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MEMORANDUM

To: Andrew Garofalo, Senior Partner
From: Melanie Lessard-Dunkiel & Linda Fresneda, Junior Associates
Client Matter: Johnson08
Date: January 29, 2014
Re: Potential Issues with Security Deposit Claim_Reasonable Wear & Tear

We have done the requested research regarding normal wear and tear and unreasonable wear and tear under Florida law for the purposes of analyzing whether any of the items under the Johnson-Wilson lease qualify as such.

Normal wear and tear is defined as "a deterioration or depreciation in value by ordinary and reasonable use of the subject-matter". *Smith v. Niederriter*, 18 Fla. L. Weekly Supp. 1051a (Fla. June 20, 2011) (citing BLACK'S LAW DICTIONARY 1593 (6TH ED. 1990)). In a case were the landlord claims that the tenant caused damage to the premises or any part of it, the burden of proof is initially on the landlord to prove that tenant has caused those damages. *Stegeman v. Burger Chef Systems Inc.*, 374 So.2d 1130 (Fla. 4th DCA 1970). Once the landlord has done so, the burden then shifts to the Tenant to prove that the damages were pre-existent to his tenancy. *Id.*

The dent and scratches on the garage door in other circumstances would probably be considered normal wear and tear, however from the information gathered from the contractor it does seem like unreasonable wear and tear. The scratches and dents on the door would not deteriorate to that point on its own. It appears that the Tenant carelessly backed into the door with his vehicle and the damage appears to be significant. Considering (1) that the door has to be replaced because of its current

condition, (2) that the damage was not present at the prior to the beginning of the lease, and (3) that the damage appears to be unreasonable wear and tear, the Tenant should be charged for this damage and accordingly the $450.00 should be deducted from the security deposit.

In regards to the damages to the outdoor kitchen grill, the dent in one of the cabinet doors does not seem to be major and could likely have been caused by reasonable use of the grill. However, the missing door and the missing grill grates are highly likely unreasonable wear and tear because they were not left in the premises. In fact, in *Smith* the court held that the tenant's failure to leave the drapes which were there at the time the lease was entered into upon vacating the premises constituted unreasonable wear and tear. *Smith v. Niederriter*, 18 Fla. L. Weekly Supp. 1051a (Fla. June 20, 2011). The Tenant should have not taken/lost the door and grates to the outdoor grill. In addition, the cut to the propane hose seems like an intentional and deliberate act on the part of the Tenant and should not be considered reasonable wear and tear. Accordingly, unless the tenant can prove that the hose was not deliberately cut but rather that it was damaged due to normal deterioration, the Tenant should be held responsible for the damage and the $525.00 should be deducted from his security deposit.

The damage to the carpet in the second bedroom is described as a "stain," however from the description it looks like it would be easy to remove and stains are usually hard to remove from a carpet. It seems that the proper classification for this would be "dirt residue" and that it could be easily removed by an ordinary carpet cleaning. However, a landlord, as Florida law reveals, cannot usually charge tenants for

carpet and general cleaning of the house unless the lease specifically states otherwise. *Burley v. Mateo*, 18 Fla. L. Weekly Supp. 624a (Fla. March 2, 2011); *Bergren v. Wyatt*, 11 Fla. L. Weekly Supp. 407a (Fla. Feb. 19, 2004). Here, since (1) the damage to the floor appears to be reasonable wear and tear, and (2) the landlord specifically agreed to be responsible for the maintenance and repair of the floors rather than stipulate that the tenant be responsible, and (3) the landlord will probably had to clean the carpet before renting the unit again regardless, the $150.00 should not be deducted from the tenant's security deposit.

In regards to the damage in the master bedroom's wall, the three holes where picture frames once hung are described as "tiny." It seems that this is minor damage to the wall which could easily be repaired with some light spackling and sanding. Further, the two holes in each of the other four bedrooms sounds like they may be slightly bigger as they are not characterized as "tiny" as the holes in the master bedroom were. We would have to assess how "big" those holes really are in order to determine if the walls were damaged beyond reasonable wear and tear. However, since the work estimate specifically states that these holes can be fixed with some light spackling and sanding, the holes are likely just reasonable wear and tear. As stated in *Smith*, normal wear and tear is defined as "a deterioration or depreciation in value by ordinary and reasonable use of the subject-matter". *Smith v. Niederriter*, 18 Fla. L. Weekly Supp. 1051a (Fla. June 20, 2011). Here, the work estimate specifically states that future occupants will also likely hang pictures in the same areas. It follows logically that since it is anticipated that future tenants will use the walls for the exact same purpose, that the small holes in

the walls are just a reasonable use of the subject-matter. As such, it would be unreasonable to charge the tenant for such ordinary wear and tear.

In regards to the damage in the kitchen, namely the broken faucet, according to the description it seems to be broken beyond repair given that a new kit has to be ordered. This does seem to indicate that the broken faucet handles are unreasonable wear and tear as you would expect the lifespan of an expensive plumbing fixture to be more than 5 years. Additionally, landlords are not allowed to deduct damages caused from the landlord's failure to repair plumbing leaks from a tenant. *Burley v. Mateo*, 18 Fla. L. Weekly Supp. 624a (Fla. March 2, 2011). Further information will be needed to see whether the tenant ever complained about a leak with the kitchen plumbing. If there was a complaint and the landlord did not fix it then the landlord may be responsible if the damage to the handles was caused by or if the damage was accelerated by this failure to repair. However, it seems unlikely that a plumbing issue will cause relatively new handles to break to such a state of disrepair. Unless, the Tenant can somehow prove that these types of faucets tend to break in this fashion after a relatively short period of normal use then it seems that the tenant is responsible for the broken faucet handles and accordingly the $2,000.00 should be deducted from the security deposit.

Regarding the damage done to the master bathroom marble countertop, the description reveals that there is a large crack running along the vanity countertop. Although small chips and scratches would be expected from normal wear and tear, the fact that there is a large crack running along the edge of the vanity countertop suggests that this is unreasonable wear and tear. It seems like the damage was a result of careless behavior – likely from someone or something heavy sitting on the edge of the

vanity. However, since we do not really know how the damage occurred we would have to investigate further to find out if this kind of marble is perhaps prone to breaking as time goes by and how long it usually lasts. If we do find that this type of marble is prone to easy breakage than normal countertops, then the $3,800.00 should be deducted from the tenant's security deposit.