DOCKET NO. CV-22-6029753-S	:	**SUPERIOR COURT**
COUNRTY HOME, LLC	:	**J.D. OF LITCHFIELD**
v.	:	**AT TORRINGTON**
CROSBY, THOMAS AND CRYSTAL	:	**MAY 16, 2024**
DEHART, ANDREAU		

MEMORANDUM OF DECISION

On December 20, 2021, the plaintiff, Country Home, LLC, filed a two-count complaint against the defendants, Thomas Crosby, Crystal Crosby (defendants Crosby), and Andreau DeHart. The plaintiff filed an amended complaint on January 26, 2022, alleging that the defendants violated the following terms of the lease, signed January 22, 2019, including failing to pay rent in a timely fashion, thereby accruing late fees, reasonable attorney's fees, and costs regarding this action and the prior eviction (Docket No. CV-21-6028797-S), leaving garbage on the premises, failing to repair damages they made to the premises, and to pay interest on the funds owed. In the second count, the plaintiff requests funds at the rate of $2,500 monthly for reasonable use and occupancy between June 30 and December 31, 2021, during the pendency of the eviction matter. In total, the plaintiff is claiming damages in the amount of $33,585.40.

On March 15, 2022, the defendants Crosby filed an amended counterclaim, which was most recently amended on September 15, 2022 (entry at Docket No. 120). The defendants request the return of the outstanding security deposit totaling $1,850.00, plus interest totaling $1,858.28, along with attorney's fees. The defendant Crystal Crosby further argues the plaintiff has no legal right to what they are requesting (entry at Docket no. 108).

This court heard testimony and admitted exhibits presented on January 24 and April 26, 2024. The plaintiff presented their managing partner of Country Home, LLC, Holly Flor, and the named defendant Andreau DeHart as witnesses and seventy-five exhibits. The defendants Crosby testified on their own behalf and called landlord Holly Flor to the stand. The defendants also entered forty-two exhibits.

The court has carefully and fully considered and weighed all the evidence received at trial, evaluated the credibility of the witnesses, assessed the weight to be given to specific evidence, measured the probative force of conflicting evidence, reviewed all exhibits and

relevant law, and has drawn such inferences from the evidence, or facts established by the evidence, that it deems reasonable and logical. Based upon the evidence, the court makes the following findings.

On June 22, 2019, the plaintiff entered a two-year lease with Thomas and Crystal Crosby[1] following a walk through on the property. The lease was to commence on July 1, 2019, and to terminate on June 30, 2021, for property located at 5 Mountain View Avenue in New Milford, Connecticut. The terms of the lease included the tenants being responsible for their own refuse collection charges, the rent being late if payment was not postmarked by the 10th day of the month with a 5% late charge, the tenants not storing anything in the yard or any other place on the property except for space designated by the landlord and, if violated, the landlord may hire another to remedy the situation with the tenants responsible for the costs. The named defendant Andreau Dehart was allowed to stay for extended periods from time to time but was not considered a tenant or resident. The tenants were to remove all garbage, rubbish and other waste in a clean and safe manner and not destroy or damage any part of the property. The landlord was to make repairs to the exterior of the property which included replacing or repairing rotted and damaged trim and clapboards, and to make repairs to the interior of the property, which included replacing basement doors, the front door and counter tops in the full bathroom upstairs, and to the sink in the basement. These terms were to occur within the first 30 days of the tenancy. Later in the lease, it is stated that if the tenants failed to do any of the things they promised to do, they were to pay the landlord the amount it cost to rectify the situation. It also states that upon expiration of the lease, the tenants shall return possession of the leased premises in the condition it was at the time of their occupancy, reasonable wear and tear excepted. The tenants were to pay interest on any amount owed past due, with the interest being at the rate of either 10% or 18%[2] percent per year. Additionally, if the matter was referred to an attorney for eviction proceedings to enforce any terms, or collect any sums due under the lease, the tenants were to pay reasonable attorney's fees, costs, and expenses.

During the defendant's initial visit to the property, it appeared that the prior tenant was still at the property at the time of the walk through, as numerous belongings remained in the home, garage, and yard. The property, at that time, was dirty, had torn screens, walls adorned by nail holes and marks, a broken closet door in one-bedroom, stained ceiling tiles, and rotting exterior walls, windowsills, and doors. Exterior refuse included, but was not limited to, an outdoor heating lamp, two oversized tables, extensive cleaning materials (to include brooms, mops, and solvents), and random refuse. As the defendants believed the landlord would take care of the remaining debris, they signed the lease on June 22, 2019, including the "as is" language, as they were about to lose their previous rental due to its sale. After packing their

[1] Although the plaintiff names Andreau DeHart as a defendant in this action, he was not a party or signatory to the lease.

[2] Due to the confusion as to the interest term rate, the plaintiff is claiming the 10% figure.

two daughters and all belongings into a moving truck, they learned upon arrival at the property that all the refuse remained at the home and nothing additional had been cleaned. The defendants extensively filmed both the interior and exterior of the home at the time of their move-in in 2019.

The plaintiff rented a container in which the defendants could throw refuse, and the defendants cleaned the property, to the best of their ability and without reimbursement, utilizing said container in the summer of 2019. The company that manages the container went out of business, resulting in the annoyance of flies for a few weeks prior to the container eventually being removed from the property. On November 5, 18, and 27 of 2019, the defendants paid $190 to have their water tested and learned the following: 1) that coliform bacteria existed above the specified limit making it unsafe to drink; 2) that the water hardness was very elevated causing scaling in water lines, water heaters, and appliances, and 3) the presence of borderline nitrate levels. These factors necessitated the defendants purchase of bottled water until the landlord adequately bleached the system. The system was corrected after the third bleaching, and the defendants deducted their water purchases, allegedly totaling $87.00, from their rent. Towards the beginning of the tenancy, the landlord hired the defendant's sister-in-law to paint the premises. It was never made clear to this court to what extent the premises was painted. The landlord did not comply with doing all the repairs that were contracted to occur within the first 30 days of the lease, although this court cannot determine which repairs were and were not done within said timeframe.

On August 6, 2021, the plaintiff filed a summary process action (Docket No. CV-21-6028797-S) against all three named defendants in this matter. On September 7, 2021, this court accepted an interim stipulation (entry at Docket No. 111) and on November 9, 2021, this court granted a judgment of possession based on lapse of time (entry at Docket No. 116). On or about November 30, 2021, an agreement was reached allowing all three defendants a final stay through December 31, 2021 (entry at Docket No. 119.10). This court ordered the defendants continue to pay for their use and occupancy in the amount of $1,850.00 to the plaintiff by December 15, 2021 (entry at Docket No. 118.10). The defendants paid the $1,850.00 monthly through December 31, 2021. The plaintiff's bill of costs totals $435.60 in bringing this action.

Late in the evening on December 31, 2021, the defendants again took a video of the premises immediately prior to leaving. Sometime after midnight on December 31, 2021, the landlords gained access to the property after the defendants vacated the premises. The landlord alleges that multiple windows were cracked, the house was cold, a relatively new refrigerator had drawers damaged or missing, a shower head and downspout in the bathroom needed replacing, the edge of a counter top was broken, doors were scratched or broken, towel bars in the bathroom were missing, a cabinet knob and closet bar were missing, an outlet and antique light switch plates were broken, a deadbolt needed replacing, some debris was outside the home as well as in the garage, and that the walls needed repainting. Additionally, the single-family residence needed cleaning, and the plaintiff rented a container within which

refuse could be discarded. The landlord testified that she hired cleaners and again painted the property. On January 25, 2022, the plaintiff informed the defendants Crosby, in writing, they were holding onto the entire security deposit to offset claimed damages to the property.

III. DISCUSSION

A. BREACH OF CONTRACT

The plaintiff's complaint alleges that the defendant is liable for breach of contract. In an action for breach of contract, the elements plaintiff must establish are: 1) the formation of an agreement; 2) performance by one party; 3) breach of the agreement by the other party; and 4) damages. See *Meyers* v. *Livingston, Adler, Pulda, Meiklejohn & Kelly, P.C.*, 311 Conn. 282, 291, 87 A.3d 534 (2014).

Here, the evidence presented supports the finding that the elements have been demonstrated by a fair preponderance of the evidence pertaining to defendants Crystal and Thomas Crosby. Furthermore, the court finds that the elements have been demonstrated by a fair preponderance on the amended counter claim pertaining to Country Home, LLC. The plaintiff argues that, because they named Mr. DeHart[3] to the summary process action and he participated in that process as a sometime resident, he is also liable as a party in this matter. As Mr. Andreau DeHart was not a signatory, tenant, or resident to the original lease agreement, this court finds judgment in favor of Andreau DeHart and denies the claims brought against him. As to Crystal and Thomas Crosby, the first element is not contested. All parties do not dispute they entered into a lease agreement, or the terms of the lease. However, Crystal and Thomas Crosby dispute the second, third and fourth elements.

General Statutes § 47a-21 (d)(2) provides in relevant part that "[u]pon termination of a tenancy, any tenant may notify the landlord in writing of such tenant's forwarding address. Not later than twenty-one days after termination of a tenancy or fifteen days after receiving written notification of such tenant's forwarding address, whichever is later, each landlord other than a rent receiver shall deliver to the tenant or former tenant at such forwarding address either (A) the full amount of the security deposit paid by such tenant plus accrued interest, or (B) the balance of such security deposit and accrued interest after deduction for any damages suffered by such landlord by reason of such tenant's failure to comply with such tenant's obligations, together with a written statement itemizing the nature and amount of such damages. Any landlord who violates any provision of this subsection shall be liable for twice the amount of any security deposit paid by such tenant . . .."

[3] Mr. DeHart was self-represented in the summary process proceeding as well as this proceeding.

To receive double damages, the tenant must have given written notice of his forwarding address to the landlord See *Johnson* v. *Mazza*, 80 Conn. App. 155, 160, 834 A.2d 725 (2003). However, any offset must be calculated against the doubled deposit. See *Nitch* v. *Lavoy-Alaimo*, Superior Court, judicial district of Hartford-New Britain (August 27, 1992, *Holzberg, J.*). Summary process actions are a creature of statutes and must be strictly construed. See *Jo-Mark Sand & Gravel Co.* v. *Pantenella*, 139 Conn. 598, 600-601, 96 A.2d 217 (1953).

"Summary process statutes that grant a landlord's rights in derogation of the common law have been narrowly construed and strictly followed." *Housing Authority* v. *Harris*, 225 Conn. 600, 605, 625 A.2d 615 (1993); see also *Jefferson Garden Associates* v. *Greene*, 202 Conn. 128, 143, 520 A.2d 173 (1987). On January 25, 2022, the plaintiff informed the defendants Thomas and Crystal Crosby that they were keeping the Crosbys' security deposit, plus interest, totaling $1,858.28 as damages for the premises, as expenses were greater than said security deposit amount. The plaintiff continues to hold onto the Crosbys' security deposit. The court finds that Country Home, LLC is liable to Crosby for the sum of $1,858.28 before the deduction of any offsets for damage to the premises, payments due under the lease, or other claims.

General Statutes § 47a-11 (f) sets out the tenant's statutory duties, of which the most general is the duty to "not willfully or negligently destroy, deface, damage, impair or remove any part of the premises or permit any other person to do so." A tenant is thus liable for willful or negligent property damage. Although the plaintiff sets forth her claim as a breach of the lease agreement, the provisions of the lease concerning the tenant's responsibilities mirror those of the statute.

"Since tenant liability must be based on willful or negligent conduct, the mere fact of damage does not necessarily make the tenant liable. . . . [T]he landlord must prove that (a) the damage occurred, (b) it exceeded normal wear and tear, and (c) it was caused by the tenant. Damage may be shown either by direct evidence or circumstantially. However, a tenant is not liable for damages that already existed when he moved into the apartment or for damage which occurred after he vacated. Similarly, he is not liable for damage caused by persons for whom he is not responsible." (Internal quotations omitted.) *Agostino* v. *Cary*, Superior Court, judicial district of Stamford-Norwalk, housing session, Ct. Sup. 11802 (October 20, 2011, *Maronich, J.*).

"The tenant is also not liable for what is usually described as 'normal' or 'reasonable' wear and tear. The determination of what is wear and tear, as distinct from what is property damage, is heavily dependent on the facts of the case; but in general, it refers to deterioration of or damage to the property which can be expected to occur from normal usage." (Internal quotation marks omitted.) Id.

"Wear and tear also include normal repainting and cleaning which occur at the end of a tenancy. The tenant is not liable for nail or pin holes in a plaster wall which would ordinarily be

spackled as part of a routine repainting. Each claim must be evaluated on its own merits, in light of the general principle that some wear and tear is inevitable in rental property." Id.

"The landlord must also establish sufficient evidence of the amount of the damage to remove a judgment from the area of speculation. This will not ordinarily require expert testimony or appraisals, but it does require the presentation of some evidence from which a court can make a reasonable estimate of the amount to be awarded." Id.

"Property damage may be measured by repair cost or by value, as appropriate. Replacement cost is not usually allowed. Thus, if a tenant has destroyed or removed a landlord-provided carpet, the tenant's liability must be adjusted for the age and condition of the carpet, since the tenant is liable only for lost value. While the court should not impose an unreasonable burden of proof, judges handling property damage claims in landlord-tenant cases have traditionally sought to make sure that such claims are legitimate and that the amount claimed as damages is not inflated." Id.

The burden of proof is on the plaintiff to prove, by a fair preponderance of the evidence, that the defendant tenants are responsible for the damages claims she is alleging. The court cannot credit the photographic evidence presented by Ms. Flor, as explained below, which further extends to the veracity of her claims and testimony. Per the videos and photographs presented by the defendants, the evidence shows the dates and times to conditions both back in June of 2019 as well as late in the evening immediately prior to the tenants vacating the premises on December 31, 2021. Ms. Flor insists her photographic exhibits of the premises occurred January 1st, 4th, and 11th, 2022. However, this court credits the defendants' argument that the photographs depicting "dirty" conditions claimed by the plaintiff could not have been found after December 31, 2021. The defendant's pictures and videos show the conditions immediately prior to leaving the premises after they cleaned it. It makes no sense, as insisted by Ms. Flor, that the defendants, after cleaning, proceeded to then cook on the stove top during the ensuing 10 minutes while rushing to meet this court's deadline to vacate the premises by 12:00 am on January 1, 2022.

Additionally, Ms. Flor attributes door damage to the defendants, but said damage was clearly visible at the time the defendants moved in during June of 2019. Ms. Flor alleges damage to a toilet seat,[4] and a missing antique light switch which was again on the switch in the defendants' pictorial evidence following the defendants' cleaning. The "broken" bedroom closet door running off its upper tracks is identified as an issue by the defendant in her 2019 move-in video when Ms. Crosby noticed the floor anchor was defective. Furthermore, this court cannot attribute two broken windowpanes to the defendants after viewing the poor job workers did when glazing all the exterior windows in the home during the defendants' occupancy. Ms. Flor also attributes the cost of window treatments to the defendants even though none were present when the defendants entered the premises, and this court finds

[4] The missing "chip" disappeared after being cleaned by the defendant.

more credible Ms. Crosby's testimony that she purchased the treatments that were left hanging behind.

The plaintiff alleges the defendants broke the face of the kitchen countertop. Taken in conjunction with all the other non-credible claims made by Ms. Flor, this court finds more likely Ms. Crosby's testimony that the countertop face fractured at the time of installation and was glued throughout the period of their tenancy, as reflected in the defendants' pictures and video at their time of leaving the home. Mr. Crosby indicated that the replacement refrigerator was delivered unboxed while strapped into the back of a truck. He noticed a dent on the exterior of the refrigerator while helping the workmen move the refrigerator into the house. As the refrigerator was delivered outside its original box, this court cannot find that the refrigerator was newly purchased and therefore cannot attribute any missing or cracked shelves within to the defendants.

Considering the photographic, testimonial, and documentary evidence of the premises' condition introduced by both parties at the trial, this court delineates the following conditions at the termination of the tenancy that constitutes greater than normal wear and tear with accompanying receipts: 1) one broken knob on the stove ($17.98); 2) one missing towel bar ($18.92); 3) one broken door knob ($42.48); 4) a broken electrical wall plate ($3.61); 5) a missing kitchen drain stopper ($10.62); 6) one broken basement light glaze ($12.39); 7) an entry latch ($10.97); 8) one missing closet pole ($12.97); and 9) a pocket door latch ($15.36). The court denies the plaintiff's claims for the cost of a requested new door, as the same replacement door that existed at the time of the tenants occupying the property in 2019 remained in the garage at the time the defendants vacated in 2021. The damages to the property total $145.30.

The defendants are not liable for any repairs to the furnace nor the filling of the oil tank. There appears to be no damage to the system caused by the defendants' negligent or willful conduct. Upon taking over the premises in 2019, the defendants needed to add 167.30 gallons to the premises and paid for said delivery. On January 1, 2022, although the plaintiff added 149.4 gallons into the tank, the court finds the defendants left the oil tank on the property fuller than when they moved in in 2019, and the court denies the plaintiff's claim for reimbursement of oil costs. The court further cannot attribute the claimed septic tank cleaning costs to any negligence by the defendants. The claimed damage to the walls, requiring spackling and painting, constitutes normal wear and tear as well as does the claimed cleaning costs of the premises. The inoperable basement bathroom fan, along with the shower head and handle replacement, cannot be attributed to any negligence by the defendants and are consistent with the poor condition of the residence when taken over by the defendants in 2019. The defendants testified that, due to the inoperability of the fan and risk of ceiling mold, they avoided using the basement bathroom altogether. Therefore, the court denies those requested claims and costs attached thereto as well.

Additionally, noting Ms. Flor's numerous damage claims with photographic documentation to which this court finds either as normal wear and tear, non-credible, or pre-existing upon the defendant's move-in date in 2019, this court does not find credible the extent of the damages claimed, nor the associated subsequent repairs and costs, in Ms. Flor's testimony lacking dated photographic proof or other independent evidence. As there is no specific breakdown by handyman, Mr. Jorge Llivicura, as to the repair costs for individual items, this court is unable to formulate an accurate value for the labor required to repair the broken knob on the stove, missing towel bar, broken doorknob, broken electrical outlet wall plate, broken basement light glaze, entry latch, missing closet pole, and pocket door latch.[5]

Although the plaintiff has the obligation to mitigate damages pursuant to General Statutes § 47a-11c, she nonetheless rented a container from All American Waste to remove refuse that was found around the property after January 1, 2022. An overwhelming majority of the bagged trash could have been disposed of at the curb for trash pickup, and this court is unable to discern via the evidence presented what cleaning apparatus[6] may have been left by the defendants and which were those left by the previous tenants prior to June of 2019. Although one large table/bench and broken heating lamp left in the garage and breezeway would have required bulk trash removal, both pieces are also observed in the defendant's 2019 video as left over from the prior tenants. Based upon the condition of the outdoor heating lamp photo in 2021, this court can also reasonably infer the propane tank was previously located inside the base of the outdoor heating lamp in 2019. Consistent with Section 7 (a) of the lease, the defendants not only returned possession of the leased premises' exterior in the condition it was at the time of their occupancy, but in fact returned it in a better state after the defendants cleaned the interior of the premises in 2021 prior to exiting. Although Ms. Flor testified it was a "business decision" to pursue the defendants instead of the prior tenants in 2019, this court is not charging the defendants' costs to which they have no responsibility. Therefore, the court denies the plaintiff's request for the container rental, haul charge and disposal fee.

According to Ms. Flor's hand typed exhibit, the defendants were late on sixteen payments from September 2019 through June of 2021, incurring debt in the amount of $1,480.00. However, beyond the plaintiff's own created typed synopsis of late payments, this court received no independent exhibits of post marked letters, nor accompanying bank statement proof, as when these rental payments were sent and deposited. The only independent documentary evidence of a late payment is in the summary process action, submitted by the defendants, that they paid late rent for September 2021 (entry at Docket No. 113). This court notes the extensive effort the plaintiff invested in providing photographic evidence, as well as receipts, for her alleged damage claims and costs incurred. As this court already has concerns regarding the veracity of Ms. Flor's testimony along with the timing of her photographic evidence, these concerns also extend to the veracity of her handwritten and

[5] Plaintiff's Exhibit 10.

[6] Brooms, rakes, mops, and solvents.

typed documents she created for trial.[7] Although the defendant agreed that some payments may have been late, there is no other clarification as to how many. The plaintiff cannot collect on the September 2021 late fee as the lease at that point had already terminated.[8]

As this court previously ordered reasonable use and occupancy at the rate of $1,850.00 (Docket No. CV-21-6028797-S) (entry at Docket No. 119.10), this court is denying the plaintiff's request for an additional $3,900.00 towards reasonable use and occupancy between July 1, 2021, and December 31, 2021. The plaintiff claims she had a new tenant willing to pay more than the $1,850.00 monthly rate of the Crosbys, but no letters of intent, signed leases with another third party, or dates of signing were provided by the plaintiff upon which this court can rely. Additionally, this court is unaware if these purported new tenants saw the home before, or after, any long standing and much needed repairs by the plaintiff were completed following the defendants' exit from the premises.[9] Considering that both the outside and inside structural condition of the home was substantially similar to when the defendants move into the house in 2019, and as this court previously determined reasonable use and occupancy at $1,850.00, this court is denying the additional claim of $3,900.00.

Based on all the foregoing reasons, the court totals, by a fair preponderance of the evidence, the damages to the property at $145.30. The bill of costs total $435.60 in the prior action and $368.82 for this present action. A fee of $87.00 is attributed due to the improperly deducted $87.00 from rent for replacement drinkable water.

The affidavit for attorney's fees requests $27,246.54 from the defendant. Not only would such an order be grossly inequitable, but General Statute Section § 47a-4 (7) caps legal

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[7] The plaintiff failed to provide any postmarked letters sent by the defendant, nor any corresponding bank statements showing proof of the deposited rent.

[8]The plaintiffs argue that Executive Order 7X only allowed an extension on late payments for the months of April and May of 2020. However, Order 7X was subsequently modified by Executive order number 7NN, Section 1, as well as Executive Order 9E, Section 1, issued on September 30, 2020. After April and May of 2020, Order 9E, in combination with 9T and 9L, extended Section 1 of Executive Order 7X through February 9, 2021. Executive order 10A, Section 3, extended 7X Section 1 until the moratorium lifted on June 30, 2021. All subsequent extensions of Section 1 do not specifically address any subsections other than Order 7NN, which in May 2020 expanded the time frame for late payments in May of 2020. Executive Order No. 7DDD Section 1 (a) seems to indicate in its last paragraph that "[e]xcept as expressly provided herein, nothing in this order shall relieve a tenant of liability for unpaid rent or of the obligation to comply with other terms of a rental agreement . . .." It is arguable that the subsequent extensions of Order 7X Section 1 may not allow late monthly payments to continue without penalty during these executive orders even had this court found Ms. Flor to be credible regarding late payments.

[9] This court can find that Ms. Flor did accommodate some interior painting, a kitchen renovation, and bleaching of the well water during the defendant's tenancy.

fees at 15%. Since neither party was entirely in the right, with both partially prevailing on some of their claims, and this court finds the total damage and cost totals for both actions equaling $1,036.72, this court is ordering the defendant to pay $155.50 towards attorney fees to the plaintiff. Therefore, the total amount the defendant owes the plaintiff equals $1,192.23.

B. DEFENDANT'S COUNTERCLAIM

The defendant's counterclaim argues for the return of the security deposit plus interest, that the losses and damages claimed were not caused by the defendant, and for attorney's fees. The plaintiff contests the return of the security deposit plus interest based on damages claimed.

All named defendants were self-represented in this action as well as the prior summary judgment matter. Therefore, their request for attorney's fees is denied.

As the number of damages and costs granted by this court, by a fair preponderance of the evidence, totals $1,192.23 and the security deposit being held by the plaintiff totaling $1,858.28 exceeds the amount of the damages awarded, the plaintiff owes the defendant $666.05.

ORDER

On the first count of the amended complaint, the court enters judgment in favor of the plaintiff and awards total damages in the amount of $1,192.23. The judgment is denied as to Andreau DeHart.

On the second count of the amended complaint, the court enters judgment in favor of Thomas and Crystal Crosby as they paid each month's rent of $1,850.00, as previously determined by the court. The judgment is denied as to Andreau DeHart.

On Crystal Crosby's counter claim, the court enters judgment in favor of Ms. Crosby in the amount of $1,858.28, minus the cost of damages awarded in the plaintiff's first count.

The plaintiff is ordered to pay the defendant $666.05 forthwith.

Hon. Jason M. Lobo