IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY
SMALL CLAIMS DIVISION

LENORA CARUSO,

Plaintiff(s),

vs.

APTS. DOWNTOWN, INC.
JOSEPH CLARK, R-1, and
GILBERT MANOR, LLC.,

Defendant(s).

NO. SCSC081696

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT

December 8, 2013

On the 12th day of October, 2012, and the 9th day of November 2012, this matter came before the Court for trial upon Plaintiffs' claim for money judgment for a violation of Iowa Code 562A.12, alleging the unreasonable failure to return the Plaintiffs' security deposit, for tortious conduct, for overcharging for repairs, for abuse of process, and for violations of the Iowa consumer credit and debt collection statutes, and for willfully using a rental agreement with known prohibited provisions, punitive damages and attorney fees. This matter was tried as the third of three companion cases: this case; Elyse De Stefano vs. Joseph Clark, et. al, SCSC080575, tried July 18, 2013; and Sophie Borer vs. Joseph Clark, et al, SCSC081695, tried September 14, 2012. In all cases, the Plaintiffs appeared in person and with their attorneys Christopher Warnock and Christine Boyer and the Defendants all appeared by Joseph Clark and Attorney Joseph Holland of Holland & Anderson and James Affeldt of Elderkin and Pirnie, P.L.C. The Court reviews the file again in this matter and finds the following:

1. Plaintiff's Application to Defer Payment of Costs filed March 26, 2012;
2. Court's Order granting application to defer payment of costs filed March 27, 2012;
3. Original Notice (Action for Money Judgment) in small claims filed March 27, 2012;
4. Return of services filed April 5, 2012;
5. Letter from Attorney Christopher Warnock to Clerk of Court (availability for trial dates) filed April 11, 2012;
6. Answer of Defendant Joseph Clark (James W. Affeldt) filed April 16, 2012
7. Appearance of Counsel (Joseph Holland) and Answer of Defendants James Clark, R-1, LLC, and Gilbert Manor, LLC, and Defendant James Clark's Motion to Consolidate and Stay Proceedings (pending district court ruling in LACVO72840 Michael Conroy, et al v. Apts. Downtown, Inc. et al, filed October 21, 2011) both filed April 16, 2012;
8. Defendant Joseph Clark, et al., Motion to Consolidate and Stay Proceedings filed April 17, 2012;
9. Plaintiff's Resistance to Motion to Consolidate; Expedited Hearing Request, filed April 20, 2012;
10. Order issued by the Honorable Judge Paul D. Miller, denying Motion to Consolidate, issued May 17, 2012;
11. Plaintiff's Motion to Set Hearing and Letter from Attorney Christopher Warnock to Clerk of Court (availability for trial dates) both filed June 4, 2012;

12. Entry of Appearance (Christine Boyer) for Plaintiff, filed June 4, 2012;
13. Defendant James Clark, et al, Response to Plaintiff's Motion to Set Hearing, filed June 6, 2012;
14. Defendant Joseph Clark's Response to Plaintiff's Motion to Set Hearing, filed June 7, 2012;
15. Order setting trial for July 18, 2012; filed June 7, 2012;
16. Consent Motion to Substitute Defendant James Clark for Apartments Downtown, Inc., filed June 15, 2012;
17. Defendant Joseph Clark's Motion to Change Trial Date; Motion to Try Case Separately from Other Small Claims Cases, filed June 15, 2012;
18. Plaintiff's Resistance to Motion to Continue, filed June 18, 2012;
19. Defendants Gilbert Manor LLC and R-1 LLC Motion for Separate Trial, filed June 26, 2012;
20. Plaintiff's Resistance to 2nd Motion to Continue, filed July 2, 2012;
21. Subpoena (Plaintiff to substituted Defendant Apartments Downtown, Inc.) and return of service of subpoena, filed July 6, 2012;
22. Order setting trial dates, issued July 12, 2012;
23. Order setting trial for October 12, 2012; filed July 20, 2012;
24. Plaintiff's First Motion to Amend Petition and First Amended Petition, filed August 30, 2012;
25. Plaintiff's Hearing Memorandum Without Exhibits, filed October 1, 2012;
26. Plaintiff's Motion to Show Cause, filed October 2, 2012;
27. Subpoena (Plaintiff to Joseph Clark) and return of service, filed October 4, 2012;
28. Resistance to Plaintiff's Motion to Show Cause, filed October 10, 2012;
29. Small Claims Trial Notice resetting (second half) for November 9, 2012;
30. Order granting Plaintiff's Motion to Substitute Defendant James Clark for Apartment Downtown, Inc. (signed October 12, 2012 but unfiled)
31. Defendant Joseph Clark and Apartment Downtown, Inc. Trial Memorandum, filed December 7, 2012;
32. Plaintiff's Response to Defendant's Trial Memorandum, filed December 10, 2012;
33. Plaintiff's Motion to Join, filed February 13, 2013; to add Plaintiff's roommates and co-tenants Victoria Eisenhour (sp) and Claire Caruso as Plaintiffs
34. Defendant's Resistance to Motion to Join, filed February 18, 2013;
35. Plaintiff's Reply to Defendants Resistance to Motion to Join, filed February 18, 2013;
36. Plaintiff's Motion to Set Appeal Bond, filed June 25, 2013;
37. Plaintiff's Attorney Fee Affidavit (Christopher Warnock), filed June 25, 2013;
38. Plaintiff's Attorney Fee Affidavit (Christine Boyer), filed June 27, 2013;
39. Defendant's Resistance to Motion to Set Appeal Bond, filed July 5, 2013;
40. Defendant's Motion to Strike (attorney fee affidavit), filed July 5, 2013;
41. Plaintiff's Resistance to Motion to Strike Attorney Fee Affidavit, filed July 11, 2013.

At the time of trial, on October 12, 2012, the Defendant's Motion to Amend Petition was granted without objection by Defendants; Plaintiff's Motion to Show Cause was denied. As for the Plaintiff's Motion to Join, filed subsequent to trial and the close of the record in this matter, said motion is HEREBY DENIED.

On October 12, 2012 and on November 9, 2012, the Plaintiff Lenora Caruso appeared in person and with her attorneys Christopher Warnock and Christine Boyer. The Defendant Apartments Downtown, Inc. appeared by Joseph Clark and his attorney James

Affeldt. Defendant James Clark, R-1, Gilbert Manor, LLC, appeared in person and with attorney Joseph Holland. The Court received the testimony of the parties, witnesses, and exhibits submitted by the Plaintiff and the Defendants. Upon the matter submitted, the Court now makes the following findings of fact.

Pursuant to a written lease agreement, the Plaintiff Lenora Caruso and two other tenants, Victoria Isenhour and Claire Caruso, rented a three bedroom apartment/ residence from Defendant Apartments Downtown, Inc., said apartment located at 427 S. Johnson Street, in Iowa City, Johnson County, Iowa. The initial tenancy period ran from August 5, 2010 to July 31, 2011. Pursuant to the rental agreement, the tenants provided a $1,270.00 security deposit (one month's rent-$1,370.00- minus a $100.00 coupon). Claire Caruso, the Plaintiff's sister and co-tenant, was designated as the deposit holder. The written lease agreement was four pages long but held 70 paragraphs of lease provisions in extremely small type. The initial lease agreement was signed by the Plaintiff, the other two tenants, and a representative of the landlord in March of 2010. The Plaintiff and her roommates moved into the property in August 2010 and then subsequently executed another written lease for the same property the next year - to run from August 6, 2011 to July 30, 2012. The rent amount for the second lease period was slightly higher at $1,385.00 per month, which was paid in equal shares each month by the three tenants. At the end of the lease period, the Plaintiff and her two roommates, Victoria Isenhour and Claire Caruso moved out of the property, providing a forwarding address and leaving the keys with the landlord.

On August 25, 2012, Defendant, Apartments Downtown Inc., sent a letter to tenant Claire Caruso, who had been designated in the lease as the "deposit holder," at her address in Bettendorf, Iowa. The letter, entitled "Security Deposit Statement 2012," set forth the deductions withheld from the security deposit that had been provided by the tenants. The deductions were set forth as follows:

Carpet Cleaning:	$ 134.00
Cleaning Charges:	$ 105.00
Drip pans:	$ 40.00
Past Due Rent & Fees on Acct:	$ 625.33
TOTAL DEDUCTIONS:	$ 904.33
TOTAL (refunded)	$ 365.67

Plaintiff Lenora Caruso testified that a check was sent to the deposit holder, her sister Claire, and that each tenant was refunded approximate $120.00 or one-third share of the refunded amount of their security deposit. The Plaintiff also testified that, prior to moving out of the apartment, her mother brought their own personal carpet shampooer to the apartment and that the carpets were vacuumed and shampooed on July 22, 2012. She testified that, at the time they initially moved into the apartment, the carpet was in fair condition but was old and had some burn marks in various places. She testified that they did a thorough cleaning of the apartment, which included the collective efforts of Victoria Isenhour, Victoria's mother, the Plaintiff and her sister Claire and their parents. She testified that they all cleaned the apartment from top to bottom on July 22, 2012. The Plaintiff provided photographs of the apartment, which appeared to be in pristine condition. The Plaintiff additionally testified that she believed that the drip pans were clean and did not need to be replaced. Regarding the "past due rent and fees on account," the Plaintiff testified that the Defendant Apartments Downtown had replaced a door to one of the bathrooms and charged them approximately $200.00, which they refused to pay. When they did

not pay the cost for the door replacement, the Defendant, Apartments Downtown, Inc., began to add monthly late fees to their account.

The Plaintiff testified that the door at issue was a bathroom door. She testified that she and her roommates were unaware that there was any problem with the door until someone from Apartments Downtown or their maintenance crew entered the apartment and replaced the door sometime before July 7, 2011. The Plaintiff testified that they were not provided any notice that the landlord was coming into the property and that suddenly the door was replaced and they received a bill. She testified that the only issue with the door that she thought could possibly have warranted replacement was that the door appeared to be slighting coming or pulling apart.

On or about August 12, 2011, the Plaintiff and her roommates received an "Annual Maintenance Bill" which indicated a charge for the bathroom door replacement at a cost of $199.33. In response, the Plaintiff and her roommates, though Claire Caruso, sent a written objection to the bill and also complained that the door that had been replaced was not functioning properly. The Defendant had also sent a photograph to the Plaintiff. Upon viewing the photograph, the Plaintiff testified that she and the other tenants did not believe that it was, in fact, the same door. They questioned that, if the photograph was actually their door, the door appeared to have been additionally damaged or the wood pulled away to justify the replacement. The Plaintiff was also concerned because she had not been notified of the entry into their apartment and that they were not present when the door was removed.

On February 16, 2012, Defendant Apartments Downtown, Inc., sent a letter in response to the tenants' letter sent in August objecting to the door repair costs. Apartments Downtown concluded that, since no issue with the door had ever been noted in their move-in check sheet, they were therefore responsible for the payment to replace the door. The February 16th letter indicated that, if they paid the bill in full by February 24, 2012, the Defendant would consider dropping three of the past six months of late fees assessed to their account due to the non-payment of the door replacement cost. The tenants requested an invoice from the Defendant to verify the cost of the replacement door; however, the landlord asserted that the "invoice" had already been submitted to them. Victoria Isenhour, although still contesting the charge, submitted $20.00 as a payment toward the door replacement.

The Plaintiff testified that they were unable and unwilling to pay the cost of the replaced door and incurred ten $40.00 monthly late fee charges, a total of $400.00, as well as charges in the amount of $46.00 for a broken outdoor patio light and some broken refrigerator clips. The Plaintiff reviewed the photographs provided by the Defendant at trial purporting to be her apartment and testified that she did not believe that they accurately represent the appearance and condition of her apartment on the date she moved out.

Plaintiff's witness George Perry testified that he is a retired attorney residing in Iowa City and that he was asked to photograph 427 S. Johnson Street on July 25, 2012. Mr. Perry testified that he walked through the apartment and viewed the condition of the property. Mr. Perry testified that his impression was that the apartment was meticulously clean, that great effort had been taken to ensure that the apartment was thoroughly cleaned, and that the photographs he had taken and submitted to the court at trial accurately reflect the condition of the property on July 25, 2013. Mr. Perry further testified that he did not note anything about the overall condition of the carpeting that could be described as other than ordinary wear and tear, with the exception of a burn mark in one of the bedrooms. In addition, Mr. Perry testified that he

viewed the replaced bathroom door and personally would not have accepted the poor quality of the installation. He noted that there were gaps between the door and the door frame, that there had been no attempt to match the door with the hinges, and that it appeared to be a very quick and poor quality job. Mr. Perry testified that he went to a Menard's store upon the request of the Plaintiff to view doors of similar style and quality. He noted that the door that had been replaced on the bathroom in the Plaintiff's apartment generally sold for between $25.00 per door with no hinges and $45.00 with hinges cut out. Mr. Perry, upon cross examination, reviewed the photographs submitted by the Defendant and testified that he did not recall seeing many of the issues depicted in the Defendant's photographs, such as mold in the shower or discolorations on the carpeting.

Victoria Isenhour testified that she was a co-tenant with the Plaintiff at 427 S. Johnson Street during the two lease periods. She testified that they had received an eviction notice posted to their door for not paying for the replaced bathroom door. Upon receiving the eviction notice, Ms. Isenhour contacted her attorney. Because of the issues with the bathroom door and anticipating that there might be a lawsuit, Ms. Isenhour testified that they were especially careful in making sure that the unit was very clean when they moved out. She testified that they cleaned all day, over eight hours, and that she personally cleaned the oven twice. Because her grandmother does cleaning for a living, Ms. Isenhour's grandmother, who also was assisting with the cleaning, took out the drip pans and scrubbed them with brillo pads until they were clean. They then made sure to clean out all the cupboards, cleaned the laminate, swept the hallway, and mopped all of the floors. Ms. Isenhour testified that the "V" shaped marks in the carpeting were present at the time they moved in and that the move-in check sheet that she completed notes in many places where the condition of the flooring and carpeting was an issue. Regarding the bathroom door, Ms. Isenhour testified that she is a very detail oriented person and that she would have noticed if the bathroom door was in the condition that was depicted in the Defendant's photograph. She testified that the damage depicted in the photograph did not happen to the door that was in their apartment. She further testified that the photographs the Defendant provided of oven drip pans were not photographs of the drip pans from their apartment after they cleaned.

Defendant Joseph Clark testified that he is associated with Apartments Downtown, Inc. and that he receives monthly rent from tenants and also provides the tenants with notices and information about maintenance and repairs. Joseph Clark testified that he provided the check-out information to the Plaintiff and the tenants of Unit R8, 427 S. Johnson Street, notifying them that their Final Inspection was set for July 30, 2012 at 11:45 A.M. Joseph Clark testified that he was familiar with Plaintiff's Exhibit #20, which is a written information sheet regarding the tenant's check out, including the notice to the tenants that "TENANTS ONLY NEED TO VACUUM CARPET!" and that the tenants are advised that they do not have to set up carpet cleaning. He further testified that, if an apartment is not clean according to their "Clean, Clean, Clean" standards then tenants are charged $40.00 per hour for 6-8 people to come in and clean the apartment. In this case, the Plaintiff was charged $105.00 for cleaning charges, which included a $35.00 administrative fee for setting up the cleaning crew and then two hours of cleaning for four people to come into the unit to clean at $40/hour. Regarding the bathroom door, Mr. Joseph Clark testified that the damage to the door was not normal wear and tear and that the charges incurred by Iowa City Maintenance to repair the door were $59.33 in materials and two hours of labor at $70.00 per hour. Joseph Clark testified that he is not the landlord in this case and that he did not have any actual correspondence with the Plaintiff or Claire Caruso.

Bryan Clark testified that he is the operations manager for Defendant Apartments Downtown, Inc. and that the Defendant is his employer. He testified that his job entails the responsibility of organizing the maintenance for the buildings, including painting, dry wall, regular maintenance, remodeling, visual inspections, and any needed maintenance. He testified as to the normal procedure of how he would go about replacing a door. In this case, Bryan Clark testified that he was familiar with the door after the work was performed but that a worker named "Tyler" actually saw the damage beforehand and replaced the door. Bryan Clark testified that there was damage to the outside of the bathroom door as if someone had hit the bottom of the door causing it to cave inward. He testified that, based on his experience, someone would have had to push on the outside bottom of the door to cause the damage, however, he did not see the actual door but only saw photographs of the door.

Tyler Burketta testified that he had been employed by Iowa City Maintenance for the past two and a half years and that he replaced the door to the bathroom in the Plaintiff's apartment. He testified that he always makes a habit of posting a 24hr notice on the tenant's door and putting on the notice what work needs to be done. In this case, Mr. Burketta could not recall if anyone was at the apartment on the date he went in to make repairs. Mr. Burketta testified that in his opinion, the damage did not appear to be from moisture but that it appeared to be damage on the outside of the door below the knob and then mid-way up the door, what might be called de-lamination or a separation or splitting of the door. In this particular repair, Mr. Burketta believed that he worked with another person, went to the apartment, took a picture, and replaced the door. He believed that it took about two hours but testified that he did not remember the apartment. Mr. Burketta testified that he believed that it was an old, laminate, hollow core, door but that he did not recall ever seeing a door come apart in that way before.

Melissa Goatley testified that she is a leasing agent for Defendant Apartments Downtown and that her job is to rent and show apartments. She testified that she conducted the final inspection of apartment 427 S. Johnson Street, that she authored the report dated July 30, 2012, and that she took the photographs on the date of the inspection. She testified that she recalled that there were no tenants present the date of the inspection. Ms. Goatley testified as to her grading system and her observations on the date of her inspection and the cleaning performed.

The Plaintiff requests that the Court award her $5,000.00, which includes the balance of her security deposit, $904.33; punitive damages; and attorney fees. The Court notes that no attorney fee affidavit was filed with the Court at the time of trial but accepts the attorney fee affidavits filed by Plaintiff's counsel on June 25, 2013, and June 27, 2013. The Defendant argues that the parties are free to contract on essentially any terms and conditions within a lease and that, once the tenant has accepted the terms and conditions of the contract, the tenant should be liable for any breach and the payment of any damages owed the landlord from the breach.

The Iowa Uniform Residential Landlord and Tenant Law [IURLTA] is set forth in Chapter 562A, Code of Iowa. Under the general provisions, the landlord and tenant may include in a rental agreement, terms and conditions not prohibited by the chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties. §562A.9(1).

However, section 562A.11 provides that:

1. A rental agreement shall not provide that the tenant or the landlord:

a. Agrees to waive or to forego rights or remedies under this chapter ...;
b. Authorizes a person to confess judgment on a claim arising out of the rental agreement;
c. Agrees to pay the other party's attorney fees; or
d. Agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith.

2. A provision prohibited by subsection 1 included in a rental agreement is unenforceable. If a landlord willfully uses a rental agreement containing provisions known by the landlord to be prohibited, a tenant may recover actual damages sustained by the tenant and not more than three months' periodic rent and reasonable attorney fees.

A tenant's agreement to the terms of a lease, so long as they are not prohibited Chapter 562A, is separate and distinct from the limitations of what amounts can be withheld from a security deposit pursuant to §562A.12. *See* H-L Apartments v Al-Qawiyy, 440 N.W.2d 371 (Iowa 1989) (the landlord was not prevented from bringing an independent action for damages against tenants for breach of contract). As to the retention and return of security deposits by landlords, the law under the IURLTA is clear.

Section 562A.12 of the Code of Iowa requires the landlord to notify the tenant within thirty days from the date of the termination of the tenancy and receipt of the tenant's mailing address, the intent to return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reasons for withholding the rental deposit or any portion thereof. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary to restore the dwelling to its condition at the commencement of the tenancy, ordinary wear and tear excepted, and to remedy the tenant's default in the payment of rent or of other funds due under the rental agreement. In an action concerning the rental deposit, the burden of proving, by a preponderance of evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord. A reasonable cost of repair to restore the dwelling to its condition at the commencement of the tenancy, if the property can be repaired or restored, is the reasonable cost of repair or restoration, not exceeding the fair market or actual value of the improvement immediately prior to the damage. See generally Schiltz v. Cullen-Schiltx & Assoc., Inc., 228 N.W.2d 10, 18-19 (Iowa 1975); State v. Urbanek , 177 N.W.2d 14, 16-18 (Iowa 1970). *See* Ducket v Whorton, 312 N.W. 2d 561, 562 (Iowa 1981)

"Rent" is defined as "a payment to be made to the landlord under the rental agreement. §562A.6(9). "Rent" may also include bills for repairs done by the landlord in the prior month that were necessary because the tenant failed to maintain the property. §562A.28. Both landlords and tenants have responsibilities when it comes to maintaining the propery.

The tenant is required to maintain the dwelling unit as set forth in §562A.17, which states the following: The tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety.
2. Keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises permit.
3. Dispose from the tenant's dwelling unit all ashes, rubbish, garbage, and other waste in a clean and safe manner.
4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits.

5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises.
6. Not deliberately or negligently destroy, deface, damage, impair or remove a part of the premises or knowingly permit a person to do so.
7. Act in a manner that will not disturb a neighbor's peaceful enjoyment of the premises.

Some of the landlord's obligations are found in section 562A.15: Landlord to maintain fit premises, which includes: (1) The landlord shall:

a. Comply with the requirements of applicable building and housing codes materially affecting health and safety.
b. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.
c. Keep all common areas of the premises in a clean and safe condition. The landlord shall not be liable for any injury caused by any objects or materials which belong to or which have been placed by a tenant in the common areas of the premises used by the tenant.
d. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord
e. Provide and maintain appropriate receptacles and conveniences, accessible to all tenants, for the central collection and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal.
f. Supply running water and reasonable amounts of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

A rental agreement shall not contain provisions that are unconscionable. "Unconscionability" is defined in section 562A.7 and states as follows:

1. If the court, as a matter of law, finds that:
a. A rental agreement or any provision of it was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of an unconscionable provision to avoid an unconscionable result.
b. A settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of an unconscionable provision to avoid any unconscionable result.
2. If unconscionable is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

A bargain is "unconscionable at law" if it is "such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other." *Casey v. Lupkes,* 286 N.W.2d 204, 207 (Iowa 1979). The Court determines unconscionability as of the time the lease was entered. *Id.* at 208.

The Plaintiff makes six claims for damages in this case: (1) that Defendant James Clark, R-1, L.L.C, Gilbert Manor, LLC individually and/or as a manager participated in tortious

conduct and/or under the doctrine of *respondeat superior* for overcharging for repairs; (2) that the automatic carpet cleaning charges contained in the lease are illegal; (3) that the cleaning charges and charges for the repair of a bathroom door are excessive; (4) that the Defendant engaged in abuse of process and violations of the Iowa consumer credit and debt collection statutes; and (5) that the Plaintiff is entitled to punitive damages for the willful withholding of the security deposit.

Paragraph 37(e) of the written lease entered into between the parties, relating to carpet cleaning, states that '*The carpets throughout the building are professionally cleaned each time apartments turn over occupancy. Tenants agree to a charge starting at $95.00 (efficiency) not to exceed $225.00 (6+ bedrooms) being deducted from the deposit for professional cleaning at the expiration of the Lease.*" While the provisions of the IURLTA allow the parties to contact for carpet cleaning, including the costs and specific conditions for cleaning, the terms of this lease requiring the tenant to agree that the amount of cleaning shall be deducted from the deposit is in violation of §562A.12 and is unconscionable. Amounts to be deducted from a tenant's security deposit can only be retained by the landlord if §562A.12 is adhered to by the landlord. The tenant is then provided the opportunity to challenge those amounts and hold the landlord to his/her burden of showing that the amounts withheld were reasonable to restore the property to its condition prior to the commencement of the tenancy. The requirement that costs for carpet cleaning shall be withheld from the tenant's deposit requires the tenant to forgo their claim or rights as defined in §562A.7(2) and therefor the Court FINDS this provision in the lease unenforceable. The Court ALSO FINDS that the evidence presented by the Defendants in this case regarding the condition of the carpeting at the termination of the tenancy was insufficient to show that the carpet was damaged by the Plaintiff or other tenants such that it was beyond the level of ordinary wear and tear and therefore the charges assessed by Defendant Apartments Downtown, Inc. should not have been withheld from the Plaintiff's security deposit.

In addition, Paragraph 33(a) of the written lease agreement sets forth the following: "*Unless the Landlord is negligent, Tenants are responsible for the cost of all damages/repairs to windows, screens, doors, carpet, and walls, regardless of whether such damage is caused by residents, guests, or others.*" At trial, Defendant Apartments Downtown provided a written explanation (Defendant's Exhibit M) entitled "*Provisions in the lease that show the Tenants have agreed to pay for damages to their doors*" and identified seven locations in the lease that places such responsibility on the tenant and not the landlord for such repairs:

1. *Section 16-Tenants use the highest degree of care in maintaining rented premises. Necessary repairs will be charged to the Tenants.*
2. *Section 30- Tenants agree to pay for all damages to the apartment doors.*
3. *Section 33a-Tenants are responsible for the cost of all damages/repairs to doors.*
4. *Section 33d-A preventative maintenance crew will be entering the apartment during Summer months to repair any damages. All charges must be paid immediately or subtracted from deposit.*
5. *Section 33e-List estimated door costs at $386.00.*
6. *Section 33f-All charges must be paid immediately or they are added to the account's rent due balance and accumulate late fees. $70 per hour plus materials.*
7. *Section 10e-All charges on rental account shall be paid immediately or they will be added to the rent due balance and collected as late rent with late fees.*

The evidence presented by Defendant Apartments Downtown, Inc, regarding the damage to the bathroom door, was insufficient to prove that the problems with the door, if any, were caused by the Plaintiff, another tenant, or a guest or visitor of the Plaintiff or other tenants. However, the lease provisions promulgated by the Defendant requires the Plaintiff and other tenants to be responsible for both damages and repairs, which may be necessary when any door or other aspect of the property for that matter, due to age or poor quality construction, begins to deteriorate and thus requires repair. The Defendant's various paragraphs within the lease require the tenant to make all repairs to all doors, no matter what the cause.

Again, pursuant to the general provision of IURLTA, parties are free to contract regarding terms and conditions and respective responsibilities within the rental agreement, so long as the terms and conditions contained in the lease are not prohibited by Chapter 562A or other rule of law, including rent, terms of the agreement, and other provisions governing the rights and obligations of the parties. The rental agreement cannot provide that the tenant or the landlord will agree to waive or to forego rights or remedies under the chapter, authorize a person to confess judgment on a claim arising out of the rental agreement, agree to pay the other party's attorney fees or agreesto the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith.

The specific provisions within this lease requiring the tenants to be responsible for all repairs to doors, removes the landlords obligations under Chapter 562A and places them with the tenant, including the requirement that cost of the repair be paid immediately or it will be withheld from the tenant's security deposit. Section 562A.15 requires the landlord, not the tenant to maintain fit premises, including making all repairs and doing whatever is necessary to put and keep the premises in a fit and habitable condition. The written provision that the tenant is liable for "repairs" removes the obligation of the landlord to maintain fit premises and assesses the cost of upkeep of the premises on the tenant. By automatically assessing the repair cost and withholding it from the tenant's security deposit, this prevents the tenant from exercising the tenant's legal right to challenge the assessed cost. The Court FINDS these provisions abdicating the landlord's responsibilities and evading the landlord's obligations to be unconscionable and not enforceable. Based upon the Court's finding that the amount assessed to the Plaintiff and other tenants for the bathroom door repair to be improper, the late fees assessed for the non-payment of the repairs to the door are also unreasonable and should not have been withheld from the tenant's security deposit.

The Plaintiff also claims that the charges assessed by the Defendant Apartments Downtown, Inc, for the cleaning charges and drip pans to be unreasonable and unnecessary. The Court agrees. While the Defendant has provided photographs of the apartment purported to have been taken on July 30, 2012, the contrast between the Defendants photographs and the Plaintiff's photographs are quite notable. Most specifically, the comparison between the rims of the drip pans in Plaintiff's photograph in Exhibit 4 and Defendant's photograph in Defendant's Exhibit AA are concerning. The Court FINDS the Plaintiff's testimony, the testimony of George Perry, and co-tenant Victoria Isenhour's testimony to be credible regarding the condition of the property at the termination of the tenancy.

Upon the evidence submitted, the Court THEREFORE FINDS that the costs assessed for general cleaning, and the replacement of the drip pans deducted from the security deposit were unreasonable and unwarranted. THEREFORE, the Plaintiff is entitled to an award

of $904.33, the balance of the security deposit wrongfully withheld by the Defendant Apartments Downtown, Inc.

The Plaintiff requests that the Court award her damages for the bad faith retention of the security deposit and for damages due to Defendant Apartment Downtown's willful use of unconscionable provisions in the rental agreement (carpet and repairs to doors). The Court finds these requests to be appropriate based upon the evidence presented in this matter and awards the Plaintiff $200.00 in punitive damages for the bad faith retention of the security deposit. In addition, the Court FURTHER FINDS that the Defendant willfully used this rental agreement containing at least two provisions known by the landlord to be prohibited under 562A.11 (paragraphs 37(e) and 33(a)), and the Plaintiff is therefore awarded two month's rent in the amount of $2,770.00.

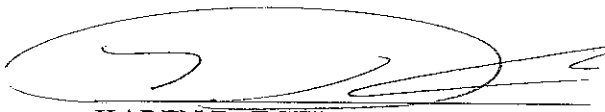
Upon the evidence submitted, the Court is unable to find that the Plaintiff has sustained her burden that James Clark should be held personally liable for any illegal conduct in this matter. The Court is unable to find that the Defendant(s) James Clark, R-1, or Gilbert Manor, LLC, or Defendant Apartments Downtown, Inc., engaged in a violation of the Debt Collection Act or that the Defendant(s) engaged in an abuse of process for the reasons substantially set forth in Defendant Joseph Clark and Apartment Downtown's Trial Memorandum.

Accordingly, the Court now ORDERS that judgment enter in favor of Plaintiff Lenora Caruso and against the Defendant Apartments Downtown, Inc. in the amounts of $904.33 (balance of security deposit wrongfully withheld); $200.00 (punitive damages for bad faith retention of security deposit); $2,770.00 damages calculated as two month's rent for the Defendant's willful use of a rental agreement containing provisions that the Court FINDS that the Defendant knew to be prohibited, a total of **$3,874.33**. The Court further awards attorney fees as costs in this matter in the amount of $1,200.00 to Attorney Boyer and reduced fees in the amount $2,400.00 to Attorney Warnock. The Court apologizes to the parties for the delay in this ruling.

The parties are informed of their right to appeal by filing a written notice of appeal no later than twenty (20) days from the date of the filing of this ruling.

Appeal bond: $5,000.00.

Clerk to notify.



KAREN D. EGERTON
Magistrate, Sixth Judicial District