that
17 were provided, those are being offered by the
18 defendant?

19 MR. EDLEFSEN: That are already --
20 have -- I'm new on the case, so those that have
21 already entered into through discovery, so.

22 THE COURT: All right. Nothing has
23 been entered before the court on this record for the
24 trial today. I assume that, uh, parties have
25 discussed whether there would be any objection to

1 the foundation or other things like that. I can
2 maybe hear from Mr. Okney on that.

3 Mr. Okney, how many witnesses do you have?

4 MR. OKNEY: Your Honor, I have four
5 witnesses I plan to call today.

6 THE COURT: And, uh, exhibits?

7 MR. OKNEY: I have approximately -- let
8 me just take a quick count here. 25 exhibits, Your
9 Honor.

10 THE COURT: And have they been
11 premarked?

12 MR. OKNEY: They have been premarked.
13 I do have a copy available for the Court, as well as
14 defendant -- plaintiff.

15 THE COURT: All right. Um, and is
16 there an agreement between the parties that the
17 exhibits will simply be admitted *seriatim* 1 through
18 25 without the necessity of laying foundation, um,
19 which might speed us up a little bit, provided that
20 you describe the document before you question the
21 witness on it so we know what we're talking about,
22 that you, uh, identify the number. Do we have any
23 problems with any aspect of the exhibits
24 foundationally?

25 MR. EDLEFSEN: No, Your Honor.

1 THE COURT: All right.

2 MR. OKNEY: No, Your Honor.

3 THE COURT: So would it be a problem
4 then if when the plaintiff commences his case in
5 chief, he can offer Exhibits 1 through 25, I'll
6 receive them, there will be no objection, and then
7 we can start with the testimony, if that works?

8 MR. EDLEFSEN: That works.

9 MR. OKNEY: That works.

10 THE COURT: All right. And you said
11 you have booklets of each of the exhibits, one for
12 each -- one for the court, one for the opposing
13 counsel.

14 MR. OKNEY: Yes, Your Honor. I also
15 have a booklet prepared for the witness stand so
16 that we could have some present and everybody can be
17 object same page.

18 THE COURT: Very good. Any
19 stipulations or any agreements between the parties
20 as to anything that we should talk about beforehand,
21 other than the exhibits being offered and received?

22 MR. EDLEFSEN: No, Your Honor.

23 MR. OKNEY: No, Your Honor.

24 THE COURT: All right. Anything else
25 on the record that we should discuss before we

1 commence the trial?

2 MR. EDLEFSEN: Um, can I speak with
3 opposing counsel?

4 THE COURT: Certainly. Go ahead.

5 (An off-the-record discussion held between
6 counsel.)

7 THE COURT: All right. Mr. Edlefsen,
8 anything further?

9 MR. EDLEFSEN: No, Your Honor.

10 THE COURT: All right. Typically I
11 would offer the parties the opportunity to do
12 opening statements before we begin the evidence, but
13 the court understands that this is a matter where
14 Mr. Smith was a tenant in a building operated and
15 owned, uh, or operated by the LLLP. He had a lease
16 of approximately three years from August, 2016, to
17 July, 2019. He had a security deposit of \$799 and
18 when he moved out he received \$120 back. And the
19 suit is for, uh, the remaining amounts of, uh,
20 security deposit that were retained by defendant, as
21 well as allegations that, uh, the double damages and
22 \$500 penalty should be invoked. Is that a fair
23 statement -- opening statement for the plaintiff's
24 claim?

25 MR. EDLEFSEN: That's a precise

1 statement; yes.

2 THE COURT: All right. I don't know
3 what the defense is, but I imagine that we can hear
4 that from the witnesses as well, unless the parties
5 wish to give any further opening statements.

6 MR. OKNEY: Your Honor, if I may confer
7 with counsel one more time, please.

8 THE COURT: Sure.

9 MR. OKNEY: Thank you.

10 (An off-the-record discussion held between
11 counsel.)

12 MR. OKNEY: Your Honor, if we could
13 stipulate to one additional thing during pretrial.

14 THE COURT: Certainly.

15 MR. OKNEY: That neither party has any
16 objections to the lease being -- having been intact
17 and honored faithfully, no allegations of breach of
18 lease are -- are as issue here today.

19 THE COURT: No issues of breach of
20 lease either by the plaintiff or the defendant. And
21 the parties stipulate to that?

22 MR. EDLEFSEN: Yes, Your Honor.

23 MR. OKNEY: Yes, Your Honor.

24 THE COURT: All right. I'll note that
25 as the stipulation between the parties.

1 All right. Then as the party that has the
2 burden of proof, the plaintiff may proceed and call
3 any witnesses he wishes to. You may proceed, Mr.
4 Edlefsen. Oh, actually, uh, do you want to offer
5 the exhibits first? I'll receive them. I'll get my
6 book up here. We'll set the exhibit book up at the
7 table and then we will let you call your first
8 witness. Go ahead.

9 Are the parties jointly offering Exhibits 1
10 through 25?

11 MR. EDLEFSEN: Yes.

12 MR. OKNEY: Yes, Your Honor.

13 THE COURT: All right.

14 MR. OKNEY: Your Honor, permission to
15 approach?

16 THE COURT: You may.

17 THE CLERK: Your Honor, would you like
18 me to wipe this down with a wipe first?

19 THE COURT: Uh, that's not necessary.

20 THE CLERK: There, Your Honor. And I'm
21 going to go put this in the witness stand as well.

22 THE COURT: Very well. There are wipes
23 at the witness box, if the witnesses wish to wipe
24 them off between testimony as well, if they choose.
25 So that will be available.

1 All right. Um, and we -- okay. Now I
2 understand, as I see them, I see that we say there
3 are 25 exhibits. There are actually Exhibits A, B,
4 and C; but, Exhibit C is numbered from 1 to 10. So
5 how do we get to 25 then?

6 MR. OKNEY: I've got A, 1 through 11;
7 B, 1 through 4; and C, 1 through 10, Your Honor.

8 THE COURT: Got it. All right.

9 Mr. Edlefsen.

10 MR. EDLEFSEN: Your Honor, the statute
11 requires that a -- a landlord returns a security
12 deposit in good faith if there is nothing wrong with
13 an apartment. Um, you will see through all of the
14 exhibits that this -- there was a number of
15 fabrications and, um, contradictions in the
16 defendant's defense as to the reason behind them not
17 returning the entire security deposit. Potentially
18 my client had suffered from not being able to, uh,
19 to move at the time that he actually had originally
20 wanted to, suffering, uh, suffering from the refusal
21 and denial of the full amount of the rent and the
22 justifications for such, um, are essentially
23 fabrications and, um, and invalid in terms of the
24 reason as to withholding the rent and, therefore,
25 with all that had transpired, it was in bad faith

1 and that's why we are asking for an additional
2 penalty on -- on the defendant.

3 THE COURT: And that's pursuant to what
4 statute?

5 MR. EDLEFSEN: Uh, if you look at
6 Statute, uh, 504B.178, Subdivision 4, uh, and Number
7 2, uh, or rather Number 4 -- or 3. There's a
8 statutory double damages for, um, if the -- if the
9 landlord fails to provide, um, a security deposit,
10 the damages will be essentially doubled in the
11 amount of the amount withheld, plus interest. And
12 if you look at the same statute, Subdivision 7,
13 there's a punitive damages, \$500 penalty that the
14 Legislature wanted to impose on landlords who do
15 this sort of thing.

16 THE COURT: All right. That is your
17 opening statement then?

18 MR. EDLEFSEN: Uh, you will see in each
19 of the exhibits beginning with, um, I don't know the
20 exhibit number. I have the exhibits.

21 Your booklet is numbered properly. Thank you.

22 Uh, it looks like move-out documents, landlord
23 verification, it would be B1. Actually, you know,
24 that's B2 and B4, that there's, uh, contradicting
25 statements regarding the condition of the apartment,

1 um, and the later August 2nd claims, um, as to
2 seeing the apartment as well.

3 The defendant had entered the apartment and the
4 story had changed significantly and the apartment
5 had been -- the photos themselves that the defendant
6 had taken to justify some of their claims for -- for
7 the, um, additions as to why they -- as to their
8 denials of returning the rent were fabricated
9 essentially.

10 So I guess I conclude my opening statement. I
11 guess we'll get into the details when we -- when we
12 get there.

13 THE COURT: All right. Mr. Okney, do
14 you choose to give an opening statement now or wish
15 to defer?

16 MR. OKNEY: I wish to defer, Your
17 Honor.

18 THE COURT: Very well.

19 Then Mr. Smith may call his first witness, uh,
20 Mr. Edlefsen.

21 MR. EDLEFSEN: Um. Your Honor, I'll
22 defer and let the defendant call a witness.

23 THE COURT: Well, you understand you
24 have the burden --

25 MR. EDLEFSEN: Yes.

1 THE COURT: -- of proof and so if you
2 just rested --

3 MR. EDLEFSEN: Okay.

4 THE COURT: -- right now --

5 MR. EDLEFSEN: Right. Okay.

6 THE COURT: -- the court would direct a
7 verdict because there's no evidence on the --

8 MR. EDLEFSEN: Right.

9 THE COURT: -- on the record, so.

10 MR. EDLEFSEN: Okay. Your Honor, I
11 would like to take a look at, uh, the exhibit
12 photos, um, claiming, um, exhibit --

13 (An off-the-record discussion held between Mr.
14 Edlefsen and Mr. Smith.)

15 MR. EDLEFSEN: Sorry, Your Honor. The
16 defendant had the -- had the exhibit list prepared
17 and I haven't had time to look at it. Let's see.
18 Um, I have all of the exhibits. I just haven't had
19 the order and the numbering for evidence purposes,
20 so I apologize for that.

21 Um, in the August 5th letter, um --

22 THE COURT: All right. Let me stop you
23 right there.

24 MR. EDLEFSEN: Yeah.

25 THE COURT: Mr. Edlefsen, I did not

1 state this at the front end because, uh, both
2 parties are represented by counsel, but this court
3 in trying this case is trying it *de novo* and that
4 means that the Rules of Civil Procedure and the
5 Rules of Evidence are enforced. One of the things I
6 would say to a jury if they were listening to this
7 is that the statements of counsel, the questions of
8 counsel are not evidence. Evidence is what the
9 witnesses say, evidence is what the documents say.
10 But I have no evidence right now and your statements
11 about photographs is not evidence, so I need a
12 witness up here to testify to something or questions
13 put to the witness to ask and answer so that I can
14 have some evidence. If you're about to start
15 talking about photographs and things, that's not
16 evidence and so I need you to observe those rules so
17 that I can take the case in and -- and -- and learn
18 about it not through you, who can't testify, but
19 through witnesses who are sworn under oath and can
20 be cross-examined.

21 MR. EDLEFSEN: Fair enough, Your Honor.
22 I would like to call then, uh, Jada--I'm unsure how
23 to pronounce her last name--Beulah to the witness
24 stand.

25 THE COURT: Ms. Beulah, if you will --

1 MR. EDLEFSEN: Beulah.

2 THE COURT: You may step forward and be
3 sworn.

4 THE WITNESS: Thank you. All the way
5 here?

6 THE COURT: Yes. Why don't you first
7 raise your right hand to be sworn.

8 Do you solemnly swear that the testimony you're
9 about to give will be the truth, the whole truth,
10 and nothing but the truth?

11 THE WITNESS: I do.

12 JADA BEULAH,
13 after having been duly sworn, was examined and
14 testified as follows:

15 THE COURT: All right. Thank you. If
16 you will have a seat in the witness box. If you
17 would begin by stating your full name and spelling
18 each of your names for the record, please.

19 THE WITNESS: Jada Beulah; J-A-D-A,
20 B-E-U-L-A-H.

21 THE COURT: Thank you.

22 Mr. Edlefsen.

23 CROSS-EXAMINATION

24 BY MR. EDLEFSEN:

25 Q. Mrs. Beulah, what is it your role within Broadway

1 Flats?

2 A. The assistant property manager.

3 Q. And as the assistant property manager, you -- what
4 are some of your responsibilities?

5 A. I, um, send out lease violations, I fill out, um,
6 landlord reference forms, I talk directly with our
7 residents, and I do other leasing duties.

8 Q. And would you -- and you would fill out landlord
9 verifications and view apartments when tenants move
10 out?

11 A. Correct.

12 MR. EDLEFSEN: All right. Your Honor,
13 are these -- are the exhibits entered?

14 THE COURT: They are.

15 MR. EDLEFSEN: Okay.

16 THE COURT: And I believe the witness
17 has a book up there so you can make reference to the
18 exhibits by letter and number.

19 BY MR. EDLEFSEN:

20 Q. Then I would like to examine, uh, evidence from the
21 Exhibit B2, Landlord Verification signed by Ms.
22 Beulah on July 17, 2019. Ms. Beulah, it says that,
23 um --

24 MR. EDLEFSEN: Do I need to show it to
25 her to see if she --

1 THE COURT: No. Just reference it to
2 her. She's got a book up there and --

3 MR. EDLEFSEN: Okay.

4 BY MR. EDLEFSEN:

5 Q. Ms. Beulah, have you seen that document before? Is
6 that your signature at the bottom?

7 A. Yes.

8 Q. And I'd like to make note that it shows that the --
9 under Number 11 the question is whether or not you
10 will keep the security deposit. There is nothing
11 marked. And -- and then it says, "Probably not."
12 And then on -- there is another document dated
13 July 25, 2019, um, that is B3 and/or B4. Have you
14 seen that document and is that your signature at the
15 bottom?

16 A. Yes.

17 Q. And I'd like to duly note that on the same Number
18 11, whether or not you will keep the security
19 deposit, the checked box is "No."

20 Did you happen to see the apartment before you
21 made those -- those marks on July 17th and the 25th?

22 A. No.

23 Q. You didn't see the apartment?

24 A. I did not.

25 Q. You had never entered the apartment at that point

1 in -- in your -- within a day or week of making
 2 those -- those statements?

3 A. Not within a day or a week.

4 Q. Then why would you make a verification like that?

5 A. I had assumed that the resident had taken care of
 6 the apartment.

7 Q. Is that how your -- is that how Broadway Flats
 8 operates, on -- on random assumptions?

9 A. No.

10 Q. Is there a reason, um, in the additional comments
 11 section it was stated that --

12 THE COURT: What document are you
 13 reading from?

14 BY MR. EDLEFSEN:

15 Q. In the additional comments section on the July 17th,
 16 uh, Document B2, uh, that there was nothing written
 17 and then there were some changes made and -- to the
 18 B4 document that stated "nonrenewal."

19 A. Could you repeat the question?

20 Q. What -- what is the reasoning for that difference in
 21 these exhibit -- between Exhibit B2 and B4? What is
 22 the dif -- what is the reasoning for your adding an
 23 additional comment, "nonrenewal?"

24 A. I was trying to be more thorough.

25 Q. When you filled out this document, uh, it asked

1 whether or not the person acted in a physically
 2 violent or verbally abusive manner towards staff and
 3 you marked "yes." And then in the next -- in the
 4 next line on Document B4, it claims that you were
 5 able to reapply. And it says the same thing in the
 6 line from Document B2. Now if somebody had acted
 7 physically violent, would it make sense to not allow
 8 them to reapply?

9 A. This is company policy. All persons are able to
 10 reapply.

11 Q. When this person supposedly acted physically violent
 12 or verbally abusive, um, did you call the police?

13 A. I did not, no.

14 Q. So did this verbal abuse happen within the week of
 15 July 17th and July 25th and is that why you changed
 16 your answers on these documents?

17 A. I do not remember. I believe it was prior to that.

18 Q. You don't remember when somebody verbally assaulted
 19 you?

20 A. This did not happen to me.

21 Q. Are you the one that signed the document?

22 A. Yes.

23 MR. EDLEFSEN: Okay. No further
 24 questions. Your Honor.

25 THE COURT: Do you wish to redirect now

1 or, uh, defer to your case in chief?

2 MR. OKNEY: I will defer to my case in
3 chief, Your Honor.

4 THE COURT: All right.

5 Ms. Beulah, you are excused from the witness
6 stand.

7 THE WITNESS: Thank you.

8 MR. EDLEFSEN: Your Honor, I would like
9 to call Tony Otto to the witness stand.

10 THE COURT: Okay. If you'll approach
11 and be sworn. Raise your right hand.

12 Do you solemnly swear that the testimony you're
13 about to give will be the truth, the whole truth,
14 and nothing but the truth?

15 THE WITNESS: I do.

16 ANTHONY TONY OTTO,
17 after having been duly sworn, was examined and
18 testified as follows:

19 THE COURT: Thank you. You may have a
20 seat in the witness box. If you'd like to wipe down
21 the book, there are wipes there, uh, if you so
22 choose.

23 THE WITNESS: I'm good. Thank you.

24 THE COURT: Very well.

25 Mr. Edlefsen.

1 THE CLERK: Judge, we need to --

2 CROSS-EXAMINATION

3 BY MR. EDLEFSEN:

4 Q. Mr. Otto, what is your role in Broadway Flats?

5 THE COURT: I'm sorry. I'm sorry.

6 Before you do, if you could please state your full
7 name and spell each of your names for the record,
8 please.

9 THE WITNESS: Sure. Anthony Tony Otto;
10 A-N-T-H-O-N-Y, T-O-N-Y, O-T-T-O.

11 THE COURT: Thank you.

12 Mr. Edlefsen.

13 BY MR. EDLEFSEN:

14 Q. Mr. Otto, what is your role within Broadway Flats?

15 A. I was the property manager.

16 Q. And does the -- what is the property manager's
17 responsibilities, basically, if you could describe
18 your --

19 A. In a nutshell, it's everything under the roof. I
20 take care of making sure leases are filled out
21 correctly, executed on time, rent is paid on time or
22 collection actions are taken, manage parts of the
23 safety of the building, as well as the maintenance,
24 manage the staff and daily operations.

25 Q. So are you -- would you say that you're responsible

1 for both administrative as well as, uh, like
2 physical aspects of the property?

3 A. Yes.

4 Q. Do you enter, uh, apartments of tenants very
5 frequently on a daily, routine basis?

6 A. No.

7 Q. No? Have you ever entered the apartment of Mr.
8 Smith?

9 A. Yes.

10 Q. Uh, have you entered the apartment of Mr. Smith more
11 than a -- more than one or two times?

12 A. No.

13 Q. Have you entered the apartment of Mr. Smith simply
14 one time?

15 A. Yes.

16 Q. And is this, um, on August 2nd of 2019?

17 A. I don't remember the exact date that we did the
18 walk-through.

19 Q. The walk-through was the only time that you're
20 claiming to have ever entered the apartment of Mr.
21 Smith.

22 A. Hmm, I'm sorry. I was in for a work order as well.

23 Q. So you were in for a work order because just a
24 moment ago you told me that you had -- had only
25 never entered it more than one time for the

1 walk-through. Is that correct?

2 A. I'm sorry. I entered it twice.

3 Q. So you did enter it twice. I have a question for
4 you regarding, uh, Exhibit A. I believe it's A1,
5 the -- a letter to Jermaine Smith with the, um, with
6 photos all referenced in exhibit list on Section C,
7 as well as the Document A2 wherein the statement
8 regarding all of the withholdings from the security
9 deposit are included. Um, so if you use Documents
10 A1 and A2, if you'd look at those please, Mr. Otto,
11 and ask -- and tell me whether or not that's your
12 signature at the bottom and whether or not you've
13 seen that document before.

14 A. I have seen these documents and that is my
15 signature.

16 Q. And you can see there that there's a claim, uh, that
17 the \$799 deposit plus interest, um, is only -- you
18 only refunded \$122.36, is that -- Do you see that?
19 Is that correct?

20 A. I do see that.

21 Q. I'd like -- I'd like you to first turn to the page
22 where the, uh, the picture of the refrigerator is
23 opened. That would be, uh, Document C3. Mr. Otto,
24 do you see that photo?

25 A. I do see the photo.

1 Q. And do you see the, uh, can in the photo?

2 A. I do.

3 Q. And do you know what that can is?

4 A. I could venture a guess, but I do not know for sure.

5 Q. Would you be willing to state your guess for the
6 record?

7 A. I would guess it's a can of cat food.

8 Q. A can of cat food. That looks correct to me, as
9 well.

10 Then can you take a look at the move-out
11 statement, it's located -- it is Document A2. It
12 would be the second page in the packet where it
13 says, uh, on 8/5 that the unit was left dirty, the
14 cabinets dirty, and there was food left in the
15 fridge.

16 A. I'm sorry. Which document are you looking at?

17 Q. It's Document A2, a move-out statement dated
18 August 5th. It's -- it looks like an inventory
19 printout. It's a move-out statement.

20 A. Okay. I do see that.

21 Q. It shows the lease from 8/1/2018 to 7/31/2019. Um,
22 if you'd look at the second to bottom line, it says,
23 "Food left in fridge."

24 A. Okay. I do see that line.

25 Q. Is a -- is a -- is a can of cat food left in the

1 fridge something that you would typically consider
2 like food left in fridge for the purpose of denying
3 a -- a tenant their rent back?

4 A. No. But if we read the rest of that line where it
5 does say, "Full reclean. Unit was left dirty,
6 cabinets dirty, food left in fridge." There was
7 quite a bit in that sentence. Um, the refrigerator
8 is dirty, as can be viewed in that picture, C3.
9 Leaving anything that is perishable inside of a
10 refrigerator does fall in the category of food.

11 Q. So the refrigerator, it shows pulls and broken
12 drawers. Um, if we look at Exhibit looks like C4 of
13 the refrigerator, so not the one with the door, but
14 the photo of the interior of the fridge.

15 A. I do see that photo.

16 Q. It shows that, uh, the -- the drawers are all in
17 there. All of the parts of the fridge are in there,
18 are they not?

19 A. They are not.

20 Q. And can I ask you what exactly is missing?

21 A. The drawer in the bottom right of the photo.

22 Q. The drawer on the bottom right is actually sitting
23 on the shelf in the middle of the fridge as can be
24 seen in the photo.

25 A. Okay. There is no drawer pull installed in there.

1 That has been removed.

2 Q. There's no drawer pull?

3 A. Each drawer should have its own glide that it rides
4 on.

5 Q. It looks like there's a glide at the bottom of the
6 fridge. It just looks like the drawer was taken out
7 and it's sitting in the middle of the fridge.

8 A. Unfortunately, that is not what it is.

9 Q. If we go back to Exhibit C3 in the -- where the cat
10 food is, you'll see in the drawer next to it that it
11 looks like there's a -- a, uh, rack that the drawer
12 is suppose to slide on sitting in the fridge, so it
13 looks like all the parts are there. Am I wrong?

14 A. So, yes, it looks like there's a drawer pull in
15 Photo C3.

16 Q. So there is a drawer pull there. Okay. Thank you.

17 It's my -- um, Mr. Otto, when you do
18 walk-throughs, do you typically withhold rent if a
19 cabinets is dirty?

20 A. If just a cabinet is dirty?

21 Q. Yes.

22 A. Depends on how dirty the cabinet is.

23 Q. If it was something that you could wipe down with
24 a -- with a wet rag if you were into the apartment,
25 would that be considered something that you would

1 withhold rent from?

2 A. Again, it would depend on the substance that is left
3 in there.

4 Q. It's a normal wear-and-tear issue, am I right --

5 A. No.

6 Q. -- whether or not you would decide to withhold rent?

7 If it's a normal wear-and-tear kind of thing,
8 that can be cleaned up and you probably won't
9 withhold rent; and if it's something that's damaged
10 where it needs repair or professional cleaning, then
11 you would probably withhold some rent. Did you do
12 that?

13 A. Correct. Yes.

14 Q. And, um, I would like to take a look at the
15 Documents C1 and C2, the photos of the kitchen
16 cabinet. Now I understand that you took photos as
17 evidence, but to me it just doesn't look like those
18 cabinets are very dirty. I mean it looks like
19 that's something that could be cleaned up with a
20 vacuum or a wet rag. There's -- there's no physical
21 damage to the -- to the structure. Am I correct?

22 A. Unfortunately, you are incorrect.

23 Q. Can I ask you what exactly you find so troublesome
24 about these -- these cabinets?

25 A. These were damaged beyond normal wear and tear.

1 The --

2 Q. Beyond normal wear and tear, can I ask you to
3 describe -- be more descriptive, please.

4 A. The cabinets were three years old, were brand-new.
5 This is not normal wear and tear. The water damage
6 on the -- on the base of the cabinet, the water
7 damage on the back splash of the cabinet all needed
8 to be retake -- needed to be taken out and redone.
9 That is not normal wear and tear for a cabinet.

10 Q. In your apartments, uh, are the -- are the cabinets
11 typically wood? Is the one on the photo wood?

12 A. Yes.

13 Q. And are most of the cabinets in the complex wood?

14 A. Yes.

15 Q. And is it up to a tenant then to perhaps line them
16 before they would put, you know, clean -- you know,
17 moist dishes after they do the dishes on a -- on a
18 wooden surface that could possibly deteriorate from
19 having moisture in it?

20 A. That is the tenant's choice.

21 Q. It's the tenant's choice. So the tenant's
22 responsible for additional costs of doing things
23 that would prevent any additional wear and tear to
24 the apartment complex.

25 A. The tenant --

1 Q. Is that correct?

2 A. -- has a choice to put in shelf liners or not.

3 Q. Okay. I'd like to turn to, uh, Exhibit C5, the
4 photo of the smoke alarms, C5 through C7, please.
5 Can I ask you what was wrong with the fire alarms,
6 because it just looks like one of the panels is
7 opened, but not too many other things. Can I ask
8 what was the issue with the smoke alarm?

9 A. The battery backup has been removed.

10 Q. The battery backup was removed. What does the
11 battery backup do?

12 A. The battery backup provides power in case the main
13 power to the, uh, to the unit fails.

14 Q. So it's sort of a fail-safe if the power goes out.

15 A. Correct.

16 Q. And, um, why do you think a person would remove the
17 battery backup?

18 A. I have no clue.

19 Q. Um, does the, uh, does the smoke alarm beep when,
20 uh, the power runs low on a smoke detector?

21 A. It does.

22 Q. To warn people; right?

23 A. Correct.

24 Q. And, um, when does it tend to beep?

25 A. When the battery is low.

1 Q. When the battery is low. And does the, uh, does the
2 smoke alarm decide to beep when the battery is low
3 during daylight hours, or in the evening, or in the
4 middle of the night, or does it -- does it -- or is
5 it irrelevant?

6 A. It is irrelevant.

7 Q. So in the middle of the night if the power ran out
8 and if the smoke alarm was beeping, would a tenant
9 reasonably decide that they could handle the
10 situation in the morning and remove the battery for
11 the purposes of getting sleep?

12 A. Could they decide that?

13 Q. Yes.

14 A. Was that your question?

15 Q. Yes.

16 A. Yes, they could.

17 Q. Okay. It sounds like a reasonable -- reasonable
18 thing for a tenant to do. Um, can I ask what the
19 issue was with the smoke alarms that -- that you
20 made a claim in your -- in this entire, uh,
21 throughout your claims that, um, the smoke detectors
22 were damaged or tampered with; can I ask what your
23 justification was for that?

24 A. I -- I think the photo is self-explanatory.

25 Q. Okay. The photo then. Okay. So when I look at the

1 photo it just -- it seems like everything is pretty
2 much intact, aside from the -- the cover to the
3 battery being opened and the battery being removed.

4 I'd like you to take a look at Exhibit A9. It
5 looks like a move-out, cleaning, damage charge list.

6 A. You said A9; correct?

7 Q. Um, let me look. Yes. Uh, I believe it's -- it
8 looks -- it's labeled as Number 13 here in this,
9 but, uh, it's a document that states at the top,
10 Broadway Flats Move-Out, Cleaning, Damage Charge
11 List. Do you see that? It looks like Document A3.
12 I'm sorry.

13 A. Okay. Document A3. I do see it.

14 Q. Is that a general list of the expenses that Broadway
15 Flats charges for things or is that, uh, specific to
16 this case?

17 A. That is a generic company-wide.

18 Q. Um, it says smoke detectors are \$75. Is that how
19 much smoke detectors cost?

20 A. To purchase, yes.

21 Q. Okay. I just wanted to verify that. Okay. Mr.
22 Otto, you've been in the courtroom today and you've
23 heard me ask about this, uh, assault, verbal
24 altercation of some sort with Mr. Smith I asked Jada
25 about when she was on the witness stand. Do you --

1 do you know what I'm discussing -- do you know what
2 I'm talking about when I -- You were here. You
3 heard me ask her, am I correct?

4 A. I did hear you say that.

5 Q. Um, and then she claimed that she was not the one
6 that was assaulted, despite the fact that she wrote
7 a document and signed it saying that it was --
8 saying that it was valid. Do you know what this is
9 about? Was it an assault involving you or somebody
10 else?

11 A. That involved me, as well as other staff members in
12 the building.

13 Q. Other staff members, but not Jada.

14 A. Jada was not there, no.

15 Q. Um, it's my understanding that during this
16 altercation, Mr. Smith called you and/or other
17 members of the staff liars.

18 A. Amongst other words, yes.

19 Q. Is that -- is that true that he called you and/or
20 other staff a liar?

21 A. Amongst other words, yes.

22 Q. Is it fair to say that there was some hostility
23 between you and the tenant?

24 A. That is not fair to say.

25 Q. Yet there was harsh words shared, am I correct?

1 A. Mr. Smith did share harsh words to me, yes.

2 Q. And yet there was no hostility between you and Mr.
3 Smith?

4 A. I felt no hostility towards the man.

5 Q. I'd like to turn to the exhibits that portray the
6 shopping cart items. It looks like A4 and A5,
7 please, and A6. It shows that, uh, it shows that
8 you had bought a glass crisper drawer, uh, original
9 shelf, and other refrigerator equipment totaling
10 \$384.34. I believe that's Document A6 or 7 showing
11 that. Is that correct?

12 A. I do see the documents.

13 Q. You made additional purposes claiming -- based on
14 the refrigerator; am I correct?

15 A. Correct. These are --

16 Q. In the apartment.

17 A. -- replacement refrigerator parts.

18 Q. I see one that shows a shelf assembly, the second
19 item that's \$134 that was purchased.

20 A. I do see that.

21 Q. Now when we go back to the exhibit showing the photo
22 of the refrigerator, which are Exhibit C4, we can
23 see that the shelf is there and it's in text [sic].
24 It might not be lined up the way it's suppose to,
25 but the shelf is in there. Are all the shelves in

1 the photo?

2 A. I'm sorry. I'm confused.

3 Q. Let me ask you all --

4 A. You just asked a moment ago about --

5 Q. -- are all of the shelves that were originally in
6 the refrigerator shown in this photo to be in this
7 refrigerator?

8 A. The shelves are in the refrigerator, yes.

9 Q. Okay. Because I see a charge going back to, uh,
10 Exhibit A7 wherein you felt the need to purchase a
11 new one.

12 A. A7 is a grab bar.

13 Q. I'd like to turn now to Exhibit A10 showing the
14 carpet cleaning from Daryan. Daryan is a company
15 that cleans all of -- cleans your apartments at
16 Broadway Flat upon move-outs and things like that;
17 is that correct?

18 A. They do do some turnovers for us.

19 Q. Okay. Mr. Smith's apartment was Number 316;
20 correct?

21 A. Correct.

22 Q. And it shows that the oven was extra, extra dirty.
23 Do you see that there?

24 A. I'm sorry. Which document are you looking at?

25 Q. I'm looking at Document A -- A10, the invoice from

1 Daryan for cleaning.

2 THE COURT: It's A9.

3 MR. EDLEFSEN: Is it A9?

4 MR. OKNEY: A9.

5 BY MR. EDLEFSEN:

6 Q. Okay. A9. Sorry.

7 A. Okay. A9, 316, oven extra, extra dirty.

8 Q. Yep.

9 A. Okay.

10 Q. Oven cleaning cost \$360; is that correct? I mean
11 that's -- that's the price that's shown here; right?
12 Am I correct?

13 A. No, you're not.

14 Q. Can I ask what the \$360 charge is for?

15 A. That's for a completely different unit.

16 Q. Oh, I'm sorry. Oven cleaning is \$240; is that
17 correct?

18 A. Not for the oven. That is the entire apartment
19 clean.

20 Q. Okay. So perhaps because the \$240 is equal or
21 higher than, uh, the other apartments, the idea is
22 that there's an additional charge for the oven being
23 extra dirty; is that correct?

24 A. It --

25 Q. Well, it looks like there's different apartments

1 were cleaned for different amounts and I'm seeing
2 that there's some for 180, 160, 180, 360, 190, 180,
3 and 250. Um, am I correct that the -- the charge
4 from Daryan was higher because of an oven?

5 A. As well as --

6 Q. Does that sound reasonable?

7 A. As well as additional cleaning within the unit.

8 Q. Okay. And there are separate cleaning charges to
9 Number 316 on Document A10 for \$100 for the carpet
10 cleaning. So the -- Daryan separates, obviously, I
11 can see carpet cleaning from other facets of
12 cleaning.

13 A. It is -- they are different services.

14 Q. Okay. Carpet cleaning, uh, was charged here for
15 \$100. What percent would you say -- You've been
16 there for a while; correct? You've been working at
17 Broadway Flats for a fair amount of time, correct,
18 being a property manager?

19 A. Correct.

20 Q. And if you had to quesstimate, what percent of
21 apartments need a carpet cleaning after move-out,
22 just generally?

23 A. Every apartment gets a carpet clean in a full turn.

24 Q. Every apartment. Okay. And my client had been
25 there for three years; correct?

1 A. I do not have his lease here.

2 Q. Okay. I see an additional charge on Exhibit A11 --
3 I'm sorry, A8. They are not in order in my
4 pamphlet, but Exhibit A8 for another \$205 for
5 painting. What percent of apartments would you say
6 need a repainting after a move-out?

7 A. Every apartment is painted.

8 Q. Every apartment is painted. So would you be --
9 would it be a fair assessment to say every single
10 person that lives at Broadway Flats has \$300
11 deducted from their apartment deposit --

12 A. No.

13 Q. -- at the point of move-out?

14 A. That is not a fair statement.

15 Q. Am I correct that you said that every apartment
16 needs a repainting and a re -- and a carpet cleaning
17 upon move-out?

18 A. Yes.

19 Q. And every apartment -- and the charges are typically
20 \$205 per apartment --

21 A. No.

22 Q. -- for the -- for the -- for the painting --

23 A. No.

24 Q. -- and a hundred -- so there's a special increased
25 cost for my client?

1 A. No.

2 Q. There was not a special increased cost. So what's
3 the justification for the -- the cost of cleaning
4 the apartment upon his move-out?

5 A. The bill from Daryan is the over-and-above cleaning
6 that was done, the over-and-above painting that is
7 normal wear and tear. Anything beyond what we
8 normally pay for we are billed separately for.

9 Q. So can I ask you, you're the one that took the
10 photos of the apartment?

11 A. Correct.

12 Q. Is there a reason that you took photos of the
13 cabinet and the fridge, but not the -- not the
14 carpet or the walls?

15 A. Unfortunately, it did not happen.

16 Q. It did not happen. And can I get just a reassurance
17 that you do not have any hostility toward any
18 client?

19 A. I have none towards him.

20 Q. And did you ever at one point feel any hostility
21 during this process of his -- his nonrenewal?

22 A. No.

23 MR. EDLEFSEN: Okay. Thank you. No
24 further questions, Your Honor.

25 THE COURT: Any redirect or do you

1 choose to defer?

2 MR. OKNEY: Uh, I would like to do a
3 little redirect at this point, Your Honor.

4 THE COURT: All right.

5 REDIRECT EXAMINATION

6 BY MR. OKNEY:

7 Q. Mr. Otto, do you prefer Tony or Mr. Otto?

8 A. Tony. All right, Tony.

9 THE COURT: We refer to witnesses by
10 their last name, not their first name, in court.

11 MR. OKNEY: Yes, Your Honor.

12 BY MR. OKNEY:

13 Q. Mr. Otto, let's take a look at -- actually, let's
14 talk about your general move-out policy. Can you
15 tell the Court how you normally conduct a move-out
16 from start to finish?

17 A. Sure. Start to finish. A resident gives notice
18 anywhere from 60, 90, to 120 days in advance.
19 Typically about 60 to 90 days prior to then moving
20 out, we do a walk-through of the apartment to assess
21 any damages, um, see where the apartment condition
22 is at. We follow that up with about two weeks prior
23 to final move-out doing a second walk-through to see
24 if there's been any further damage.

25 Day of move-out or day after, depending on how

1 weekends fall, two members of staff walk the
2 apartment. We take photographs of damage. I then
3 go back to my office, write up the move-out letter,
4 the move-out statement, and submit everything for
5 either refund or collections based on each
6 situation.

7 Q. What about the standard cleaning procedures that the
8 building takes care of upon receiving a newly
9 vacated unit?

10 A. We try very hard to turn units as best we can with
11 in-house. We do all of our own maintenance.
12 Anything that can be fixed without charging the
13 client or resident we try and take care of.

14 Q. What about painting services?

15 A. Painting, we do touch-up painting on our own. If
16 it's beyond basic touch-up painting, then outside
17 service is brought in.

18 Q. What about carpet cleaning?

19 A. Carpet cleaning, we have our own carpet cleaner. We
20 do a lot of the cleaning ourselves. If it is beyond
21 a basic clean, an outside company is then brought
22 in.

23 Q. And what about general cleanliness of the unit?

24 A. General cleaning, again, if it's something that's
25 basic that we can take care of, we do. If we need

1 to bring in an outside company, in this case Daryan,
2 we do.

3 Q. Is Daryan the only outside company you bring in?

4 A. Um, they're one of I want to say three companies
5 that we have used over the past two years.

6 Q. So when you bring in Daryan, is it safe to say that
7 it is brought in simply because the cleaning is
8 above and beyond normal?

9 A. Typically; correct.

10 Q. All right. Let's talk about the Photographs C1 and
11 C2, please. And approximately how long were you the
12 property manager at Broadway Flats?

13 A. I think about a year-and-a-half.

14 Q. A year-and-a-half. How many units are in the
15 building?

16 A. Uh, 103.

17 Q. And on an annual basis approximately how many of
18 those units are turned over from one resident to a
19 new resident?

20 A. About 60 percent.

21 Q. So is it safe to say that in the year-and-a-half you
22 were the property -- property manager, you were at
23 approximately 90 turns?

24 A. Correct.

25 Q. What percentage of them have above and beyond, uh,

1 cleaning, uh, damage to the cabinets such as that
2 seen in C1 and C2?

3 A. Very few.

4 Q. And what is it specifically about, uh, Mr. Smith's
5 apartment that required extensive, uh, further
6 cleaning and repair?

7 A. Referring to this picture?

8 Q. To the cabinets specifically, Mr. Otto.

9 A. Okay. It appears that during his time at Broadway
10 Flats, the cabinets had never been cleaned. There
11 were several spills, um, and stains within -- inside
12 the cabinets. The bottom of the boards are warped.
13 The, um, mold, you can sort of see it in C2. The
14 very dark portion was crawling up the back wall that
15 needed to be cleaned. That's something that I have
16 not seen in other apartments.

17 Q. Thank you. If we could now address our attention to
18 Photos C3 and C4, the refrigerator. What is it
19 about the condition of the refrigerator that led you
20 to believe replacement parts were needed?

21 A. In C3 you can see that the drawer pull, which is
22 permanently installed in the bottom of the
23 refrigerator, has been removed and is sitting in the
24 drawer. In C4 you can see that the drawer on the
25 left is leaning, which is where the drawer pull

1 should be residing.

2 Q. Mr. Otto, if I can ask you about that drawer pull.

3 Where is it typically attached in that refrigerator?

4 A. On the bottom of the refrigerator.

5 Q. By that do you mean the drawer that is visible in

6 the lower left-hand corner of the refrigerator in --

7 A. I do.

8 Q. -- Photo C4?

9 A. Correct.

10 Q. And -- and there -- there was no other drawer that

11 appears to have been vacant from C4.

12 A. C4, the drawer that is typically on the right on the

13 bottom is on the shelf above.

14 Q. And is there a drawer pull for that?

15 A. It is still attached to the bottom of the

16 refrigerator.

17 Q. Okay. And if we could then direct our attention

18 back to A4, that second item on that list, the shelf

19 assembly genuine original equipment. What was that?

20 A. That's the drawer pull.

21 Q. So it was a replacement drawer pull?

22 A. Correct.

23 Q. Was that for the one that was damaged and the drawer

24 pull was in the door?

25 A. Correct.

1 Q. But it was not for the missing drawer.

2 A. No. That is not for a drawer. That is the drawer
3 pull.

4 Q. Okay. And if I could actually bring your attention
5 back to Number A2 again. Did you prepare this
6 move-out statement?

7 A. I did.

8 Q. And is it an accurate and complete move-out
9 statement?

10 A. It is.

11 Q. Did you at any point add to the move-out statement
12 with a later document?

13 A. No.

14 Q. Were any charges not on this move-out statement
15 charged to Mr. Smith's account?

16 A. No.

17 Q. Do you see anywhere on that statement a deduction
18 for damage to fire and smoke detectors?

19 A. No.

20 Q. To the best of your knowledge, did you deduct
21 anything from Mr. Smith's security deposit for
22 damage to the smoke and fire alarm system?

23 A. No.

24 Q. Can you please direct your attention to Photo Number
25 C7. I apologize. C6. Can you -- can you tell me

1 do you see anything covering the detecting vents in
2 that photo?

3 A. It is covered with tape.

4 Q. Is that standard?

5 A. That is not.

6 Q. What would be the effect of that, to the best of
7 your knowledge, be on the smoke detector's ability
8 to accurately detect a potential fire?

9 A. It would completely disable it.

10 Q. And does that smoke detector also function as a
11 carbon monoxide detector?

12 A. It does.

13 Q. Is that brand, I believe it says Kidde, do you see
14 that same brand there?

15 A. I do.

16 Q. To the best of your knowledge, is that the brand of
17 smoke detector employed throughout the building?

18 A. It is.

19 Q. And is that standard in every unit?

20 A. It is.

21 Q. Is that smoke detector operated by, uh, hardwired
22 electricity as well as a battery backup?

23 A. It is.

24 Q. So even if you were to remove the batteries in the
25 case of a fire, it would continue making sound?

1 A. Correct.

2 Q. So it was still functional, despite the batteries
3 being removed.

4 A. Correct.

5 Q. And then please direct your attention to Number C7.
6 Can you please tell me what we're looking at there?

7 A. That would be an additional backup sound, sounding
8 horn in the sleeping area of the apartment.

9 Q. What purpose of it there?

10 A. That is attached to the fire suppression system.

11 Q. So if a fire goes off in the building in say a
12 common area, what happens?

13 A. The alarm would sound, followed by an audible, um,
14 "A fire has been detected in the building. Please
15 move to the nearest fire exit. Do not use the
16 elevators," recording.

17 Q. And would that have sounded in every unit?

18 A. Yes.

19 Q. And would that have sounded via this speaker?

20 A. Yes.

21 Q. What if a fire were to happen in an individual unit?

22 A. That unit would have had its own alarms going off,
23 as well as the units to the left and right of it.

24 Q. So that -- so each unit is -- to the left and right
25 of a unit are wired in -- all units adjacent to each

1 other are wired into this emergency alert system?

2 A. Correct.

3 Q. So if there is an isolated fire in a private
4 residence, both that tenant and the ones immediately
5 adjacent would be immediately notified?

6 A. Correct.

7 Q. And if there is a general area of fire, it will go
8 to the -- it would go to every unit?

9 A. Correct.

10 Q. When you received the apartment back from Mr. Smith,
11 what was the condition of that alarm system in C7?

12 A. It was inoperable.

13 Q. Why?

14 A. Um, had been covered with tape and had been, for
15 lack of a better word, jimmied with, um, so it was
16 no longer making connection to the electrical system
17 behind it.

18 Q. So it was inoperational [sic]?

19 A. Correct.

20 Q. And is that something you've encountered in other
21 units?

22 A. Never.

23 Q. Was there any charge to Mr. Smith for replacement or
24 repair of this item?

25 A. There was no charge.

1 Q. All right. A lot has been made of an alleged
2 altercation. Can you tell me in your words what
3 happened?

4 A. In a nutshell, Mr. Smith was upset at me for not
5 being available for an appointment that we had. Um,
6 I had a family emergency and had to leave early that
7 day. Several days later we were in the -- I believe
8 the hallway and Mr. Smith was clearly agitated.
9 Yelled several words at me, one of them was "liar."

10 MR. EDLEFSEN: Objection, Your Honor.

11 THE COURT: Grounds?

12 MR. EDLEFSEN: For one is that -- is
13 that not character evidence?

14 THE COURT: No. I didn't hear the
15 grounds for an objection.

16 MR. EDLEFSEN: I just don't think that
17 we need to get into that.

18 THE COURT: That's not --

19 MR. EDLEFSEN: We're just wasting time.
20 I mean, like does the -- does the --

21 THE COURT: That's not grounds for an
22 objection. Do you have a --

23 MR. EDLEFSEN: Fair --

24 THE COURT: -- legal basis for an
25 objection?

1 MR. EDLEFSEN: Fair enough. No further
2 questions. No further objections. Sorry.

3 THE COURT: All right. You may
4 continue.

5 BY MR. OKNEY:

6 Q. Mr. Otto, do you recall on or about what day that
7 happened, the actual altercation itself?

8 A. The date, I do not. It's been too long. I'm sorry.

9 Q. To the best of your knowledge.

10 A. It was, um, gosh, three, four months prior to moving
11 out.

12 Q. And during the follow three or four months between
13 the date of the altercation and the date of
14 move-out, did you have any further confrontations
15 with Mr. Smith?

16 A. Nothing terribly significant.

17 Q. Would you characterize the nature of your
18 interactions during that time as standard between
19 you as a building manager and a tenant on the way
20 out?

21 A. They were not standard. Mr. Smith was, in my
22 opinion, clearly agitated with me, um, was yelling
23 frequently. That's not standard behavior that I
24 receive from tenants.

25 Q. Okay. And just to clarify, the only -- is it safe

1 to say that the only times you were in Mr. Smith's
2 apartment during his tenancy were at his request for
3 maintenance work?

4 A. Uh, once for maintenance work and then once for the
5 move-out.

6 Q. Okay. So we talked about the general move-out
7 policies.

8 A. Um-hmm.

9 MR. OKNEY: You know, actually, Your
10 Honor, I can wait for direct to finish the rest of
11 my questions. I have no further.

12 THE COURT: Pardon me?

13 MR. OKNEY: I have nothing further at
14 this time for, uh, for redirect. I can wait for
15 direct testimony.

16 THE COURT: But if you choose to take
17 your redirect now, this is the direct testimony.

18 MR. OKNEY: Oh, keep going.

19 BY MR. OKNEY:

20 Q. So let's talk about the entrance to his -- his --
21 I'm sorry, not that. The -- so what happened here
22 at the check-out, Mr. Smith -- The standard
23 check-out policy is a walk the apartment two, three
24 months in advance, then re-walk two weeks. Did that
25 happen in Mr. Smith's case?

1 A. That did not.

2 Q. Why not?

3 A. We were barred from entering his apartment.

4 Q. How did that happen?

5 A. Um, we sent a notice out, a standard 24-hour notice
6 to enter. We give the explanation. An email is
7 sent as well as a note posted on the door. Mr.
8 Smith replied with an email of no entry allowed.

9 Q. Can I direct your attention to Exhibit A11.

10 A. Yes, I have it here.

11 Q. Do you recognize that?

12 A. That is the email from Mr. Smith.

13 Q. And it's this email dated June 19, 2019, that gave
14 you the impression you were not to enter his
15 apartment.

16 A. Correct.

17 Q. When a tenant makes that request of you -- Have you
18 received that request before?

19 A. No.

20 Q. So this was a unique situation?

21 A. Very much so.

22 Q. And did you act to honor his wishes of no entry?

23 A. Yes.

24 Q. Had anybody from the -- do you know when the last
25 time during his tenancy any member of your staff

1 entered his unit?

2 A. I believe it was about a month prior to this. Um,
3 the maintenance person and myself went in to do an
4 air conditioner check.

5 Q. And in this case do you remember which maintenance
6 person it was?

7 A. It was John Whitman.

8 Q. And when you saw, uh, a month prior to this, are you
9 referring to the June 19th email?

10 A. Correct. Yes.

11 Q. So -- so to the best of your knowledge, no member of
12 Broadway Flats' staff was in the unit, uh, since
13 approximately the middle of May, 2019?

14 A. Correct.

15 Q. All right. If you could direct your attention to
16 Exhibit B2. Is this a standard form?

17 A. This is a standard form.

18 Q. And who typically fills this out?

19 A. Typically it's my assistant manager, Jada.

20 Q. Prior to sending it out, does she check with you
21 everything on the form?

22 A. No.

23 Q. So she -- so she independently writes -- signs off
24 on that?

25 A. Typically. Correct.

1 Q. Is it typical in a situation where there is an
2 incident on file for her to personally sign a
3 document like this, even if she may not have been
4 present when the incident took place?

5 A. Yes.

6 Q. Did she talk about this July 17th form with you
7 prior to sending it?

8 A. No.

9 Q. Did she talk with you post sending it?

10 A. Yes.

11 Q. What was the nature of that conversation?

12 A. Um, I had to correct her on her -- on what happened.
13 Um, typically our company offers move-in, move-out
14 date, and if money is owed is our standard answer
15 for forms like this.

16 Q. So typically speaking you don't personalize your
17 answers to a tenant.

18 A. Correct.

19 Q. You, generally speaking, have standard answers you
20 give.

21 A. Correct.

22 Q. What happened here?

23 A. Unfortunately, um, Jada was trying to be helpful.
24 Um, she was newish in her position. Um, I took this
25 as a learning moment, um, without getting into HR

1 policies. Um, this was certainly a learning moment
2 of -- this is not the correct way that we -- we do
3 the detail.

4 Q. What does "able to reapply" mean to you on this
5 document?

6 A. Everyone is free to reapply.

7 Q. To --

8 A. We will rerun screening later on.

9 Q. So in this case what it means -- would you say it's
10 safe to characterize it as they can apply like any
11 member of the public?

12 A. Correct.

13 Q. And they will be given no special treatment one way
14 or the other.

15 A. Correct.

16 Q. Do you have any policies in place where you bar
17 applications without processing them?

18 A. Never.

19 Q. So anybody who walked in the door looking for a unit
20 is given the same processing treatment.

21 A. Correct.

22 Q. Regardless of whether they're a previous tenant.

23 A. Correct.

24 Q. Were you aware of who the landlord was that you were
25 submitting this to?

1 A. Was I aware? No.

2 Q. Okay. I want to go back to Daryan Cleaning,
3 Exhibits A8, 9, and 10. Generally speaking, who
4 sets the fees for Daryan?

5 A. Daryan.

6 Q. Do you know how they bill you?

7 A. They bill us typically hourly.

8 Q. So it's a -- To the best of your knowledge, it is a
9 straight labor cost and potentially some parts, but
10 it is not unique other than the amount of labor
11 required for the cleaning per unit?

12 A. The short answer is yes. I'm sure they have an
13 algorithm that has been built.

14 Q. But you are not privy to their billing practices,
15 other than what you're sent.

16 A. Correct.

17 Q. Is it typical for them to break up tasks like this?

18 A. Yes.

19 Q. For example, I see on A8 it says, "Painting as work
20 performed." Is that standard?

21 A. Correct.

22 Q. And if they had additional work besides
23 painting--for example, cleaning--would that come on
24 a separate invoice usually?

25 A. Correct.

1 Q. Do you recognize Exhibit A8?

2 A. I do.

3 Q. And is that the bill that Daryan submitted to you
4 for all of their work during that time period?

5 A. For the painting, yes.

6 Q. And A9, do you recognize that one?

7 A. I do.

8 Q. And as being performed for cleaning?

9 A. I do.

10 Q. And A10, do you recognize that one?

11 A. I do.

12 Q. And who's responsible for settling those?

13 A. That would be myself.

14 Q. And did you pay all those?

15 A. I did.

16 Q. All right. About the carpet cleaning listed here,
17 is this carpet cleaning done by a third party?

18 A. It is done by Daryan, who is a third party.

19 Q. And this is after you have already used your own
20 carpet cleaner on the unit?

21 A. Correct.

22 Q. Do you typically bill residents for that carpet
23 cleaning upon move-out?

24 A. For the initial carpet cleaning, we do not.

25 Q. And what were the total -- Hold on. So if we could

1 direct your attention back to Exhibit A2, please.
2 The second line from the bottom on the -- I'm sorry.
3 Yes, the line, uh, the second line from the bottom
4 for \$350, "Full reclean. Unit was left dirty." Was
5 that \$350 the amount that Daryan charged you above
6 and beyond your normal cleaning?

7 A. No.

8 Q. What is that amount?

9 A. That was a good-faith estimate that I created based
10 on my history with Daryan, what they typically
11 charge. The actual charge of what I paid was
12 higher.

13 Q. How did you determine the cost of replacing the
14 light fixtures?

15 A. The light fixtures?

16 Q. Actually, you know what, strike that. I'd like to
17 go back. Let's take a look at Exhibits C8, C9, and
18 C10, please. Starting with C8, can you tell us what
19 that is?

20 A. That is the fire suppression system in the bathroom.

21 Q. And what is the discoloration on there?

22 A. That is rust.

23 Q. Do you have any idea how that happened?

24 A. Uh, that would be through the bathroom not being
25 vented while the shower steamed.

1 Q. How were the bathrooms vented?

2 A. The bathrooms all have an automatic exhaust system
3 built in, um, that stays on after the lights are
4 turned off for 15 minutes to continue exhausting
5 moisture out.

6 Q. How many light switches are there; how many
7 electrical switches, I apologize, in the bathroom?

8 A. One.

9 Q. And that -- that switch governs one circuit?

10 A. Correct.

11 Q. And that same circuit controls the lights, as well
12 as the exhaust fan?

13 A. Correct.

14 Q. And what happens when a tenant -- when a resident
15 turns off the light?

16 A. Uh, the fan continues to run for 15 minutes to
17 continue exhausting. The fan automatically shuts
18 off.

19 Q. And is that standard?

20 A. It is.

21 Q. So if the fan had been operating properly, would
22 this rust have formed to the best of your knowledge?

23 A. No.

24 Q. In the approximately 90 units you have -- you
25 personally toured as part of a move-out, did you

1 encounter this in any other unit?

2 A. Never.

3 Q. If you would turn to C9, can you explain what we're
4 looking at there?

5 A. You're looking at a grab bar, which is also a towel
6 bar, that is covered in rust.

7 Q. Do you know what the material is?

8 A. Nickle.

9 Q. And have you seen that in any other unit?

10 A. None.

11 Q. Where is that located?

12 A. In the bathroom.

13 Q. And if you would turn your attention to C10, please.
14 Can you describe what we're looking at there?

15 A. That is the light fixture above the sink in the
16 bathroom.

17 Q. And what is that discoloration?

18 A. That is rust.

19 Q. Have you encountered that in any other unit?

20 A. No.

21 Q. Had any resident, other than Mr. Smith, ever resided
22 in that unit?

23 A. No.

24 Q. Did he ever have a co-tenant on his lease?

25 A. No.

1 Q. To the best of your knowledge, did he have any
2 regular or long-term guest?

3 A. Not that I was ever aware of.

4 Q. Mr. Otto, why didn't you charge Mr. Smith for any of
5 the fire -- fire suppression and detection damage?

6 A. At the time I did not have a fair estimate for
7 how -- for how expensive they would be. It would
8 have been incredibly unfair of me to just guess.

9 Q. And I want to take your -- direct your attention to
10 A2. Is there any charge on that list for the
11 replacement of the fire suppression nozzle in the
12 bathroom of the unit?

13 A. No.

14 Q. Do you have any idea how much that costs to replace?

15 A. I honestly don't remember at this time.

16 Q. Okay. But Mr. Smith was not charged for that?

17 A. He was not charged.

18 Q. And was Mr. Smith charged for the replacement of the
19 faulty -- or the damaged fire alert system in the
20 bedroom depicted in C7?

21 A. No.

22 Q. Can you verify that the -- the amount shown on
23 Exhibit A4 are the accurate amounts you paid for
24 those prices or for those replacement parts?

25 A. They are.

1 Q. And the same question regarding A5.

2 A. They are.

3 Q. The same question regarding A6.

4 A. It is.

5 Q. Would anybody else have been responsible -- I'm
6 sorry. And the same question for A7.

7 A. It is.

8 Q. Is anybody else responsible for ordering those
9 parts, making those payments?

10 A. For making the payments, no.

11 Q. So you would have -- you're the sole decision-maker
12 on that; you're the one with the knowledge?

13 A. Correct.

14 MR. OKNEY: No further questions, Your
15 Honor.

16 THE COURT: Any further cross?

17 MR. EDLEFSEN: Yes, Your Honor. I have
18 several questions for Mr. Otto.

19 RECCROSS-EXAMINATION

20 BY MR. EDLEFSEN:

21 Q. Mr. Otto, you just stated that you didn't charge
22 because you didn't know -- you didn't charge, I
23 believe, for the smoke detectors because you didn't
24 know an exact price and it would be unfair to guess;
25 is that correct?

1 A. Correct.

2 Q. Why would it be unfair to guess when you know that
3 there's \$75, according to your move-out, your, uh,
4 little policy thing from your --

5 A. Mr. Okney was referring to the fire suppression
6 system, not the smoke detector, as well as the ring
7 around the fire suppression system in the bathroom.

8 Q. And you stated that the towel racks were made of
9 nickle, correct?

10 A. Metal. The finish is called brushed nickle, so I'm
11 assuming. It doesn't seem like a big leap for me to
12 assume that it's nickle.

13 Q. Not stainless steel; correct?

14 A. The finish says brushed nickle.

15 Q. If it was stainless steel, you would have said
16 stainless steel; correct?

17 A. I -- if I knew for a fact that it was stainless
18 steel. I do not. I'm going off of a statement that
19 it said brushed nickle.

20 Q. Does it seem like a reasonable policy to you for an
21 apartment complex to include fixtures in the
22 bathroom that are essentially more rustproof than
23 perhaps this brushed nickle is?

24 A. The fixtures that we have are standard in all units,
25 uh, have held up quite well.

1 Q. Okay.

2 A. Um, concerning I've not even --

3 Q. So --

4 A. -- had this ever.

5 Q. Okay. So let me get back to this. Because there
6 was -- some of the issues with the smoke detector
7 relate to -- what was your appointment with Mr.
8 Smith about, the one that you said that you missed?

9 A. Off the top of my head at this point I don't
10 remember.

11 Q. Okay. You don't remember what that appointment was
12 about. You did say, though, that there was indeed
13 an altercation, probably after this appointment
14 wasn't [sic] missed; correct?

15 A. Correct. He was upset and yelling.

16 Q. Okay. And you didn't call the police, or did you?

17 A. No.

18 Q. And you could not remember the date; correct?

19 A. The exact date, no.

20 Q. You didn't make any notes about it?

21 A. Um, no.

22 Q. No notes. Okay. And you did say that you have
23 hostility toward my client, Mr. Smith.

24 A. No, I don't.

25 Q. Um, you do serve an administrative role; correct --

1 A. I do.

2 Q. -- like you said. Um, and does that include
3 collecting rent?

4 A. It does.

5 Q. And do you know who pays the rent for Mr. Smith?

6 A. Um, Mr. Smith, to the best of the my recollection --
7 I'm sorry. Bear with me. I've several hundred
8 units I manage. Um, I believe he pays a portion and
9 there's a third party that pays a portion.

10 Q. Okay. So you are aware that there is a third party
11 that pays for Mr. Smith's rent.

12 A. I am, yes.

13 Q. Okay. Now, um, there's two documents that were
14 signed by Jada prior to Mr. Smith's move-out date,
15 the July 17th and July 25th, uh, Exhibits B2 and B4
16 that I would like you to take a look at. They're
17 landlord verification forms. You do get a copy of
18 these, am I correct?

19 A. I'm sorry. I didn't hear your question.

20 Q. Have you -- have you seen these documents?

21 A. I'm seeing them here, yes.

22 Q. Do you get these documents, um, routinely as part of
23 your operation?

24 A. Um, do I personally? No. Does the office? Yes.

25 Q. Are you aware of Ms. Beulah's responsibilities in

1 terms of filling these out?

2 A. I am.

3 Q. Um, I'd like to make a note with the exhibits that,
4 uh, Number 9 asks were there any issues in the
5 apartment with cleanliness, safety, or sanitation.

6 Uh, and in both documents the box was marked "No."

7 Do you see that, Mr. Otto?

8 A. I do see that.

9 Q. But that's not -- that's not the story from when you
10 went into the apartment though, is it, on -- on
11 August 2nd?

12 A. When we were actually allowed into the apartment,
13 that was not the case that we found; correct.

14 Q. When you were actually allowed into the apartment.
15 Are you saying that Mr. Smith denied you access to
16 the apartment?

17 A. I am.

18 Q. Did you communicate with Mr. Smith via email?

19 A. Several times, yes.

20 Q. I'd like to then turn to Exhibit A11, the June 19th
21 email. Can you see it?

22 A. I do see A11.

23 Q. And is that not an email from Mr. Smith?

24 A. It is.

25 Q. And does it say, "I will alert my lawyer of" --

1 for -- "about it for his personal investigation and
2 legal answers. Please note I won't stop you from
3 doing so."

4 Do you see that?

5 A. I do see that.

6 Q. So that is an email that said that he will not stop
7 you from entering his apartment, but you chose not
8 to enter; correct?

9 A. It continues on. It will -- "It will be at your own
10 risk, sir."

11 Q. Yeah, he won't obstruct your entry for a reason. He
12 won't be home. Do you see that?

13 A. I do see that.

14 Q. So did you not enter because of -- for potential
15 legal repercussions or did you not enter for some
16 other reason?

17 A. I did not enter to try to honor the wishes of Mr.
18 Smith.

19 Q. Okay. But he wasn't -- he never denied you access
20 to the apartment, did he?

21 A. Physically to --

22 Q. No.

23 A. -- to stand in our way? No.

24 Q. No, not physically. In any way.

25 A. Sending an email indicating that you do not wish

1 someone to enter, that's denying entry.

2 Q. But it's for legal purposes, do you see that?

3 A. I do.

4 MR. EDLEFSEN: Okay. No further
5 questions, Your Honor.

6 THE COURT: Any further redirect?

7 FURTHER DIRECT EXAMINATION

8 BY MR. OKNEY:

9 Q. You mentioned a -- you mentioned a notice that had
10 been provided to Mr. Smith regarding an intent to
11 enter the apartment.

12 A. Correct.

13 Q. To the best of your knowledge, was the June 19th
14 email in question a response to that request from
15 management?

16 A. It is.

17 Q. So would you characterize his response as a denial
18 to your request --

19 A. Yes.

20 Q. -- a verbal denial?

21 MR. OKNEY: No further questions, Your
22 Honor.

23 THE COURT: Any further cross?

24 MR. EDLEFSEN: [No response.]

25 THE COURT: Mr. Edlefsen, any further

1 cross-examination?

2 FURTHER CROSS-EXAMINATION

3 BY MR. EDLEFSEN:

4 Q. Um, one last question for you, Mr. Otto. Um, is
5 Broadway -- Broadway Flats, are you working for
6 Broadway Flats and are they -- are you working --
7 you're working for Broadway Flats, correct, and they
8 are a management company?

9 A. That is not correct. I am working for Pinnacle.

10 Q. Pinnacle. Okay.

11 A. The management company tasked with the day-to-day
12 operations of Broadway Flats.

13 Q. Does Pinnacle own more than just Broadway Flats?

14 A. Pinnacle does not own properties.

15 Q. Pinnacle manages properties?

16 A. Correct.

17 Q. And do they manage more than just Broadway Flats?

18 A. Yes.

19 Q. Have you heard of a -- an apartment building called
20 Mill City?

21 A. I have.

22 Q. And does Pinnacle manage, uh, manage Mill City?

23 A. We do.

24 Q. Are you -- are you aware of Mr. Smith's residence at
25 Mill City?

1 A. I am.

2 Q. So you are aware that he is still living under
3 Pinnacle's management.

4 A. I am.

5 Q. Did you ever speak with anybody about Mr. Smith's
6 application to live at Mill City?

7 A. No.

8 Q. You never spoke to anybody about it?

9 A. To the best of the my recollection, no.

10 Q. To the best of your recollection. Can you not
11 recall if you spoke to anybody about Mr. Smith's
12 potential residence in another building that
13 Pinnacle manages that perhaps you'd be responsible
14 for it?

15 A. Again, to the best of the my recollection, I do not
16 remember a specific conversation about Mr. Smith
17 with any other building complex.

18 MR. EDLEFSEN: Okay. No further
19 questions, Your Honor.

20 THE COURT: Anything further?

21 FURTHER DIRECT EXAMINATION

22 BY MR. OKNEY:

23 Q. Mr. Otto, do you have any responsibilities at the
24 Mill City Quarter apartment complex?

25 A. None.

1 Q. Have you ever had any responsibilities at that
2 complex?

3 A. No.

4 Q. Is it typical within the Pinnacle management
5 structure for managers of different properties to
6 communicate with tenants?

7 A. Rarely.

8 Q. And is it typical for managers of other properties
9 to have working knowledge of day-to-day operations
10 regarding current tenants in another -- in a
11 property they aren't responsible for?

12 A. No.

13 MR. OKNEY: No further questions, Your
14 Honor.

15 THE COURT: All right. Mr. Otto, you
16 are excused from the witness stand.

17 Does the plaintiff have any further evidence or
18 witnesses to offer at this time?

19 MR. EDLEFSEN: Just one moment, Your
20 Honor.

21 THE COURT: Certainly.

22 MR. EDLEFSEN: Your Honor, I'd like to
23 call John Whitman to the witness stand.

24 (An off-the-record discussion held between the
25 Court and the clerk.)

1 THE COURT: Counsel, for your
2 information, I've got a hearing that starts at
3 11:30. It's a Zoom hearing. It has to take place
4 downtown out of my chambers so, um, I know that
5 you're, by numbers here, three-fourths of the way
6 through, assuming all witnesses are called. Um, but
7 unless we markedly speed up, we're not going to be
8 done by 11:30. I need to know if --

9 MR. EDLEFSEN: Fair enough, Your Honor.
10 I can make my case without him.

11 THE COURT: All right. Well, I'm not
12 trying to tell you not to call folks. I just need
13 to find out how long it's going to be so I can tell
14 the people for the 11:30 if they can hang on and
15 wait for 15 minutes. To give them advice that we're
16 still coming; we're just not able to start that
17 hearing just yet. So do you have any estimate about
18 how much testimony you'll take from this witness or
19 the possible remaining witness?

20 MR. EDLEFSEN: Very little.

21 THE COURT: All right. And then, Mr.
22 Okney, once the plaintiff has rested, how long do
23 you estimate your witnesses are going to last?
24 You've already done one. You've got, uh, up to
25 three others that you would do your direct

1 examination on.

2 MR. OKNEY: Your Honor, I anticipate
3 that coming out of, uh, opposing counsel's direct
4 testimony and the cross-examination, et cetera, we
5 should probably be able to wrap this up if you give
6 the 15 minutes.

7 THE COURT: All right.

8 (An off-the-record discussion held between the
9 Court and the clerk.)

10 THE COURT: All right. Then if that is
11 the case, uh, this is Mr. Whitman. If you'll step
12 forward, sir. Would you raise your right hand to be
13 sworn.

14 Do you solemnly swear the testimony you're
15 about to give will be the truth, the whole truth,
16 and nothing but the truth?

17 THE WITNESS: I do.

18 JOHN WHITMAN,
19 after having been duly sworn, was examined and
20 testified as follows:

21 THE COURT: Please have a seat in the
22 witness box. And you're free to use the wipes there
23 to wipe down the exhibit book, if you so choose.

24 If you would begin by stating your full name
25 and spelling each of your names for the record,

1 please.

2 THE WITNESS: My name is John Whitman;
3 J-O-H-N, W-H-I-T-M-A-N.

4 THE COURT: Thank you.

5 Mr. Edlefsen.

6 CROSS-EXAMINATION

7 BY MR. EDLEFSEN:

8 Q. Mr. Whitman, please state your role at Broadway
9 Flats.

10 A. I am the maintenance supervisor for the property.

11 Q. And how long have you worked there?

12 A. Uh, about a year.

13 Q. A year. Do you interact with Mr. Otto very often?

14 A. Daily.

15 Q. Daily. Would you say you have a good relationship
16 with Mr. Otto?

17 A. Yes.

18 Q. Mr. Whitman, have you ever entered the apartment of
19 Mr. Smith?

20 A. Yes, I have.

21 Q. Multiple times?

22 A. Uh, I can't give you a specific number, but it's
23 been more than once.

24 Q. It has been more than once. Okay. Um, and do you
25 relay information about the apartment to Mr. Otto

1 when you go into apartments?

2 A. Depending on the situation, um, I enter the
3 apartments with a specific intention of a work
4 order. If there is an extreme violation, then that
5 information is usually, uh, forwarded on to the
6 office.

7 Q. Was there an extreme violation any time that you had
8 entered Mr. Smith's residence?

9 A. No.

10 Q. Do you happen to remember the last time that you had
11 entered his apartment?

12 A. No.

13 Q. Could you give me a quesstimate? A very vague one
14 is fine.

15 A. It would have probably been in May for a filter
16 change related to the HVAC system.

17 Q. Have you ever had any, uh, interaction with Mr.
18 Smith?

19 A. Yes, I have.

20 Q. And were those would you say smooth or were they
21 more like altercations?

22 A. I would say in between the two.

23 MR. EDLEFSEN: No further questions,
24 Your Honor.

25 THE COURT: Any direct examination at

1 this time?

2 MR. OKNEY: Yes, Your Honor, I'll take
3 direct examination at this time.

4 REDIRECT EXAMINATION

5 BY MR. OKNEY:

6 Q. Mr. Whitman, in your capacity as the maintenance
7 supervisor, do you typically conduct walk-throughs
8 at move-out?

9 A. Yes, I do.

10 Q. Did you in this case?

11 A. I did not.

12 Q. Okay. You weren't present when Mr. Otto took the
13 photos that we have been looking at?

14 A. After he -- the -- I'm sorry. You're talking about
15 after he had left?

16 Q. Yes. I -- I -- Let me clarify. After Mr. Smith
17 vacated the apartment, did you conduct a
18 walk-through?

19 A. Yes, I did, with Mr. Otto.

20 Q. Did you conduct any walk-throughs prior to his
21 vacating the apartment?

22 A. No.

23 Q. So in between your last remembered entry at sometime
24 in May and his move-out, did you ever enter his
25 apartment?

1 A. No, I did not.

2 Q. You were present with Mr. Otto during the
3 post-move-out inspection.

4 A. That is correct.

5 Q. Do you recognize the various photos labeled C1
6 through C10?

7 A. Yes, I do.

8 Q. Were you present when all of those were taken?

9 A. Yes, I was.

10 Q. And are all of them accurate depictions of the
11 condition of apartment was returned in?

12 A. Yes, they were.

13 Q. Approximately how many times have you helped conduct
14 these move-out inspections, these post-move-out
15 inspections?

16 A. All of them.

17 Q. So in your year-and-a-half-plus of working there,
18 would it be safe to say that you've been in 90 to
19 100 units?

20 A. Correct.

21 Q. Have you seen any other units that presented the
22 type of rust or water damage in the bathroom
23 fixtures as Mr. Smith's was returned in?

24 A. No, I have not.

25 Q. Would you characterize the amount of, um -- would

1 you characterize the dirt and the stains within the
2 cabinets to be above and beyond normal?

3 A. Yes, I would.

4 Q. And would you testify that the condition of the
5 refrigerator required that drawer to be repaired and
6 replaced?

7 A. Yes, it did.

8 Q. Why?

9 A. So specifically the -- like we had stated, the
10 drawer glides are a permanent part of the shelf
11 unit. The drawers are the only part that are
12 removable. With the drawer glides removed, they can
13 no longer be put back into place, so the entire
14 structure that the drawers sit on had to be
15 replaced.

16 Q. So the draw itself was intact and this wasn't a
17 replacement drawer.

18 A. Correct.

19 Q. It was a drawer slide.

20 A. Correct. Also, if you look at C4, there's a piece
21 of glass missing from the top of that shelving unit
22 as well.

23 Q. Can you -- can you explain that? It might be a
24 little bit difficult to see in everybody's copy of
25 the photos.

1 A. Sure. So if you look at C4, you see a piece of
2 glass shelf near the bottom. If you look to the
3 left, there are basically two side pieces. The
4 glass is sitting on one. There should be a second
5 piece below that. That blocks off the drawers that
6 are removable.

7 Q. And is that piece present in this photo?

8 A. No, it is not.

9 Q. Were you responsible for replacing the damaged
10 equipment found in photo C7?

11 A. Yes, I was.

12 Q. Do you remember how extensively it was damaged? Was
13 it completely inoperable?

14 A. It was inoperable, but I believe we were able to
15 repair it.

16 Q. Okay. And is the same true of the smoke detectors?

17 A. I don't recall.

18 Q. Okay. Uh, turning your attention quickly to C6. If
19 that is in fact a clear covering over the intake
20 vents, what would be in your professional opinion
21 the impact of that on the smoke detector?

22 A. It would inhibit its performance.

23 Q. Significantly?

24 A. It can.

25 Q. Would you say it could create the potential of a

1 fire hazard by having a nonoperational unit?

2 A. Oh, definitely.

3 MR. OKNEY: No further questions, Your
4 Honor.

5 THE COURT: Further cross?

6 RECROSS-EXAMINATION

7 BY MR. EDLEFSEN:

8 Q. Mr. Whitman, you said you did the walk-through of
9 Mr. Smith's apartment.

10 A. Correct.

11 Q. This was on August 2nd apparently, after he had
12 moved out; correct?

13 A. After he had moved out, yes.

14 (An off-the-record discussion held between Mr.
15 Edlefsen and Mr. Smith.)

16 MR. EDLEFSEN: Your Honor, I may have
17 additional evidence that I'd like to admit, one
18 additional exhibit. It's an email that I don't know
19 how it wasn't in there. I thought it was. I can --
20 I can ask opposing if he accepts it.

21 THE COURT: Why don't you ask opposing
22 counsel about that.

23 MR. OKNEY: I have no problem.

24 THE COURT: All right. Do you, uh --

25 MR. EDLEFSEN: Do I have to -- should

1 I, uh, enter it?

2 THE COURT: Why don't you -- I don't
3 know what it is. It's just a --

4 MR. EDLEFSEN: It's just --

5 THE COURT: -- separate email, uh --

6 MR. EDLEFSEN: It's a separate email,
7 um, on August 2nd, the date of the walk-through from
8 Broadway Flats manager Tony to Jermaine, Mr. Smith.

9 THE COURT: Do you want to make that,
10 uh, D1 or do you want to make that A --

11 MR. EDLEFSEN: Let's just make it D1
12 for simplicity purposes.

13 THE COURT: All right. If you could
14 put a D1 on it, then.

15 Darren, right, we've got a new exhibit.

16 THE CLERK: Okay.

17 THE COURT: So if we could get copies
18 to be made for everybody.

19 BY MR. EDLEFSEN:

20 Q. I have an email dated August 6th from Tony --

21 THE COURT: Wait. Before you -- before
22 you ask any questions, can you give it to my clerk
23 so he can make copies so that everyone can have it
24 in front of them.

25 (Mr. Edlefsen does as instructed. A pause in

1 proceedings from 11:19:36 a.m. until
2 11:21:46 a.m.)

3 THE COURT: All right. And since this
4 exhibit has not been officially offered or received
5 yet, if you could lay some foundation with this
6 witness and, uh --

7 MR. EDLEFSEN: This exhibit, uh, is --

8 THE COURT: You need to do that through
9 asking the witness questions about it. You don't do
10 it your own statement. Is it tied to this witness
11 in any way?

12 MR. EDLEFSEN: Uh, the question is
13 going to be who was at this walk-through. I mean
14 the witness has testified as to all the exhibits
15 and -- and this is explaining --

16 THE COURT: Well --

17 MR. EDLEFSEN: -- who was present at
18 the walk-through.

19 THE COURT: I -- I know. But I don't
20 know who Yuman [phonetic] Greenfield is and I don't
21 know -- it's sent by -- apparently it's sent by Mr.
22 Otto. Neither one of those are on the witness stand
23 right now and so unless this gentleman has seen it,
24 there's no foundation, unless there's no objection
25 to foundation and it can be --

1 MR. OKNEY: Objection, Your Honor;
2 foundation.

3 THE COURT: Pardon me?

4 MR. OKNEY: Objection to foundation,
5 Your Honor.

6 THE COURT: All right. Why don't you
7 set aside D1, since you can't put it in right --

8 MR. EDLEFSEN: Fair enough.

9 THE COURT: -- now and you can ask
10 questions about --

11 MR. EDLEFSEN: Fair enough.

12 THE COURT: -- that meeting --

13 BY MR. EDLEFSEN:

14 Q. Mr. Whitman, were you present at the walk-through?
15 I believe you already said that you were; is that
16 correct?

17 A. Yes, I was.

18 MR. EDLEFSEN: No further questions,
19 Your Honor.

20 THE COURT: All right. Anything
21 further from this witness?

22 FURTHER DIRECT EXAMINATION

23 BY MR. OKNEY:

24 Q. Mr. Whitman, do you have any access to the Broadway
25 Flats manager email at Pinnacle Living email

1 address?

2 A. No, I do not.

3 MR. OKNEY: No further questions, Your
4 Honor.

5 THE COURT: All right. So you're
6 excused from the witness stand, Mr. Whitman.

7 Does the plaintiff have any further exhibits or
8 testimony to offer at this time?

9 (An off-the-record discussion held between Mr.
10 Edlefsen and Mr. Smith.)

11 MR. EDLEFSEN: No, Your Honor.

12 THE COURT: All right. Does the
13 plaintiff rest?

14 MR. EDLEFSEN: No, Your Honor.

15 THE COURT: The plaintiff does not
16 rest? So what are you --

17 MR. EDLEFSEN: I'm sorry. I rest, Your
18 Honor.

19 THE COURT: All right. Is the defense
20 prepared to proceed with its case in chief?

21 MR. OKNEY: Yes, we are, Your Honor.

22 THE COURT: All right. You may call
23 your first witness.

24 MR. OKNEY: Your Honor, defense calls
25 Nicole Scofield.

1 THE COURT: Ms. Scofield, you may
2 approach to be sworn. If you would raise your right
3 hand to be sworn.

4 Do you solemnly swear the testimony you're
5 about to give will be the truth, the whole truth,
6 and nothing but the truth?

7 THE WITNESS: Yes.

8 NICOLE SCOFIELD,
9 after having been duly sworn, was examined and
10 testified as follows:

11 THE COURT: Thank you. You may have a
12 seat in the witness box. Again, there are Handi
13 Wipes there, if you wish to wipe off the exhibit
14 book.

15 THE WITNESS: I'm good. Thank you.

16 THE COURT: Could you please state your
17 full name and spell each of your names for the
18 record, please.

19 THE WITNESS: Nicole Scofield;
20 N-I-C-O-L-E, S-C-O-F-I-E-L-D.

21 THE COURT: Thank you.

22 Mr. Okney.

23 DIRECT EXAMINATION

24 BY MR. OKNEY:

25 Q. Ms. Scofield, can you please state your position for

1 the record?

2 A. I'm the regional property manager for Broadway
3 Flats.

4 Q. And is one of the properties that you oversee
5 Broadway Flats?

6 A. Yes.

7 Q. And is Mr. Otto your direct employee?

8 A. Yes.

9 Q. And do you have decision-making authority
10 essentially for everything that he does?

11 A. Yes.

12 Q. You're familiar with this case and all of its
13 intricacies?

14 A. I am.

15 Q. So let's start with the June 19th email marked A11.
16 Were you made aware of the contents of that email in
17 your capacity as region property manager?

18 A. Yes, I was.

19 Q. And was it your advice to Mr. Otto to honor the
20 wishes Mr. Smith?

21 A. Yes.

22 Q. So it was under your direction that Broadway Flats
23 management and maintenance did not enter the unit
24 without express request?

25 A. Correct.

1 Q. Can we please turn our attention to Exhibit A1. Are
2 you familiar with this type of letter?

3 A. Yes.

4 Q. Would you say that this language and format is
5 pretty standard for a move-out letter related to a
6 deposit return?

7 A. Correct.

8 Q. Were you made aware of this letter prior to it being
9 sent out?

10 A. I am not always made aware of the move-out
11 statements prior to them being sent out because I
12 don't do them on a daily basis.

13 Q. When are they typically brought to your attention?

14 A. If there's any type of concerns or if the resident
15 has any -- if the resident has concerns with it once
16 they move out.

17 Q. In situations where outside cleaning services are
18 hired, what's your role?

19 A. I don't have any role in that. That's done at the
20 property level.

21 Q. Understood. Let's talk about Form B2 and B4. Are
22 you familiar with that standard form?

23 A. Yes.

24 Q. Now is that one that, uh, that Pinnacle provides or
25 is that unique to Broadway Flats?

1 A. Nope. This is a Pinnacle form.

2 Q. And is this what -- what building managers working
3 for Pinnacle respond with or is this what they send
4 out when asking for verification?

5 A. Both.

6 Q. Allow me to rephrase. Is this a form that Pinnacle
7 sends out when one of its properties is doing a
8 check, a rental reference check on a potential
9 tenant?

10 A. Yes.

11 Q. To the best of your knowledge, was this form
12 submitted to Broadway Flats by another Pinnacle
13 property?

14 A. It was.

15 Q. A managed property.

16 A. Yes.

17 Q. And which property is that?

18 A. Mill City Quarter.

19 Q. Are you responsible for Mill City Quarter?

20 A. I am.

21 Q. And were you responsible for the review of Mr.
22 Smith's application at Mill City Quarter; ultimately
23 did you have the final say on whether or not he was
24 going to be granted residence at Mill City Quarter?

25 A. Yes.

1 Q. Would you characterize the forms that we're looking
2 at here, the B2 and B4, as largely, uh, ornamental
3 in the sense that your management company already
4 had intimate knowledge of Mr. Smith as a resident?
5 Put another way, would the information on this form
6 ever have denied him within Pinnacle?

7 A. On B4?

8 Q. B4, yeah.

9 A. No.

10 Q. No. So any information on this form would have
11 had -- would and did have no impact on potential
12 tenancy?

13 A. Correct.

14 Q. Is it standard operating procedure for this form to
15 be filled out prior to a move-out walk-through being
16 done?

17 A. No. We -- we usually do -- when we get notice of
18 somebody moving out, we do a pre-walk-through.

19 Q. To the best of your knowledge, did that happen here?

20 A. It did not.

21 Q. Do you know why it didn't happen here?

22 A. It was -- we were denied entry.

23 Q. Was it your instruction to change the standard
24 procedure in this case due to Mr. Smith's email?

25 A. Correct.

1 Q. Is it standard procedure if after a verification
2 form had been sent out and, uh, damage occurs in a
3 unit, for the amount to be withheld change -- to
4 change?

5 A. I'm sorry. Say that again.

6 Q. So if after you submitted this form, damage occurs
7 to a unit. Could the information on this form
8 change?

9 A. Yes.

10 Q. And would you fill out a new form if it had?

11 A. No. I guess I'm confused on what you're asking me.
12 Would I fill out a new form at move-out?

13 Q. What I'm asking you is let's pretend that a unit
14 after inspection, pre-move-out inspection was
15 damaged and you -- and after pre-move-out you filled
16 out this form and indicated you would not withhold
17 any security deposit.

18 A. Correct.

19 Q. If on a subsequent inspection damage was found,
20 would you refill out this form and resubmit it?

21 A. Yes, we could.

22 Q. Is it standard procedure to do so?

23 A. If it's requested, we would do it.

24 MR. OKNEY: Okay. No further
25 questions, Your Honor.

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. EDLEFSEN:

4 Q. Mrs. Scofield, you said that the, uh, issue of
5 cleaning an apartment post-move-out would be not
6 your responsibility, but more at the property level;
7 correct?

8 A. Correct.

9 Q. So that would be Mr. Otto; correct?

10 A. Yes.

11 Q. He's the one that has ultimate say over those
12 things; correct?

13 A. Yep.

14 Q. And you're the one that essentially had ultimate say
15 over whether or not Mr. Smith was able to lease from
16 Mill City.

17 A. I was asked to review the file, yeah.

18 Q. And you did approve him?

19 A. Um-hmm.

20 Q. Because he is living there right now; correct?

21 A. Correct.

22 MR. EDLEFSEN: Okay. No further
23 questions, Your Honor.

24 THE COURT: Any further examination?

25 MR. OKNEY: No, Your Honor.

1 THE COURT: Ms. Scofield, you are
2 excused from the witness stand.

3 Does the defendant have any further testimony
4 or evidence to offer at this time?

5 MR. OKNEY: No, Your Honor. Defense
6 rests.

7 THE COURT: All right. The court will
8 consider that the evidentiary portion of this trial
9 is concluded, that it has received all testimony and
10 evidence that will be considered the record. I'll
11 note that I have received Exhibits A, B, and C in
12 their, uh, entirety. I did not -- I was not offered
13 nor did I receive Exhibit D1.

14 Mr. Edlefsen, is that a document that's
15 essential to your case?

16 MR. EDLEFSEN: It was an issue that's
17 no longer relevant, Your Honor.

18 THE COURT: All right. Then the court
19 will not consider Exhibit D1 a part of the record,
20 but the testimony of the witnesses, as well as the
21 Exhibits A, B, and C; and that includes any
22 documents that were referred to, as well as those
23 that may not have been referred to by witnesses.
24 They're all in evidence that the point.

25 Do the parties wish to submit, uh, verbal

1 closing arguments or a written summation of the
2 evidence? I'll leave it up to you as to how you
3 would do it and then the court would take the matter
4 under advisement and issue a decision.

5 MR. EDLEFSEN: Either verbal or written
6 is acceptable to me, um, as on the time frame.

7 THE COURT: All right. Mr. Okney?

8 MR. OKNEY: Whichever the court
9 prefers, Your Honor.

10 THE COURT: All right. Uh, let me just
11 check with my clerk.

12 (An off-the-record discussion held between the
13 Court and the clerk.)

14 THE COURT: All right. Would you like
15 to, uh, give a verbal closing argument then at this
16 time and if so, um, then I believe it is, uh, Mr.
17 Okney that goes first and Mr. Edlefsen gets the last
18 word.

19 MR. OKNEY: Your Honor, Mr. Smith was a
20 resident at Broadway Flats apartments, a brand-new
21 construction when he took possession. He was the
22 only tenant to have ever resided in that unit at the
23 time he returned it to us, to my client.

24 During the final three months of his tenancy,
25 no -- no Broadway Flats employee entered his unit

1 and they had no actual knowledge of the condition.
2 The landlord verification request was filled out on
3 a good-faith basis and submitted according to the
4 information they had.

5 At the time of move-out, they discovered
6 extensive damage beyond normal wear and tear and
7 went through standard operating procedures by
8 obtaining outside two-party cleaning services, as
9 typically done. The bills for those services are
10 clear, as is the move-out statement deduction
11 amount. The move-out statement was made in good
12 faith. Upon further calculation, it turns out the
13 good-faith loser was the landlord, whose total
14 damages for replacement parts and cleaning well
15 exceeded the amount that was on account in the
16 security deposit. Additionally, there was damage to
17 the unit for which Mr. Smith was never charged.

18 The timeliness of the response to the, uh, upon
19 Mr. Smith's move-out was well within the statutory
20 21 days. In sum, the defendant met all of its
21 obligations under 504B and properly withheld the
22 amounts withheld.

23 THE COURT: Thank you.

24 Mr. Edlefsen.

25 MR. EDLEFSEN: Your Honor, the evidence

1 shows that the claims for damage to the apartment
2 are fabricated. The physical evidence that we've
3 seen from the photographs show a fridge that hardly
4 needs any repair, aside from putting a drawer back
5 together. It shows a small amount of rust to a
6 fixture in a bathroom that probably shouldn't be
7 there. It lacks -- the evidence lacks pictures from
8 a carpet or required painting, which are the most
9 substantial claims. If they were going to take
10 pictures, they obviously should have taken them of
11 the things that they were going to make their --
12 their deductions from the rent from.

13 Between those fabrications, as well as the
14 change in story from the landlord verification from
15 Ms. Beulah to -- to the week later, um, August 2nd
16 claims from the walk-through, um, we didn't know for
17 certain who was there, uh, as well as the fact that,
18 um, the majority of the issues came directly from
19 Mr. Otto, who is the only one who had any sort of
20 altercation with -- with Mr. Smith. Um, so my
21 conclusion is that there was some discrimination
22 against him in part because of an entire story and a
23 perception of Mr. Smith from Mr. Otto. Mr. Otto, as
24 we know, is, uh, fully aware of where Mr. Smith's
25 rent comes from. He had the altercation with him,

1 et cetera.

2 So in conclusion, my claim is that Mr. Otto was
3 essentially the one responsible for denying Mr.
4 Smith's deposit to be returned in fairness and for
5 those -- and the reasons and the justifications
6 doing so because they're fabricated are, therefore,
7 in bad faith, which is the exact type of thing that
8 the Legislature wants to avoid by imposing a penalty
9 on landlords who do this sort of thing. So I have
10 no further questions -- or nothing further -- else
11 to say.

12 THE COURT: All right. Thank you,
13 Counsel.

14 The court will take the matter under
15 advisement. I will issue a decision in the near
16 future then. Thank you very much.

17 MR. EDLEFSEN: Thank you, Your Honor.

18 (The proceedings adjourned at 11:39 a.m.)
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STATE OF MINNESOTA DISTRICT COURT
COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

REPORTER'S CERTIFICATE

Jermaine Smith,

Plaintiff, COURT TRIAL

V.

COURT FILE: 27-CV-19-19452

Broadway Flats, LLLP,

Defendant.

I, JODI R. HOFFARTH, Official Court Reporter,
do hereby certify that I reported the foregoing
proceedings as an Electronic Court Reporter and
thereafter transcribed the same, as evidenced by the
foregoing transcript, and that the same is a true
and correct transcription to the best of my ability
of said matter heard before the Honorable Joseph
Klein, one of the judges of the Fourth Judicial
District, State of Minnesota.

Dated: January 4, 2021

/S/ Jodi R. Hoffarth
Jodi R. Hoffarth
Official Court Reporter
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