IN THE SUPREME COURT OF IOWA

No. 14-0820

ELYSE DE STEFANO,

Plaintiff-Appellant/Cross Appellee,

vs.

APTS. DOWNTOWN, INC,

Defendant-Appellee/Cross Appellant.

APPEAL FROM THE JOHNSON COUNTY DISTRICT COURT
THE HONORABLE NANCY BAUMGARTNER JUDGE

APPELLANT'S FINAL BRIEF

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STATEMENT OF THE CASE

COURSE OF PROCEEDINGS

Plaintiff/Appellant Elyse DeStefano, ("Tenant") filed a petition against Defendant/Appellee Apts. Downtown ("Landlord") in the small claims division of Johnson County District Court on October 10, 2011 and was permitted to proceed *in forma pauperis*. Docket, Apx. 2. Tenant claimed that Landlord had violated the Iowa Uniform Residential Landlord Tenant Act, ("IURTLA") codified at Iowa Code Chapter 562A. Petition.

The case proceeded to trial on July 18, 2012 and on June 10, 2013 in a 17 page memorandum opinion, Magistrate Egerton found in favor of Tenant. Docket, Apx. 6; Trial Court Judgment, Apx. 97.

Landlord appealed and on district court appeal Judge Baumgartner, in an 11 page ruling entered May 5, 2014, partially reversed the magistrate's ruling District Court App. Ruling, Apx. 98-108.

Tenant appealed and sought discretionary review, which was granted October 1, 2014. Notice of Appeal, Apx. 109.

FACTS

Tenant, an undergraduate student, along with her roommates rented a house from Landlord. Lease, Apx. 13. The house's side door was kicked in by an unknown burglar. Trial Court Judgment, Apx. 83; District Court App.

Ruling, Apx. 100. Tenant was subsequently charged $598.46 by Landlord for the repair of the door. Trial Court Judgment, Apx. 83; District Court App. Ruling, Apx. 100. Landlord charged $70 an hour for repairing the door and included its overhead and ordinary business expenses in the repair charges. July 18, 2011 Trial Transcript ("Tr.") 43-4; Def.Exhibit OO, Apx. 17; Trial Court Judgment, Apx. 88; District Court App. Ruling, Apx. 104. Tenant refused to pay for the door and as a result Landlord charged $40 late fees per month and refused to allow a sublease by Tenant. Trial Court Judgment, Apx. 84; District Court App. Ruling, Apx. 100.

ROUTING STATEMENT

Appellant believes that this case presents a substantial issue of first impression with regard to the repair responsibilities of landlords and tenants and thus could be retained in the Supreme Court under Iowa R. App. Proc. 6.1101(2). However, Appellant also believes that the application of the governing statute to the facts of the instant case are fairly straightforward and that under Iowa R. App. Proc. 6.1101(3)(a) that this case could be appropriately transferred to the Court of Appeals.

ARGUMENT

I. THE DISTRICT COURT ERRONEOUSLY REVERSED THE MAGISTRATE'S JUDGMENT

The district court's ruling that landlords can charge their tenants for the criminal acts of third parties is the most important issue presented by Tenant. This ruling, reversing the judgment of the magistrate, strikes at the very heart of the IURLTA by permitting landlords to evade their responsibility to pay for repair and maintenance.

The district court, again reversing the magistrate's judgment, permitted Landlord to levy inflated repair and maintenance charges that include its overhead and ordinary costs of business, violating the IURLTA's actual damages requirement. This is also a ruling with far reaching consequences for landlords and tenants.

The district court's ruling that only Plaintiff's co-counsel be awarded attorney fees is erroneous, but not as important as the substantive landlord tenant issues.

Small claims actions that are tried at law are reviewed for correction of errors at law. A review of statutory construction is at law. The appellate court is bound by the lower courts' findings of fact if supported by substantial

evidence. *GE Money Bank v. Morales*, 773 N.W.2d 533, 536 (Iowa 2009).

A. Landlords Cannot Charge Their Tenants for the Criminal Acts of Unknown Third Parties

Appellant preserved error on this issue as it was ruled upon by the magistrate and district court. Trial Court Judgment, Apx. 94-96; District Court App. Ruling, Apx. 104-5.

At trial the magistrate found that Tenant's door had been kicked in during by an unknown burglar. Trial Court Judgment Apx. 14. Nevertheless, Landlord's lease states, "Tenants agree to pay for all damages to the apartment windows, screens and doors, including exterior unit doors (including random acts of vandalism" Lease ¶30, Apx.14; cited in Trial Court Judgment, Apx. 95. Based on this provision, Landlord charged Tenant $598 for repair of the door damaged by the burglar. Trial Court Judgment, Apx. 83; District Court App. Ruling, Apx. 100.

The magistrate held that this lease provision and the charges made pursuant to it were: (1) illegal under Iowa Code §562A.15, which governs the landlord's responsibility to repair; (2) illegal under *Mastland v. Evans Furniture*, 498 N.W. 2d 682, 686 (Iowa 1993) which permits a landlord to charge only for a tenant's negligent or deliberate acts; and (3) unconscionable. Trial Court Judgment, Apx. 95-6.

On appeal the district court reversed, holding that,

> Iowa Code § 562A.15(2) permits landlords and tenants of single family residences to agree in writing that the tenant perform the landlord's duties, and specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith. See Iowa Code § 562A.15(2) (2013). Iowa Code § 562A.6 defines "good faith" as "honesty in fact in the conduct of the transaction concerned." Iowa Code § 562A.6 (2013).
>
> It is undisputed that the property at issue in this matter is a single family residence. Pursuant to the plain language of § 562A.15(2), the parties were allowed to make an agreement for Plaintiff (as well as her roommates) to perform certain of Defendant's duties, as well as make repairs, and take care of maintenance tasks, alterations and remodeling on behalf of Defendant. The Court finds no evidence in the record that there was a lack of honesty in fact in the conduct of the transaction concerned. Thus, the parties were free to reach an agreement holding the tenants financially responsible for repair of a door damaged by an alleged criminal act, and it was error for Magistrate Egerton to find this lease provision unconscionable. This portion of Magistrate Egerton's judgment should be reversed.

District Court App. Ruling, Apx. 105.

There are two major flaws in the district court's reasoning. The district court is correct that Tenant and her roommates rented a single family home. However, the district court held that under Iowa Code §562A.15(2) that a landlord and tenant may agree that the tenant, "…perform the landlord's duties and specified repairs, maintenance tasks, alterations, and remodeling …" District Court Ruling Apx. 105. The district court incorrectly quoted the statute which in fact says,

> The landlord and tenant of a single family residence may agree in writing that the tenant perform the *landlord's duties specified in subsection 1, paragraph "a", subparagraphs (5) and (6)*, and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.

Iowa Code §562A.15(2).

Rather than allowing a complete assumption by the tenant of all the landlord's repair and maintenance responsibilities, in fact, §562A.15(2) only allows a very limited substitution: the tenant may agree to provide and maintain trash receptacles and running water.

Since the statute specifically limits the assumption of landlord responsibilities to these two subparagraphs, the additional "specified repairs, maintenance tasks, alterations, and remodeling" that can be agreed to by a landlord and tenant must be other than those necessary to comply with the landlord's responsibilities under §562A.15(a)(1)-(4).

Thus a landlord and tenant of a single family home cannot agree that a tenant take on the landlord's responsibility for complying with housing and building codes, for maintaining the premises in a fit and habitable condition, for maintaining common areas and for maintaining electrical, plumbing, sanitary, heating, air conditioning, ventilation and other facilities and appliances. See Iowa Code §562A.15(a)(1)-(4).

Clearly fixing an outside door, as in the instant case, falls under

maintaining the premises in a fit and habitable condition, and as such this responsibility cannot be delegated to the tenant, even in a single family home.

This also clearly necessary from a policy standpoint. One of the key purposes of the IURLTA is, "To insure that the right to the receipt of rent is inseparable from the duty to maintain the premises." Iowa Code §562A.2(2)(c). Interpreting §562A.15(2) to allow the assumption by a tenant of *all* landlord repair and maintenance responsibilities clearly violates a fundamental objective of the act. If true, only the most philanthropic or misinformed landlords would ever make a repair or do maintenance since they can with ease contractually relieve themselves of any and all responsibilities under §562A.15.

The second major flaw in the district court's reasoning is that §562A.15(2) allows only an agreement that, "the *tenant perform the landlord's duties* specified in subsection 1, paragraph "a", subparagraphs (5) and (6), and also specified repairs, maintenance tasks, alterations, and remodeling." There is no provision for the landlord to perform repairs and then charge the tenant for them.

In the instant case the Lease did not follow the plain language of §562A.15(2) and require the Tenant themselves to make repairs. Rather, Landlord did the repair and Tenant was charged for it. As provided by the

Lease[1] the Landlord repaired the door, charging $598, which the district court subsequently awarded to them on appeal, reversing the magistrate. District Court App. Ruling, Apx. 100, 108.

As noted, the express purpose of the IURLTA is, "[t]o insure that the right to the receipt of rent is inseparable from the duty to maintain the premises." Iowa Code §562A.2(2)(c). Section 562A.15(2), allowing the tenant to perform repairs, is an exception to the general statutory rule of landlord repair. Thus it is,"…a statutory exception which should be strictly construed so as not to encroach unduly upon the general statutory provision to which it is an exception." *Peoples' Gas & Elec. Co. v. State Tax Commission*, 28 N.W.2d 799, 803 (Iowa 1947); see also *Polk County Juvenile Home v. Iowa Civil Rights Com'n*, 322 N.W.2d 913, 916 (Iowa App. 1982).

As an exception to the general requirement of landlord repairs, §562A.15(2) must be strictly construed. Thus, since its express statutory language requires the tenant to perform the repairs, a landlord may not rely on §562A.15(2) to justify doing its own repairs and then charging the tenant for them.[2]

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[1] Only Landlord's maintenance branch was permitted to do repairs under the Lease. Lease ¶33(c), Apx. 14.

[2] Tenant believes that the wording of this provision, whose plain language

Sections 562A.15(2)&(3) appear to be "handyman" exceptions, allowing tenants with carpentry or other skills to bargain for reduced rent in return for doing limited repairs and maintenance themselves. This limited exception cannot be expanded to allow a landlord to charge a tenant for repairs because, as this case shows, it then permits leases that eliminate the landlord's responsibility for repairs and maintenance.

This statutory exception allowing landlords to require tenants to repair and maintain needs careful scrutiny. Wide use of §562A.15(2) is inappropriate for the young undergraduate tenants in this case and, in fact, for most tenants. As the Supreme Court noted in its landmark landlord tenant decision in *Mease v. Fox*, "today's city dweller usually has a single, specialized skill unrelated to maintenance work; he is unable to make repairs like the `jack-of-all-trades farmer…'" *Mease v. Fox*, 200 N.W.2d 791 at ¶ 32 (Iowa 1972) citing *Javins v. First National Realty Corporation*, 428 F.2d 1071, 1078-1079 (D.C. App. 1970). As we can see in the instant case, under Landlord's interpretation, as adopted by the district court, the limited handyman exception of §562A.15(2) expands

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requires that the tenant perform the repairs, is significant. For example, §562A.27(4)(d), which allows the tenant to offset rent owed with the cost of repairs does not state that the tenant must perform the repairs, as in §562A.15(2), but that, "…the tenant in good faith *caused the condition constituting the breach to be corrected*…§562A.27(4)(d).

to swallow all landlord responsibility for repair and maintenance payment.[3]

The sweeping results of the district court's repair charge ruling are obvious given the facts of this case where Tenant was charged by the Landlord for repairs due to the criminal acts of an unknown third party. This flies in the face of *Mastland v. Evans Furniture*, 498 N.W. 2d 682 (Iowa 1993) where the Supreme Court held, "…the landlord may keep the rental deposit only if the damages beyond normal wear and tear result *from the deliberate or negligent acts of the tenant, or the tenant knowingly permits such acts*." *Mastland*, 498 N.W. 2d at 686.[4]

We should also note that the reference to "keeping the security deposit" in *Mastland* disposes of the argument that there is somehow a difference between being responsible for repairs and paying for repairs. A landlord is not discharging its statutory obligation to repair if it merely picks up the phone and calls a contractor, but then sends the bill to the tenant. The landlord must also pay for the repair, unless, of course it was due to the negligence or a deliberate act of the tenant. The responsibility to pay for repair is inextricably linked with the responsibility to repair. As noted by the Supreme Court in *Mease v. Fox*,

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[3] Appellant would assert that it is unconscionable for a lease to contain a provision providing for tenant to perform repairs under §562A.15(2)or(3), if the tenant is not actually able to perform the repairs themselves, for example, is elderly, disabled or lacks the required license or equipment for the repair.
[4] Cited in Trial Court Judgment, pp. 15.

one of the reasons to require landlords to be responsible for repairs and maintenance is that, "Low and middle income tenants, even if they were interested in making repairs, would be unable to obtain any financing for major repairs since they have no long-term interest in the property." *Mease v. Fox*, 200 N.W.2d 791 at ¶ 32 (Iowa 1972) citing *Javins v. First National Realty Corporation*, 428 F.2d 1071, 1078-1079 (D.C. App. 1970).

The district court's ruling permits landlords to charge tenants for any and all repairs and maintenance and its effect is not limited to tenants in single family houses. Section 562A.15(3) provides that,

> The landlord and tenant of a dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only:
> a. If the agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration;
> b. If the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

Iowa Code §562A.15(3).

If, as the district court ruled, the phrase "specified repairs, maintenance tasks, alterations, or remodeling" means all the landlord's repair and maintenance responsibilities, and charging the tenant for repairs is legally the same as the tenant themselves performing repairs, then the process is quite simple. In order to force tenants in a multi-unit building to pay for all repairs

and all maintenance a landlord need only require the signing of a separate standard repair addendum along with its standardized, boilerplate lease. The addendum can state that it was entered into in good faith and with adequate consideration and does not diminish the responsibility of landlord to other tenants.

Thus, if we follow the rationale of the district court's ruling, with a simple change to their lease or leasing procedure, Iowa landlords can charge for all repairs and maintenance for all tenants. In one fell swoop the district court's ruling eviscerates the IURTLA's fundamental requirement of landlord repair and maintenance. The facts of this case make crystal clear the district court's error in making this ruling as it is manifestly unjust for Tenant to have to pay for the criminal acts of unknown third parties. This Court should reverse the district court's ruling on repair charges, restoring the magistrate's judgment.

B. Landlord Illegally Refused to Permit a Sublease by Tenant

Error was preserved on this issue as it was ruled on by the magistrate and on district court appeal. Trial Court Judgment, Apx. 84, 96; District Court App. Ruling, Apx. 105.

Tenant sought permission from Landlord to sublease her unit and was rejected because she refused to pay the charge for repair of the door damaged by burglars. District Court App. Ruling, Apx. 105. The trial court had held

that since the provision imposing the repair charge on Tenant was illegal that the refusal to sublease was unjustified, awarding as damages the two months rent paid when she was unable to sublease. Trial Court Judgment, Apx. 96.

The district court reversed holding that,

> …because the lease provision regarding the tenant's financial responsibility for damage to exterior doors, including random acts of vandalism, was not prohibited, illegal or unconscionable, Defendant properly withheld approval of the proposed sublease due to the tenants' failure to pay what they owed to repair the exterior door.

District Court App. Ruling, Apx. 105.

If the lease provision used to charge Tenant for the criminal acts of third parties was legal, the district court is correct that the Landlord's refusal to permit subleasing was appropriate.[5] However, if landlords may not charge their tenants for the criminal acts of third parties, a refusal to sublease because the tenant refused to pay these charges is unjustified. This Court should overturn the district court's ruling reversing the magistrate's award of damages for failure to sublease.

[5] It is clear that Landlord would have agreed to sublease if Tenant was willing to pay for the damaged door and resulting late fees. See May 11, 2011 document prepared by Landlord but unsigned by Tenant. Plaintiff's Exhibit 11, Apx. 16.

C. Landlords Cannot Charge Their Overhead or Ordinary Business Expenses as Part of Their Costs of Repair

1. Error Preservation

With regard to error preservation on this issue the magistrate specifically held that it was inappropriate to include overhead and ordinary business expenses in the cost of repair and that Landlord's cleaning and repair charges were excessive,

> While the Defendant has taken exceptional steps to consolidate the business of renting and maintaining properties to tenants in the Iowa City area, it appears quite apparent that the costs of operating such a large business, including liability insurance and employee retirement benefits have been passed onto to the tenant. In some instances, such as paying a supervisor to drive to a property to look at weeds and then pay him to contact another employee to come [and] remove weeds and then ultimately paying another employee to remove the weeds, [are] not only unreasonable, but almost comical.

Trial Court Judgment, Apx. 93.

The district court noted, "Plaintiff's next argument is that the landlord may not charge tenants its ordinary business expenses by passing along high hourly rates to the client in order to pay for the costs of operating the landlord's business." District Court App Ruling, Apx. 104. After noting Tenant's argument, but without further explanation of its rationale, the district court awarded Landlord the full amount of the charges it sought for the entry door repair. District Court App Ruling, Apx. 108.

Tenant would note that the issue of including overhead and ordinary business expenses in repair charges was extensively briefed to the district court. District Ct. Appellee Brief, 17-20; District Ct. Appellant Brief, 5-6. In *Devoss v. State*, 648 N.W.2d 56 at ¶35-7 (Iowa 2002) the Supreme Court held,

> We have in a number of cases upheld a district court ruling on a ground other than the one upon which the district court relied provided the ground was urged in that court. See, e.g., *Interstate Power Co. v. Ins. Co. of N. Am.*, 603 N.W.2d 751, 756-58 (Iowa 1999) [additional citations omitted] *We have likewise applied the rule in reversing a district court ruling.* See *Fencl v. City of Harpers Ferry*, 620 N.W.2d 808, 811-12, 818-19 (Iowa 2000)

Devoss v. State, 648 N.W.2d 56 at ¶43-4. In addition, because this is an appeal of a small claims case, a motion to enlarge under Iowa R. Civ. P. 1.904(2) is not available. See *Midwest Recovery Services v. Cooper*, 465 N.W.2d 855, 857 (Iowa 1991). Thus Tenant would assert that error has been preserved on the issue of the legality of including overhead and ordinary business expenses in repair and maintenance charges.

2. Landlords Cannot Charge Overhead and Ordinary Business Expenses as Part of the Cost of Repair

Thus not only did Landlord illegally charge Tenant for the cost of repairing the door damaged by burglars, but Landlord also overcharged Tenant for the repair by including its overhead, administrative and other ordinary costs of business without proof that these charges were directly related to the

damage. Landlord charges $70 per hour for repairs, which includes,

> Salaries/hourly pay, overtime expense, Social Security taxes, Medicare taxes, Workmans [sic] comp, Federal taxes, State taxes, bonus/longevity pay, depreciation, advertising, 401k plan, health insurance, legal fees, equipment rental, business license, gen. liability insurance, utilities/phone, vehicle expense, mileage expense, accounting, postage and supplies, IT expense/hardware/software, Misc.other.

Hourly Cost Breakdown, Defendant's Exhibit OO, App 17.[6]

The trial court held that Landlord's cleaning and repair charges were excessive,

> While the Defendant has taken exceptional steps to consolidate the business of renting and maintaining properties to tenants in the Iowa City area, it appears quite apparent that the costs of operating such a large business, including liability insurance and employee retirement benefits have been passed onto to the tenant.

Trial Court Judgment Apx. 93.

These charges are clearly inappropriate. The Supreme Court has held that under the URLTA when a lease is breached a landlord may only recover their actual damages,

> …we agree with [the tenant] that the *landlord is not entitled to recover if no evidence substantiates that actual damage has been sustained.* Section 562A.32 provides the landlord "may have a claim . . . for actual damages for breach of the rental agreement."…Here, the landlord did not present any testimony or other evidence to support the value of its demand for debris removal. In fact, the landlord did not

[6] The $598 door charge was for the full replacement cost for a new door as no evidence was presented as to the fair market value of the damaged door.

> present evidence that Frost's debris was removed. *Absent evidence that actual damages were sustained*, it was error to award any sum for debris removal.

D.R Mobile Home Rentals v. Frost, 545 N.W.2d 302 at ¶34-5 (Iowa 1996).

With regard to what can appropriately be charged as actual damages as the trial court held,

> 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 *Schlitz v. Cullen-Schlitz & 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).

Trial Court Judgment, Apx. 91.

Furthermore, as a general rule, the cost of repairs properly charged as damages includes only the reasonable costs of labor and materials, not overhead or administrative costs. See e.g., *City Wide Associates v. Supreme Judicial Court of Mass.*, 564 N.E.2d 1003 at ¶14 (Mass 1991) ("…cost of materials and labor to repair the damage done by the tenant"); *Matus v. State*, No. A-9998 at ¶55 (Alaska App.2009) ("In the case of a repair estimate, it is a prediction of how much money would be needed {e., the cost of materials and labor}to restore the property.").

Landlord has not suffered any additional costs directly attributable to its

overhead or ordinary business expenses if Tenant breaches the lease as these are costs that it must pay regardless of whether the lease is breached.[7] As the Supreme Court has held, "…no one should profit more from the breach of an obligation than from its full performance." *Midland Mut. Life Ins. Co. v. Mercy Clinics, Inc.*, 579 N.W.2d 823, 830 (Iowa 1998) citing 22 Am.Jur.2d Damages § 568 (1988).

In addition, allowing landlords to charge their overhead and administrative costs would cause very wide variations in the charges made to tenants, with very large landlords being permitted to make very large charges, while the exact same work done by a small landlord would be charged at a much lower rate. Tenants would also point out that if actual damages include overhead, administrative and ordinary business costs, this means that tenants would also be able to charge a landlord these costs if a landlord breached the lease or IURLTA.

Setting the cost for repair at the reasonable out of pocket cost of just labor and materials is fair for both landlords and tenants, and allows for a level playing field for all landlords, large and small. The district court's ruling,

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[7] Even if charging overhead or ordinary business expenses were appropriate, Landlord failed to prove the amount directly attributable to the breach. At trial Landlord's business manager stated, "So how [do] we come up with the $70 an hour, that is agreed by the tenants when they sign it." Tr. 61.

awarding repair and maintenances charges to Landlord which include its ordinary costs of business and overhead, should be reversed.

D. Tenant's Lead Counsel's Attorney Fees Should Be Paid

While both Tenant's lead counsel, Christopher Warnock and Tenant's co-counsel, Christine Boyer, filed attorney fee affidavits[8] the district court awarded attorney fees only to Ms. Boyer,

> Iowa Code §562A.12(8) provides that the Court may, in any action on a rental agreement, award reasonable attorney fees to the prevailing party. Plaintiff has prevailed on several of her claims. Further, the Court concludes that the attorney fee affidavit filed by Attorney Christine Boyer on June 21, 2013 includes a sufficient breakdown of the attorney fees sought by Plaintiff's counsel such that the Court can, and does, determine that the fees sought are reasonable.

District Court App. Ruling Apx. 108.

Tenant would note that both affidavits were filed on June 21, 2013. Apx. 18, 21. Furthermore, as an examination of the affidavit cost breakdowns reveals, the level of detail in Ms. Boyer's affidavit is almost identical to that of Mr. Warnock's affidavit, making the district court's denial of Mr. Warnock's fees difficult to fathom. Attorney Fee Affidavits, Apx. 20, 22.

The district court's ruling denying attorney fees should be reversed and this case remanded for the determination of trial and appellate attorney fees.

[8] Affidavits of Attorneys Warnock & Boyer, Apx.18-20; Apx. 21-2,

See *Bankers Trust Co. v. Woltz*, 326 N.W.2d 274, 278 (Iowa 1982); (unless statute otherwise provides, attorney fees includes appellate attorney fees).

II. CONCLUSION

Is it legal for a landlord to charge its tenants for the criminal acts of unknown third parties? Is it just to require that a tenant recompense her landlord for damage she did not cause? The trial court resoundingly said, "no".

Yet as a matter of both law and of conscience, the district court found that this standardized, boilerplate lease provision, signed by a young undergraduate, resulting in a $598 repair charge for damage caused by an unknown burglar, was perfectly acceptable.

As shown by its standard lease, signed by thousands of Iowa City tenants, Landlord charges its tenants for damage they neither caused nor knew about. Compounding the injury Landlord includes its inflated overhead and ordinary costs of business when charging tenants for repairs. This Court should put an end to these unjust and illegal practices.

The ill effects of accepting the district court's rationale would extend beyond the unjust imposition on tenants of the cost of damage by unidentified perpetrators. It would dismember a fundamental objective of the IURLTA: the landlord's responsibility for repair and maintenance.

WHEREFORE, Plaintiff/Appellant Elyse DeStefano requests that the district court's ruling on small claims appeal be reversed insofar as it reverses the magitrate's judgment and that the case be remanded for the determination of Appellant's counsel's trial and appellate attorney fees.

REQUEST FOR ORAL SUBMISSION

Appellant requests oral argument.

Respectfully submitted,

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CERTIFICATE OF RULE 6.1401 COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)g(1) because this brief contains 4469 words, excluding the parts exempted by Iowa R. App. P. 6.903(1)(g)(1).

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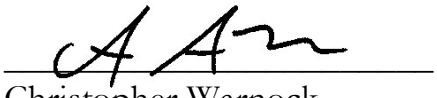

Christopher Warnock

January 20, 2015