IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

Philip and Brittany Amor,	)	
	)	
Plaintiffs,	)	
	)	**No. CVCV075753**
vs.	)	
	)	**RULING**
Bradford Houser, et al.,	)	
	)	
Defendants.	)	

On this date, the above-captioned matter came before the undersigned for review of the following pleadings filed by Plaintiffs: First Motion for Declaratory Judgment; Second Motion to Amend Petition Adding Plaintiff and Defendants; and Third Motion to Amend Petition Adding Plaintiff. The Court finds a hearing on the pending Motions is unnecessary. Having considered the file, relevant case law, and written arguments of counsel, the Court hereby enters the following ruling:

FACTUAL AND PROCEDURAL BACKGROUND

On August 2, 2013, Plaintiffs filed a Petition at Law & Equity, and for Class Action, followed by the filing of a First Amended Petition at Law & Equity on September 6, 2013. A class action has been certified in this matter, and all filings pertaining to class action certification appear to have been addressed, with no further orders needed thereon. In the First Amended Petition, Plaintiffs state claims against Defendants Bradford Houser, River Ridge Place, LLC, and Houser Enterprises, Inc. based on a lease agreement entered into between Plaintiffs and River Ridge Place, LLC. Plaintiffs believe River Ridge Place is a property holding entity; Houser Enterprises, Inc. is a property management entity; and Bradford Houser owns both entities. Plaintiffs allege the lease contains provisions that violate Iowa Code chapter 562A, the Uniform Residential Landlord and Tenant Law (IURLTA). Plaintiffs seek actual and punitive damages, plus attorney fees and costs, in conjunction with their claims. Defendants have denied the allegations of the Petition that are adverse to them.

Plaintiffs filed their First Motion for Declaratory Judgment on August 2, 2013, along with their initial Petition, seeking a declaratory judgment that the lease contains prohibited provisions. The Court notes that proceedings have been delayed due to an appeal of the class action issue. Plaintiffs contend the lease violates the IURLTA by including attorney fee and liability shifting/indemnification provisions; by contemplating charges that exceed the landlord's actual damages; by including improper automatic carpet cleaning charges; and by attempting to evade the normal wear and tear requirement. Plaintiffs also contend the inclusion of the prohibited clauses was knowing and willful on the part of Defendants.

Defendants have resisted the First Motion for Declaratory Judgment, noting it is unclear whether Plaintiffs are seeking a declaratory judgment or summary judgment on their claims. At the time the Resistance was filed, Defendants argued it would be premature to enter a declaratory judgment, since, at that time, not all Defendants had even filed Answers. Defendants also

resisted the Motion, to the extent it is a motion for summary judgment, on grounds that Plaintiffs have not complied with Iowa Rule of Civil Procedure 1.981 because Plaintiffs have failed to cite to any evidence to support their Motion.

Defendants later supplemented their Resistance to acknowledge that Paragraph 19 of the lease in question, titled "Attorney's Fees," contains a provision which is prohibited by the IURLTA because it purports to require one party to pay the other party's attorney's fees. Defendants also acknowledge that Paragraph 21 of the lease in question contains a provision prohibited by the IURLTA because it contains a prohibited limitation of liability and indemnification provision. With respect to Plaintiffs' argument regarding imposition of fees, Defendants assert that Plaintiffs offer no evidence of whether the amounts specified in the lease are designed to compensate the landlord for its actual damages. Defendants further assert that the inclusion of the automatic carpet cleaning provision is appropriate because it ensures the statutory obligation of the tenant to maintain and improve the quality of housing, and to keep the premises clean and safe. As to Plaintiffs' normal wear and tear claim, Defendants note that the provision is that dirt is not ordinary wear and tear, and contend that this is permissible under the IURLTA because tenants have an obligation under the IURLTA to maintain and improve the quality of housing and keep the premises clean and safe. Finally, Defendants argue there is no evidence to show they willfully used prohibited provisions in the lease with knowledge that the provisions were prohibited by the IURLTA.

In their Second Motion to Amend, Plaintiffs seek leave to add Adam Nardini as a Plaintiff, and to add Oakcrest Investments, LLC and Oakcrest Condominium Cooperative (both of whom Plaintiffs believe to have ownership and/or management interests in the subject property) as Defendants. In the Third Motion to Amend, Plaintiffs seek leave to add James Lewis as a Plaintiff. Neither Motion to Amend has been resisted by Defendants.

CONCLUSIONS OF LAW

At the outset, the Court notes its agreement with Defendants that it is unclear whether Plaintiffs are seeking summary judgment or declaratory judgment. Plaintiffs repeatedly make reference to both forms of relief, but their initial Motion, filed with the initial Petition, is only pled as a Motion for Declaratory Judgment. Both parties have cited to other Johnson County District Court cases that have addressed similar claims brought by Plaintiffs, which the Court notes have been considered in the context of summary judgment and declaratory judgment motions. Plaintiffs rely heavily on the decision of the Iowa Court of Appeals in the case of Staley v. Barkalow, No. 12-1031, 2013 WL 2368825 (Iowa Ct. App. 2013) and of Judge Douglas S. Russell's ruling on remand entered in the Staley case (Johnson County case number LACV073821) on March 18, 2014. The Court incorporates both Staley decisions as if set forth in full herein.

Because the Court concludes many of Plaintiffs' arguments can be addressed as a matter of law, the Court will proceed with addressing Plaintiffs' claims under both the declaratory judgment and summary judgment standards.

"Summary judgment is appropriate if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." Kolarik v. Cory Intern. Corp., 721 N.W.2d 159, 162 (Iowa 2006) (citing Iowa Rule of Civil Procedure 1.981(3)). "Further considerations when reviewing a motion for summary judgment are summarized as follows:

> 'A factual issue is material only if the dispute is over facts that might affect the outcome of the suit. The burden is on the party moving for summary judgment to prove the facts are undisputed. In ruling on a summary judgment motion, the court must look at the facts in a light most favorable to the party resisting the motion. The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record.'"

Id. (citing Estate of Harris v. Papa John's Pizza, 679 N.W.2d 673, 677 (Iowa 2004) (quoting Phillips v. Covenant Clinic, 625 N.W.2d 714-717-18 (Iowa 2001)).

"To obtain a grant of summary judgment on some issue in an action, the moving party must affirmatively establish the existence of undisputed facts entitling that party to a particular result under controlling law." McVey v. National Organization Service, Inc., 719 N.W.2d 801, 802 (Iowa 2006). "To affirmatively establish uncontroverted facts that are legally controlling as to the outcome of the case, the moving party may rely on admissions in the pleadings…affidavits, depositions, answers to interrogatories by the nonmoving party, and admissions on file." Id. "Except as it may carry with it express stipulations concerning the anticipated summary judgment ruling, a statement of uncontroverted facts by the moving party made in compliance with rule 1.981(8) does not constitute a part of the record from which the absence of genuine issues of material fact may be determined." Id. at 803. "The statement required by rule 1.981(8) is intended to be a mere summary of the moving party's factual allegations that must rise or fall on the actual contents of the pleadings, depositions, answers to interrogatories, and admissions on file together with any affidavits." Id. "If those matters do not reveal the absence of genuine factual issues, the motion for summary judgment must be denied." Id.

"When two legitimate, conflicting inferences are present at the time of ruling upon the summary judgment motion, the court should rule in favor of the nonmoving party." Eggiman v. Self-Insured Services Co., 718 N.W.2d 754, 763 (Iowa 2006) (citing Daboll v. Hoden, 222 N.W.2d 727, 733 (Iowa 1974) ("If reasonable minds could draw different inferences and reach different conclusions from the facts, even though undisputed, the issue must be reserved for trial.").

"However, to successfully resist a motion for summary judgment, the resisting party must set forth specific evidentiary facts showing the existence of a genuine issue of material fact." Matter of Estate of Henrich, 389 N.W.2d 78, 80 (Iowa App. 1986). "[The resisting party] cannot rest on the mere allegations or denials of the pleadings." Id.

Iowa Rule of Civil Procedure 1.1101 provides:

> Courts of record within their respective jurisdictions shall declare rights, status, and other legal relations whether or not further relief is or could be claimed. It shall be no objection that a declaratory judgment or decree is prayed for. The declaration may be either

> affirmative or negative in form or effect, and such declarations shall have the force and effect of a final decree. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The enumeration in rules 1.1102, 1.1103, and 1.1104, does not limit or restrict the exercise of this general power.

I.R.Civ.P. 1.1101.

"The purpose of a declaratory judgment is to determine rights in advance." Bormann v. Board of Sup'rs in and for Kossuth County, 584 N.W.2d 309, 312 (Iowa 1998). "The essential difference between such an action and the usual action is that no actual wrong need have been committed or loss incurred to sustain declaratory judgment relief." Id. at 312-13. "But there must be no uncertainty that the loss will occur or that the right asserted will be invaded." Id. "As with a writ of certiorari, the fact that the plaintiff has another adequate remedy does not preclude declaratory judgment relief where it is appropriate." Id.

"[D]eclaratory judgment is an action in which a court declares the rights, duties, status, or other legal relationships of the parties." Dubuque Policeman's Protective Ass'n v. City of Dubuque, 553 N.W.2d 603, 606 (Iowa 1996). "Declaratory judgments are res judicata and binding on the parties." Id. "'The distinctive characteristic of a declaratory judgment is that the declaration stands by itself, that is, no executory process follows as of course. In other words such a judgment does not involve executory or coercive relief.'" Id. (citing 22A Am.Jur.2d Declaratory Judgments § 1, at 670 (1988)).

"The burden of proof in a declaratory judgment action is the same as in an ordinary action at law or equity." Owens v. Brownlie, 610 N.W.2d 860, 866 (Iowa 2000). "The plaintiff bringing the action has the burden of proof, even if a negative declaration is sought." Id.

The Court has reviewed Judge Russell's March 18, 2014 Ruling in the Staley case, and the Court notes that it finds Judge Russell's Ruling to be persuasive. This Court draws, in large part, from Judge Russell's March 18, 2014 Ruling in addressing the issues currently argued by Plaintiffs.

With the aforementioned legal standards in mind, the Court first addresses Plaintiffs' argument that Defendants' leases and lease rules violate the IURLTA, specifically with regard to attorney fee and illegal liability and indemnification clauses. Defendants have acknowledged that these clauses in its leases are prohibited by the IURLTA. Therefore, because there is no dispute among the parties as to the illegality of the attorney fee and liability shifting/indemnification provisions, Plaintiffs' Motion should be granted on this issue.

The Court next considers Plaintiffs' challenge to the inclusion in the standard lease of a variety of fees, fines, penalties and charges that Plaintiffs claim violate the requirement that landlords can only recover actual damages for a tenant's breach of a lease or violation of chapter 562A. Plaintiffs generally argue that Defendants cannot recover anything other than actual damages for a tenant's breach of a lease of violation of chapter 562A. The Iowa Supreme Court has held that a landlord is not entitled to recover if no evidence substantiates that actual damage has been sustained. D.R. Mobile Home Rentals v. Frost, 545 N.W.2d 302, 306 (Iowa 1996).

Considering the language utilized by the Iowa Legislature in chapter 562A in conjunction with the Iowa Supreme Court's holding that actual damage must be sustained in order for a landlord to recover, the Court concludes that a landlord may only recover actual damages that are proven to be owed to the landlord under the standards espoused in chapter 562A. Therefore, Plaintiffs' Motion should be granted on this issue.

The Court next addresses Plaintiffs' argument that Defendants' leases contain illegal automatic carpet cleaning provisions. Iowa Code § 562A.12(3) provides:

> 3. a. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the dwelling unit, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:
>
> (1) To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.
>
> (2) To restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted.
>
> (3) To recover expenses incurred in acquiring possession of the premises from a tenant who does not act in good faith in failing to surrender and vacate the premises upon noncompliance with the rental agreement and notification of such noncompliance pursuant to this chapter.
>
> b. In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

Iowa Code § 562A.12(3) (2015).

> Plaintiffs have specifically challenged the following language from Defendants' leases:
>
> Tenant shall vacuum regularly and *professionally* shampoo carpets once a year and at the end of the lease term. Tenant shall use only Landlord approved carpet cleaning companies…Carpets that are not cleaned at the end of the lease term or that are cleaned with an unauthorized cleaning firm, equipment or person will result in a $100 service charge plus re-cleaning charges.

See Plaintiffs' Exhibit 1, p. 8 sec. 1.

This clause automatically imposes on tenants certain fees for carpet cleaning regardless of whether the carpet is clean or not. Iowa Code § 562A.12(3) requires a landlord to provide the

tenant with a specific reason for withholding any of the rental deposit, and also requires the landlord to prove, by a preponderance of the evidence, the reason for withholding any of the rental deposit, with ordinary wear and tear excepted. This is a purely legal question, and the Court finds no disputed issues of material fact in the record. Further, Plaintiffs have met their burden of proving they are entitled to declaratory relief on this section of the standard lease. The clause requiring professional carpet cleaning may not be included in the landlord's standard lease because inclusion of the clause permits the landlord to avoid its obligations as defined by the Iowa Legislature in § 562A.12(3). Plaintiffs' Motion should be granted on this issue.

The Court next considers Plaintiffs' claim that Defendants have included clauses in their leases that attempt to evade the normal wear and tear requirement. The clause at issue specifically states: "Dirt is NOT considered 'normal wear and tear.'" See Plaintiffs' Exhibit 1, p. 7 sec. 6.

One of the purposes behind the IURLTA is to encourage the landlord and tenant to maintain and improve the quality of housing. Iowa Code § 562A.2(2)(b) (2015). A tenant has an obligation to keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises permit. Iowa Code § 562A.17(2) (2015). "The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties." Iowa Code § 562A.9(1) (2015). Plaintiffs acknowledge that there is authority for the proposition that the accumulation of dirt is not in itself ordinary wear and tear. See Miller v. Geels, 643 N.E.2d 922 (Ind. Ct. App. 1994). However, Plaintiffs rely on authority from other jurisdictions to argue that dirt and required cleaning are indeed measured by the ordinary wear and tear standard. There does not appear to be authority from the Iowa Appellate Courts on this issue.

The Ohio Court of Appeals has considered a lease that provided that dirt did not qualify as normal wear and tear, and concluded that where evidence did not show that there was damage to the carpet beyond any normal wear and tear, there was a wrongful deduction from the security deposit. Chaney v. Breton Builder Co., Ltd., 720 N.E.2d 941 (Ohio Ct. App. 1998) (abrogated on other grounds by Parker v. I&F Insulation Co., 730 N.E.2d 972 (Ohio 2000)). In an unpublished opinion, the Wisconsin Court of Appeals found that a landlord is required to prove that certain items deemed "dirty" needed to be cleaned due to wear and tear beyond ordinary wear and tear. Chan v. Allen House Apartments Mgmt., No. 97-3060-FT, 1998 WL 133849 (Wis. Ct. App. 1998). The Texas Court of Appeals has held that a landlord cannot retain any portion of the security deposit to cover normal wear and tear, and a tenant could vacate an apartment, leaving the normal amount of wear and soil, without forfeiting any portion of his security deposit. Southmark Management Corp. v. Vick, 692 S.W.2d 157 (Tex. Ct. App. 1985).

The Court is more persuaded by Chaney, Chan, and Vick than it is by the Miller case. Essentially, the Court sees this issue as being similar to the automatic carpet cleaning clause and other automatic fees issues. The landlord cannot simply include a provision that dirt is not considered normal wear and tear without being required to make a showing as to whether any dirt found in the rental unit is beyond normal wear and tear. Rather, the landlord must be required to make a showing that any dirt in the rental unit is beyond wear and tear, such that the

landlord would be entitled to withhold any part of the security deposit based on dirt beyond normal wear and tear. Pursuant to Frost, the landlord must substantiate that actual damage has been sustained. Defendants may not attempt to evade the normal wear and tear requirement. Plaintiffs' Motion should be granted on this issue.

The Court turns to Plaintiffs' contention that the inclusion of the prohibited clauses was knowing and willful on the part of Defendants. This is a fact question to be resolved by the trier of fact. Credibility determinations will be required to be made on Defendants' representatives' testimony on the question of whether the illegal clauses were included knowingly and willfully. There also are fact questions as to whether each of the named Defendants can be held liable for the claims stated by Plaintiffs, particularly as to which Defendants can be considered landlords under these facts. Plaintiffs' Motion should be denied as to this issue.

Therefore, Plaintiffs' First Motion for Declaratory Judgment should be granted as to the legality of the challenged provisions of the leases at issue in this matter. The Motion should be denied as to the question of knowing and willful inclusion of the prohibited clauses by Defendants.

Next, the Court considers Plaintiffs' Second Motion to Amend Petition Adding Plaintiff and Defendants and Third Motion to Amend Petition Adding Plaintiff. The Court finds these Motions appear to be unresisted and should be granted for the reasons stated therein.

RULING

IT IS THEREFORE ORDERED that Plaintiffs' First Motion for Declaratory Judgment is granted as to Plaintiffs' request for a finding regarding the legality of the challenged lease provisions. The Court hereby declares that the lease provisions challenged by Plaintiffs, as described in their First Motion for Declaratory Judgment, are illegal and should not have been included in the standard lease utilized by Defendants.

IT IS FURTHER ORDERED that Plaintiffs' First Motion for Declaratory Judgment is denied as to Plaintiffs' request for a finding that the inclusion of the prohibited clauses was knowing and willful on the part of Defendants. Court Administration is directed to schedule a trial setting conference, with the issue to be considered at trial being whether the inclusion of the prohibited clauses was knowing and willful on the part of Defendants.

IT IS FURTHER ORDERED that Plaintiffs' Second Motion to Amend Petition Adding Plaintiff and Defendants and Third Motion to Amend Petition Adding Plaintiff are **GRANTED**. The proposed amendments shall stand as the file copy without the necessity of further filing.

Clerk to notify.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV075753	PHILIP AMOR & BRITTANY AMOR VS BRADFORD HOUSER, ET AL

So Ordered

Chad A. Kepros

Chad Kepros, District Court Judge,
Sixth Judicial District of Iowa