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

ELYSE DE STEFANO,

Plaintiff(s),

vs.

APTS. DOWNTOWN, INC.,

Defendant(s).

NO. SCSC080575

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

June 10, 2013

On the 18th day of July, 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 and Defendant's counterclaim for unpaid rent and charges stemming from tenancy. This matter was tried as the first of three companion cases: Sophie Borer vs. Joseph Clark, et al, SCSC081695, tried September 14, 2012; and Lenora Caruso v. Joseph Clark, et al, SCSC081696, tried October 12, 2012 and November 9, 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 October 3, 2011;
2. Court's Order granting application to defer payment of costs filed October 4, 2011;
3. Petition for a Money Judgment in small claims (12 pages) with attached exhibits 1-11 filed October 4, 2011;
4. Return of service filed October 7, 2011;
5. Appearance of Counsel (Joseph Holland) and Defendant's Motion to Strike or Require Recast of Plaintiff's Pleading both filed October 21, 2011;
6. Letter from Attorney Christopher Warnock to Clerk of Court (availability for trial dates) filed October 10, 2011;
7. Defendant'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;
8. Plaintiff's Response to Defendant's Motions to Consolidate and Strike filed October 26, 2011;
9. Order to Stay & Consolidate, issued by the Honorable Judge Mitchell Turner in LACV072840, Conroy, et al v. Apts. Downtown, filed October 28, 2011;
10. Ruling in Michael Conroy, et al, Elyse Stefano v. Apts. Downtown, Inc. LACV072840, issued May 17, 2012, by the Honorable Judge Paul Miller (denying Plaintiff's Amended and Substituted Motion for Partial Summary Judgment);
11. Motion to Transfer Michael Conroy, et al, Elyse Stefano v. Apts. Downtown, Inc. LACV072840, filed May 23, 2012;
12. Ruling on Plaintiff's Motion to Transfers, granted by the Honorable Judge Patrick Grady, filed June 8, 2012;

13. Small Claims Trial Notice filed June 8, 2012; Plaintiff's letter to Clerk of Court regarding available trial dates;
14. Defendant's Motion to Change Trial Date; Motion to Try Case Separately from Two Other Small Claims Cases, filed June 15, 2012;
15. Plaintiff's Resistance to Motion to Continue, filed June 18, 2012;
16. Subpoena issues to Apts. Downtown by Plaintiff and Return of Service, filed July 6, 2012;
17. Order continuing the two companion cases and maintaining trial date for July 18, 2012;
18. Counterclaim Against Plaintiff filed by Defendant Apts. Downtown filed July 13, 2012;
19. Original Notice and Petition Against Third Party Defendants Meghan Crotty, Hillary Block and Jennifer Connelly, filed July 13, 2012;
20. Dismissal of Third Party Defendants filed July 18, 2012;
21. Defendant Apts. Downtown Inc. Memorandum of Law, filed July 18, 2012;
22. Plaintiff's Hearing Memorandum, filed July 18, 2012;
23. Plaintiff's Motion to Join, filed February 13, 2013;
24. Defendant's Resistance to Motion to Join, filed February 18, 2013;
25. Plaintiff's Reply to Defendant's Resistance to Motion to Join, filed February 18, 2013.

At the time of trial, on July 18, 2012, the Defendant's Motion to Strike, with the exception of the exhibits attached and later offered into evidence, was GRANTED. 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 July 18, 2012, the Plaintiff Elyse DeStefano appeared in person and with her attorneys Christopher Warnock and Christine Boyer. The Defendant Apts. Downtown, Inc. appeared by Joseph Clark and Defendant's attorneys Joseph Holland and James Affeldt. The Court received the testimony of the parties, witnesses, and exhibits submitted by the Plaintiff and the Defendant. Upon the matter submitted, the Court now makes the following findings of fact.

Pursuant to a written lease agreement, the Plaintiff and three other tenants, Hillary Block, Meghan Crotty, and Jennifer Connelly, rented a four bedroom apartment/residence from the Defendant located at 516 Bowery Street, in Iowa City, Johnson County, Iowa. The tenancy period ran from July 31, 2010 to July 26, 2011. Pursuant to the rental agreement, the Plaintiffs provided a $1,635.00 security deposit (one month's rent). The written lease agreement was four pages long but held 70 paragraphs of lease provisions in extremely small type. The lease was signed by Meghan Crotty and Hillary Block on December 10, 2009; by Jennifer Connelly on April 29, 2010; and by the Plaintiff on July 7, 2010. The lease was also signed by the landlord's representative Jessica Vesto (sp) on December 10, 2009. The Defendant and the other tenants moved into the property, paid the required security deposit, and paid monthly rent throughout the rental period. On July 26, 2011, the Plaintiff and other tenants vacated the property and provided the keys to the unit and a forwarding address to the Defendant.

In a letter dated August 25, 2011, the Defendant, Apartments Downtown, sent a letter to tenant Meghan Crotty, who had been designated with the lease as the "deposit holder," at her address in Addison, Illinois, a "Security Deposit Statement 2011," setting forth the deductions withheld from the security deposit provided by the tenants. The deductions were set forth as follows:

Carpet Cleaning:	$ 191.00
Cleaning Charges:	$ 280.00
Past Due Rent & Fees on Acct:	$1,308.45
Lawn Clean Up:	$ 60.00
Screens (Kitchen, BR 2):	$ 150.00
Blinds (BR 2, 4):	$ 99.00
Removal & disposal of Tenant items	
Bed mattress in front lawn:	$ 50.00
TOTAL DEDUCTIONS:	$2,135.45
TOTAL (Due)	$ 503.45
Pay Within 30 DAYS	

Plaintiff Elyse De Stefano testified that, prior to moving out of the apartment, she and the other tenants cleaned the entire apartment thoroughly, including the carpeting. The Plaintiff provided photographs depicting the condition of the apartment at the time she and the other tenants completed their cleaning of the property. The Plaintiff contests the deductions from the security deposit for the carpet cleaning and the cleaning charges based upon her thorough cleaning of the property and based upon the condition of the property prior to the Plaintiff and other tenants tenancy. On July 29, 2010, prior to moving into the property, a "Tenant Check-In Inspection Form" was filled out and was signed by Hillary Block. The form noted that in every room there was chipped paint and/or dripped paint and/or missing paints or cracks. The inspection form also noted that the living room flooring had wear marks and was faded. The form noted that in Bedroom #1 the flooring had green stains by a vent and was faded. In Bedroom #2 the flooring was faded and in Bedroom #4 there were two spots of missing carpet and the flooring was faded. The inspection report further noted that the walls overall had drill holes and tape marks and broken dry wall and that doors were scratched. There were also notations of damaged doors and mold on the basement side of the basement door.

The Plaintiff agreed that the blinds were broken during their tenancy, that the lawn and weeds had not been maintained at the end of the tenancy, and that the screens had some holes poked through them in the family room, the kitchen, and the bedroom. The Plaintiff, however, argues that the amounts charged were unreasonable and excessive. The Plaintiff provided no testimony or evidence at trial regarding what would be reasonable charges for these repairs. The Plaintiff agrees with the $50.00 charge that the Plaintiff assessed for disposal of the mattress left at the street at the end of their tenancy. The Plaintiff further testified that her largest concern was the charge of $1,308.45 for past due rent and late fees on her account.

In October of 2010, a burglary occurred while the Plaintiff was a tenant at 516 Bowery Street. The Plaintiff and/or the other tenants reported the burglary to the Iowa City Police Department. The burglary was investigated and it was noted that the door frame to the property and the door lock was damaged and that two to three cans of Coors light beer was stolen as well as a bottle of flavored Smirnoff's Vodka, possibly black cherry. The Defendant, whose business address is 414 Market Street, in Iowa City, Iowa, contacted Iowa City Maintenance, also located at 414 E. Market Street, in Iowa City, Iowa, for repairs of the damaged entry door and frame. The invoice dated October 25, 2010, set forth the charges for "Replacement of Pre-Hung Entry Door/Frame: materials $318.46 and Labor $280.00 for (order, storage, delivery, tear-out, disposal) and further indicated that it was to be billed to: "Residents, 516 Bowery Street, Iowa City, Iowa 52240." The total cost for the damage caused by the criminal act of another on the property at issue in this matter was $598.46. When the Plaintiff and other tenants received the

charge for the repair/replacement of the door, Hillary Block sent a letter dated November 2, 2010 to Bern O'Brien, at Apartments Downtown, at 414 E. Market Street, Iowa City, Iowa, responding to the charge for repair for the criminal acts of another upon the property owned/managed by the Defendant. Ms. Block referred to several paragraphs in the lease and specifically paragraph 30 which stated that, "*Tenants agree to pay all damages to the apartment windows, screen, and doors, including exterior unit doors (including random acts of vandalism).* Ms. Block advised the Defendant, through Bern O'Brien, listed as "Manager" in the lease agreement and the "person designated by Landlord to manage the premises and to receive notices and demands upon the owner of the premises" that the tenants believed the requirement that they accept liability for the criminal act of another was unconscionable and that there was a current police investigation. On November 17, 2010, a letter was sent to Hillary Block in response to her letter challenging the charge for the repair/replacement of the door and frame. The letter set forth that the tenants, "*By signing the lease agreement you agree to pay for all damages to the apartment windows, screens, and doors, including exterior unit doors, including random acts of vandalism. If though* [sic] *the door was broken down during a burglary, the destruction of the door is considered vandalism.*" The letter further went on to state that, "*Even though the door was damaged during the break in, and not by a guest of the tenants, it still falls under the basis or* [sic] *a visitor, whether they are a known guest or not.*" In addition, the author, Allen Warson, Office Manager Apartments Downtown, advised the tenants that, *if the police investigation results in the finding of the guilty party that was responsible for the damage, then at that time we would be more than happy to charge said person(s) for the damage. Until then however, the damage incurred to the property fall under the responsibility of the leased tenants.*" "*At this time you currently still have an outstanding balance of 598.46 on your account, if this would happen to still be current when Decembers [sic] rent comes due, it will accumulate the standard $40.00 late charge.*"

The Plaintiff consulted legal counsel and on December 2, 2010, sent an email to Apartments Downtown and advised then that they would be withholding payment on the door until the end of the year and further advising that if the Defendant were to withhold their deposit, they would seek legal recourse. Allen Warson responded in an email dated December 2, 2010, but apparently misunderstood and believed that the tenants were requesting that the entry door repair be withheld from their security deposit. Mr. Warson advised the Plaintiff that, if the tenants did not pay for the repair bill that by the end of the tenancy, there would be an additional charge of $320.00 in addition to the $598.46 for the damage caused to the property due to the late fees. The Plaintiff and other tenants did not pay the $598.46 and were eventually charged additional late fees of $40.00 per month for the "non-payment of rent."

In May 2011, the Plaintiff and the other tenants were going home for the summer school break and were able to locate other tenants to sublease their unit in order to avoid incurring the $1,635.00 per month rental fee while they lived at home for the summer. When the Plaintiff and other tenants approached the Defendant and requested the Defendant's approval for the sublease, the Defendant refused, citing the Plaintiff's and other tenants' failure to pay the repair/replacement costs of the entry door and the late fees. The Plaintiff and other tenants were then required to continue paying the monthly rent until the termination of the tenancy. While they were gone for the summer, the Plaintiff and other tenants hired someone to maintain the lawn, as required by the lease. When the lawn was not mowed, an email was sent from Apartments Downtown to Jennifer Connelly, advising her that the City of Iowa City Housing Code required them to keep lawns/grass/weeds less than 14 inches in height and further advising

that to avoid the City of Iowa City from mowing the lawn and charging them a "large bill," that the lawn should be mowed immediately.

On June 22, 2011, the Defendant entered the 516 Bowery Street, without proper notice to the Plaintiff and/or other tenants and completed an "Annual Maintenance Tour." While the lease provided in paragraph 33(d) that maintenance may be entering your apartment each year between July 26 and August 31 for necessary repairs for apartment turnover, no notice was provided to tenants of the Defendant's entry into the unit on June 22, 2011. During the unannounced "Annual Maintenance Tour" the four person crew conducting the tour, identified as "BS, BH, BD, and JF" completed a form and indicated that all aspects of the apartment was good, with the exception of the refrigerator door gaskets being torn and eventually repaired on July 12, 2011 at a cost of $129.99 and that two screens were bent/pulled and were repaired on July 12, 2011 at a cost of $110.00 x 2. No other problems were noted in the condition of the unit. On July 18, 2011, the Plaintiff and the other tenants of the property were sent an invoice for the cost of the screen and refrigerator gasket replacements in the amount of $349.99.

On July 22, 2011, The Plaintiff and other tenants were sent an email with "Important Check-Out Information." The Plaintiff was advised that her final inspection appointment had been scheduled for Tuesday, July 26, 2011 at 7:45 A.M. The Plaintiff was advised that the apartment was required to be clean and empty and that all keys had to be returned. The Plaintiff and other tenants were advised that, if the apartment was not cleaned to "Landlord's "A" standard" that the tenants would be charged a minimum $150.00 for cleaning. The tenants were also advised that "Tenants Only Need to Vacuum Carpet!" The email directed the Plaintiff and other tenants of the unit that they "*DO NOT have to set up carpet cleaning. As agreed to in the lease's addendum there will be a charge of $95 -$225 deducted from the tenant's deposit to pay for professional carpet cleaning at the expiration of the lease.*"

On July 26, 2011, Mike Plath as team leader for the Defendant entered the apartment with seven other workers and conducted an inspection of the apartment. Mr. Plath completed a form titled, Iowa City Maintenance Cleaning Form. On the first page of the form beside the reference "CARPET CLNG NECESSARY Y N" both Y and N were circled, with Y being more heavily circled. Mr. Plath then proceeded to rate all aspects of the unit with either an "A" for "Spotless," or a "B" for "Clean," a "C" for "Attempted," a "D" for "Barely Attempted," and an "F" for "Missed." In addition, the form also had a rating of "1" designated as "Dirty" all the way to "10" designated as "No Cleaning Necessary." The form showed various "scores," mostly within the "high average" of 6-8 and indicated that there were beer cases left behind and also set forth what supplies were used (Lime Away, 409, Mr. Clean, Windex, Paper towels, and Easy Off Oven cleaner). Other notations by Inspector "MAC" indicated that there was rust across the front of the refrigerator, that the floor was split in many areas, that the flooring was split in the middle of the living room, that the windows looked bad, that the fan sounded rough, that the carpet was stained and dirty, that there were scrapes on the doors, and that the basement had a small amount of garbage to be removed. In addition, it was noted that a mattress had been left in front of the house.

On August 25, 2011, the Plaintiff and other tenants were advised of the amounts to be withheld from their security deposit. When the Plaintiff and other tenants disputed the charges, they were sent a letter dated September 8, 2011 and written by "Kiara-Apartments Downtown/College Town L.L.C." Within the letter, "Kiara" pointed out various aspects of the lease requiring payment for cleaning, that seven workers spent 1 hour cleaning the apartment,

that Eastern Iowa Landscaping Services performed lawn care at a cost of $60.00, and also enclosed was a copy of the "tenant ledger" for the entire lease year and the "Annual Maintenance Tour inspection report, as well as the final inspection report. Again, the Defendant demanded the payment of $503.45.

On September 19, 2011, individual letters were sent to the Plaintiff and each tenant from "APTS Downtown, Inc./Department of Collections and Litigation" demanding payment of $503.45 for damages to 516 Bowery Street and advising the Plaintiff and other tenants that if the amount was not paid, "*this debt may be taken to small claims court as well as reported to credit agencies. Information reported to a credit agency is part of your credit record for seven years.*"

The Plaintiff requests that the Court award her $1,635.00 for the return of her security deposit, $1,635.00 per month for two month's rent that she was unable to avoid due to the Defendant's refusal to allow her to sublease the apartment because of the unpaid balance on her account, $200.00 in punitive damages and attorney fees, a total of $5,105.00. The Court notes that no attorney fee affidavit was filed with the Court.

Gregory "Joseph" Clark testified that he is the business manager for Apartments Downtown, L.L.C. and that he determines all security deposit returns. Joseph Clark testified as to the business methods that are followed at the termination of a tenancy, including inspections of the units, cleaning by the crew, and related charges for various repairs and cleaning. Joseph Clark testified that the company did a market rate research on the various costs for repairs and cleaning and determined that they could actually provide such services at a lesser cost to tenants than if the work were hired out to various companies or individuals in the community.

Jeffrey Michael Clark testified that he is a maintenance worker, performs carpet replacement and is a jack-of-all-trades employed by Defendant Apts. Downtown, Inc., which is operated by his brother Joseph Clark.

Brian James Clark testified that he oversees the maintenance within Apts Downtown, Inc., that he maintains the upkeep around all the properties, as well as being a brother to Joseph Clark and Jeffrey Clark. The Clarks then provided the following evidence regarding the disputed charges withheld from the Plaintiff's security deposit:

<u>General cleaning charges</u>:

For cleaning staff, Joseph Clark testified that the company charges $35/hour. He testified that, in this particular case, the Defendant paid seven workers each at $35/hour to work for one hour on July 26, 2011 to clean the unit vacated by the Plaintiff, in addition to a $35.00 service charge, a total of $280.00 which was withheld from the security deposit provided by the tenants. Joseph Clark testified that the $35.00 service charge was an administrative charge for having to schedule people to come in to clean. Joseph Clark provided the Court with an exhibit showing the breakdown of various costs to the Defendant which is incorporated in the hourly rate and passed on to the tenants. Included in the typical $40.00/hour cleaning labor costs are the following: salaries/hourly pay; administrative expense; overtime expense; social security taxes; Medicare taxes; Workmans [sic] comp; Bonus/longevity pay; equipment; general liability insurance; utilities/radios; vehicle expense; mileage expense; and cleaning supplies.

Joseph Clark testified that a cleaning crew was sent into 516 Bowery Street on July 26, 2011 to clean. He provided the Court with photographs of specific areas which were purported to require cleaning or repair in 516 Bowery Street but testified that he had not personally viewed the property or taken photographs of the areas requiring cleaning. No

testimony was offered by any member of the cleaning crew as to the exact areas or problems that had to be addressed and cleaned.

Carpet cleaning:

Joseph Clark testified that the Defendant paid Cody's Carpets $191.00 to professionally clean the carpet on July 27, 2011 and that the $191.00 was withheld from the security deposit provided by the tenants. Jeffrey Clark presented photographs which was purported to be of the carpeting in 516 Bowery Street, also designated in the photos as "ZJ-29, Mr. Clark testified that he did not personally view the carpeting and did not take the photographs and therefore cannot testify that the photos were in fact taken in 516 Bowery Street or that the photographs were a fair and accurate depiction of the carpeting in the residence at the time the Plaintiff moved out.

Jeffrey Michael Clark testified that on July 20, 2011, before the Plaintiff and other tenants moved out, he viewed the condition of the house. Jeffrey Clark testified that he was familiar with the residence because he had installed the hardwood floor on the first floor. He testified that he recalled seeing the carpeting at the front door area leading up to the steps and recalls a darker pattern on the steps and "dust balls." He further testified that the carpet was dirty and that he would not have wanted to walk on it without his shoes on. While Jeffrey Clark testified that he believed that the dirty carpeted stairs at the front door was "beyond normal wear and tear," he did not elaborate as to why he felt that the dirt on the stairs was caused by something other than people walking on them during the tenancy. While Joseph Clark provided an invoice from Apartments Downtown as a billing statement to the Plaintiff and other tenants for the cost of the carpet cleaning. No billing statement was entered into evidence from Cody's Carpets showing that the carpeting in 516 Bowery Street was in fact cleaned by Cody's Carpets, the cost of said cleaning, or any particular issues with the carpeting other than "stained and dirty," over and above the stains and condition of the carpet previously noted by the Plaintiff and other tenants prior to moving into the property.

Lawn and weeds:

Joseph Clark testified that there were actually two charges related to the yard care. One charge stemmed from a notice the Defendant received from the City of Iowa City. Within the notice, "College Town Partners," at 414 Market Street, Iowa City, Iowa, was notified of the City Ordinance violation related to 516 Bowery Street for tall grass and weeds. The City of Iowa City's notice set forth that, unless the violation was corrected by May 31, 2011, the City would correct the violation and assess the costs to the Defendant. On May 25, 2011, the Defendant sent an email to Jennifer Connelly and advised her that unless the lawn/grass/weeds were mowed to less than 14 inches in height, the City of Iowa City would mow the lawn and charge them a large bill. The Defendant, within their "History/Notes" entry dated 5/26/11, and related to customer Meghan Crotty by user "Allen," set forth the following: "*Per your signed lease agreement, you are responsible for keeping your lawn mowed. If this is not taken care of by 5/31/11, the city will mow the yard for you at a cost of $100.00. Please have this issue taken care of as soon as possible.*" Joseph Clark testified that the second charge was based upon weeds present at the time of the final inspection, as evidenced by work completed by Eastern Iowa Landscape Services per their invoice date August 4, 2011 for $35.00 for lawn clean up at 516 Bowery Street, as well as photographs depicting the condition of the lawn before and after the lawn was mowed and the weeds removed.

Joseph Clark testified that, after the City of Iowa City ordinance violation notice, they waited until June 17, 2011 to allow the Plaintiff and other tenants to take care of the lawn and weeds. When the lawn was not mowed, the Defendant sent their staff from Iowa City

Maintenance to view the property. Brian James Clark testified that he recalled that he had sent people out to do the annual maintenance tour and that on the tour it was noted that there were weeds outside the residence that were high and that it did not appear that the lawn had been mowed all summer. Brian Clark then went to the property to view the weeds. After viewing the weeds, he then contacted another employee to come to the property to view the weeds and then possibly a third employee may have removed the weeds. The cost for Brian Clark to go to the property to view the weeds and then direct another employee view and/or to remove the weeds was $210.00 and was withheld from the security deposit provided by the tenants. Brian Clark testified that he believed this to be a fair charge for the work involved to supervise and direct the work necessary to maintain the property and rectify the weed issue.

Screens, blinds, and refrigerator gasket:

Joseph Clark testified that the written lease agreement requires the Plaintiff and other tenants to have all maintenance and necessary repairs be performed by Iowa City Maintenance, a company also operated by Joseph, Brian and Jeffrey Clark and located at the same address as Apts. Downtown, Inc. The lease set forth in paragraph 33(c) that "*Iowa City Maintenance will do all repairs to an apartment unless written authorization is secured from the landlord. Iowa City Maintenance charges $70/hour during regular business hours and $90/hour on nights and weekends for services perform (minimum I hour will be billed for service call).* In addition, paragraph 33(d) requires that "*All charges associated with these damages must be paid immediately or they will be subtracted from deposits.*"

Joseph Clark testified that, included in the typical $70.00/hour general labor costs are the following: salaries/hourly pay; administrative expense; supervisory expenses; overtime expense; social security taxes; Medicare taxes; Workmans [sic] comp; Bonus/longevity pay; Employee Benefits -401k Plan; Employee Benefits-Health Insurance; legal fees; equipment rental; general liability insurance; utilities/phone; vehicle expense; mileage expense; accounting; postage and supplies, IT expense/hardware/software; and misc. other. Joseph Clark provided photographs of damages screens and window blinds and a refrigerator gasket purporting to be from 516 Bowery Street. He testified that he did not personally view these damages, believes that his cleaning crew took the photographs, which are also labeled "ZJ-29," which is the Defendant's reference to 516 Bowery Street and are dated July 26, 2011. Joseph Clark provided a billing statement from Apartments Downtown dated July 18, 2011, to the "residents" of 516 Bowery Street demanding payment within 30 days for refrigerator gasket replacement at a cost of $129.99 and entry hall/living room 2 screen replacement $110 x 2, a cost of $220.00, total for those repairs $329.99, which were assessed to the Plaintiff and other tenants as past due rent and withheld from the security deposit provided by the tenants. While Joseph Clark testified that he did not personally view the gasket or know the age of the refrigerator, he surmised that the gasket was damaged by liquids dripping down onto the door of the refrigerator and then when the liquid caused the gasket to stick to the refrigerator when the door was opened, the gasket was torn. No testimony was provided by anyone personally viewing the refrigerator or the person making the repairs.

Joseph Clark testified that there were additional charges for a torn screen in the kitchen and a torn screen in bedroom #2, which were replaced at a cost of $40.00 each with one hour of labor $70/hour, a total of $150.00, which was withheld from the tenants' security deposit. Mr. Clark testified that he believed that the damaged screens were located during the annual maintenance tour and that the repair was done by Marv's Glass, although no billing statement by Marv's Glass was provided showing the actual cost for the screen repair. In addition, broken blinds were noted during the annual maintenance tour in June 2011 and were repaired. A billing statement was also generated showing the cost for blinds broken in bedroom

#2 and bedroom #3 at $14.50 each and two hours of labor at $35.00 per hour, a total of $99.00 was withheld from the tenants' security deposit. No receipt or invoice for the cost of the blinds were provided or submitted to the Court.

Removal and Disposal of Tenant items (mattress):

The Defendant assessed $50.00 for the removal of a mattress left on the front lawn of the property. The Plaintiff agrees this is a reasonable cost to be withheld from her security deposit.

Past Due Rent and Fees on Account:

Joseph Clark testified that an Iowa City Maintenance received a call on October 11, 2010, that the eastside entry door to 516 Bowery had been "kicked in." Iowa City Maintenance generated a "service call" for unit ZJ-29 and the door was replaced at a cost of $318.46 with four hours of labor at $70.00 per hour, a total cost of $598.46. On October 25, 2010, a billing statement from Iowa City Maintenance was generated and indicated that it was to be billed to the Residents of 516 Bowery Street, Iowa City, Iowa. Joseph Clark testified that he was advised by maintenance staff that the door had been split around the latch and the dead bolt and that he was aware that the tenants had not caused the damage. He testified that, although the Plaintiff and other tenants contested the charge because it occurred during a criminal act, the tenants had signed the lease, which in paragraph 33(a) required them to pay for such damages and set 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.*" Joseph Clark testified that, while there was insurance on the property to cover such damages, the deductible that would be required to be paid would be higher than the cost of the door. Joseph Clark testified that the tenants are responsible for whatever happens to the property because they signed the lease agreeing to the same. Upon inquiry by the Court as to whether the tenants would be liable for thousands of dollars in property damage due to a drunk driver plowing into the property, he testified that it is possible in that case he would talk to his insurance company and ask them to for look for subrogation from the driver. Joseph Clark testified that, when the Plaintiff and other tenants refused to pay for the repairs to the door caused by the break in, he assessed the repair charges as "rent" and eventually began charges late fees at $40.00 per month for their failure to pay said "rent." He additionally provided a "Breakdown of Past Due Rent & Fees on Acct." The breakdown of past due rent and fees did not include any unpaid monthly rent ($1,635.00/mo) owed pursuant to the lease but only included late fees and costs for repair to the door, lawn care, and the costs for the refrigerator gasket and two screens. The "Breakdown"set forth as follows:

9/07/10	Late Charge	Ch.#518 cashed on 9/8/10 -7 days late	$40.00 PAID*

*The Plaintiff testified that the rent was late and that the late fee was paid as required.

10/29/2010	Maintenance Fee (general)	Entry Door/Jamb	$598.46 Unpaid
12/6/2010	Late Charge	Ch#1070 cashed on 12/2/10-1day late	$ 10.00 Unpaid
1/6/2011	Late Charge	Ch#1085 cashed on 1/4/11-3 days late	$ 30.00 Unpaid
2/7/2011	Late Charge	Ch#1090 cashed on 2/2/11-1day late	$ 10.00 Unpaid
3/7/2011	Late Charge	Ch#1094 cashed on 3/2/11-1day late	$ 10.00 Unpaid
5/5/2011	Late Charge	Ch#1100 cashed on 5/2/11-1day late	$ 10.00 Unpaid
6/6/2011	Late Charge	Balance of $668.46- 30 days late	$ 40.00 Unpaid
7/19/2011	Late Charge	Balance of $708.46- 30 days late	$ 40.00 Unpaid
7/19/2011	Maintenance Fee (general)	Lawn Care-Work Done 6/17/11	$ 210.00 Unpaid
7/19/2011	Maintenance Fee (general)	AMT: Frig Gasket, 2 screens	$ 349.99 Unpaid
	TOTAL PAST DUE RENT & FEES ON ACCOUNT:		$1,308.45

Joseph Clark additionally provided a copy of the Defendant's "Transaction Listing," showing all account activity for 516 Bowery Street, beginning with a December 30, 2007 security deposit of $1,635.00. The transaction does not indicate from which tenant the deposit was received or if the full amount of the deposit was received from just one of the tenants or the Plaintiff. The subsequent entries refer to payments received from tenants "Block" or "Connelly" and indicate dates when "payment received," which also correlate with the Defendant's breakdown showing when checks were "cashed." The additional charges for "maintenance fees" are shown in the transaction listing as well. The Defendant does not provide copies of the checks noted in the breakdown to clarify the discrepancy between the breakdown and the transaction listing as to whether the late fee was assessed based upon the date the check was received (transaction listing) or the date the Defendant actually cashed the checks (breakdown). The Defendant's counterclaim requests the Court to award the balance due the Defendant after the deduction of all damages claimed from the security deposit provided by the tenants in the amount of $503.45.

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.

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 Plaintiff's agreement to the terms of the 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.

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.

A landlord is also permitted, from time to time, to adopt rules concerning the tenant's use and occupancy of the premises. However, the rules are only enforceable if they are written, for the purpose of promoting the convenience, safety and welfare of the tenants, are applied in a fair manner, and not for the purpose of evading the obligations of the landlord. §562A.18.

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 in this matter asserts that she provided a security deposit pursuant to the written lease she entered into on July 7, 2010. While the Plaintiff, upon inquiry from the Defendant acknowledged that she did not receive an assignment of the rights of the other tenants regarding the security deposit, no evidence was presented by either the Plaintiff or the Defendant that the Plaintiff was not the proper party to bring suit in this matter and, other than inquiry, no formal objections were made at trial that the Plaintiff was in fact not the proper party to bring this action and recover $1,635.00. Both parties agreed that the security deposit had been paid. However, the Defendant's records provide no assistance as to which tenant or tenants provided all or a portion of the security deposit and for some reason indicates that the security deposit was paid in 2007. While Meghan Crotty was designated by all the other tenants to receive the security deposit at the expiration of the lease, none of the security deposit was returned and therefore her designation in the written lease is irrelevant as it pertains to the facts in this case. The Court THEREFORE FINDS that the Plaintiff is the proper party to bring this action for her claim of the full amount of the rental deposit.

The Plaintiff makes six claims for damages in this case: (1) that the automatic carpet cleaning charges contained in the lease are illegal; (2) that the cleaning charges and charges for screens, blinds, and lawn service are excessive; (3) that the charges for replacing the entry door resulting from the burglary and the refrigerator gasket are illegal; (4) that the landlord refused permission to sublease the apartment due to the illegal charges for the broken door; (5)

that the hourly charge for cleaning and wedding and for replacement of the broken door from the burglary are unconscionable; and (6) 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 and the charges assessed by the Defendant cannot be withheld from the security deposit. In addition, the evidence presented 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.

The Plaintiff claims that the charges assessed by the Defendant for replacement of the blinds, cleaning charges, charges to mow the lawn and remove weeds, weed/lawn, and repair of the screens and replacement of the refrigerator gasket are excessive. The Court agrees. While the Defendant has taken exceptional steps to consolidate the business of renting and maintaining properties provided for rent to tenants in the Iowa City area, it appears quite apparent that the cost of operating such a large business, including liability insurance and employee retirement benefits, have been passed on 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 a remove the weeds and ultimately paying another employee to remove the weeds, is not only unreasonable but almost comical. Here, the Defendant sent an email to one of the tenants explaining that the City of Iowa City would charge $100.00 to mow the lawn and remove the weeds after the report of the ordinance violation in May 2011. Instead, the Defendant provided the service and then charged $210.00 to the tenants in May 2011 and an additional $60.00 in August of 2011, both charges withheld from the security deposit. The billing state from Eastern Iowa Landscaping Services only indicated a charge of $35.00 to mow and weed the entire lawn. The Court THEREFORE FINDS that the costs assessed for lawn care and deducted from the security deposit were unreasonable and should be reduced.

While the Plaintiff assets that she and the other tenants thoroughly cleaned the property and the photographs support that contention, the Plaintiff does agree that some of the damages to the property were caused by the tenants. The Plaintiff agreed that the blinds were broken in bedrooms 2 and 4, and that the screens were damaged and bent. Although the Plaintiff set forth in her Hearing Memorandum reasonable costs for such repairs, no evidence was presented at trial regarding a reasonable cost by the Plaintiff or the actual costs of the blinds by the Defendant. The Court is left with little to measure these costs other than the subjective standard of "reasonableness" of said costs and as to whether these costs exceed the fair market or

actual value of the improvement immediately prior to the damage. Based upon the photographs provided by the parties and condition of the property prior to the commencement of the tenancy, as evidenced by the Plaintiff's move-in check sheet, it is apparent that the property is older and has had a significant amount of wear from years of being a used as a rental property. No eye witness testimony was presented, besides the Plaintiff, as to the condition of the property at the termination of the tenancy The only eye witness testimony as to the condition of the property offered by the Defendant was Brian Clark's observations of the weeds and Jeffrey Clark's testimony regarding seeing dirt and dust balls on the stairs near the front door.

Upon the evidence submitted, the Court FINDS that the total deductions claimed by the Defendant and withheld from the Plaintiff's security deposit should be reduced and that the following deductions regarding cleaning, lawn care and repairs to the property are reasonable and appropriate based upon the evidence presented:

Carpet Cleaning:	$0.00 (provision in lease is unconscionable)
Cleaning Charges:	$0.00 (insufficient evidence)
Lawn care:	$135.00
Screens (kitchen & bedroom 2:	$80.00 ($40 each, includes labor)
Refrigerator gasket:	$0.00 (insufficient evidence)
Screens (living room-2)	$120.00 (frames bent, includes labor)
Removal of mattress:	$50.00
Total:	$385.00

The Plaintiff further challenges the costs associated with the costs to repair a door due to the criminal acts of another and the late fees associated with the payment of monthly rental payments and the unpaid damages that were contested by the Plaintiff. The Plaintiff requests that she be awarded the two months of rent that she would not have paid had the Defendant allowed her to sublease her property pursuant to the lease.

The issue of whether the monthly rental payments were paid as required by the lease (on or before the first day of the month) is unclear based upon the records of the Defendant. While one record, the Transaction Listing, claims to show dates then the monthly rental payments were received, the other record, the Breakdown, shows the dates the monthly rental check were cashed. The Court FINDS that based upon the records provided by the Defendant that the evidence as to late monthly rental payments for December 2010, January 2011, February 2011, March 2011, and May 2011 are not proved by a preponderance of the evidence and therefore are not appropriate as a deduction from the Plaintiff's security deposit. The remaining issue for the Court to address is whether the costs withheld from the security deposit for the repair of the entry door due to damage caused by the criminal acts of another are allowed under the IURLTA.

The evidence presented the Plaintiff is found to be sufficient to prove that the damage caused to the entry door was not caused by the Plaintiff, another tenant, or a guest or visitor of the Plaintiff or other tenants. The Plaintiff and other tenants did not deliberately or negligently destroy, deface, damage, impair or remove a part of the premises, or knowingly permit another person to do so. However, the lease provisions promulgated by the Defendant require the Plaintiff and other tenants to be responsible for the criminal acts of another is found in paragraph 30.

Paragraph 30 sets forth that: "*Tenants agree to pay for all damages to the apartment windows, screens, and doors, including exterior unit doors (including random acts of vandalism). Tenants further agree to be responsible for a 15 foot area around the apartment entry door and for the cost to repair damage to the common areas of the building as follows:*

a. *Tenants agree to be responsible for damage in the common areas, as the tenants are the only occupants of the building. The lease includes reasonable use of the common areas and tenants are responsible for its care. If the Landlord and tenants are unable to determine who caused the damage in common areas within seven days after the damage comes to the attention of the landlord, then each apartment in the building shall pay an equal pro-rata share of the cost to repair the damage. Damages can include but are not limited to doors, windows, drywall, carpet, lights, smoke detectors, etc. Such charges are due immediately."*

In addition, paragraph 53 requires that, "*Any damage to the premises, attempts to enter the premises, or vandalism to the premises by unknown parties should be promptly reported to the Police Department. Any information that may lead to the apprehension of the party responsible for the damage should be reported to the Police Department and to the Landlord immediately."*

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, term of the agreement, and other provisions governing the rights and obligations of the parties. The rental agreement also cannot not provide that the tenant or the landlord will agrees to waive or to forego rights or remedies under the chapter, authorizes a person to confess judgment on a claim arising out of the rental agreement, agree to pay the other party's attorney fees or 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.

While the Defendant requires that an "act of vandalism" be reported to the police and the landlord so that "the party responsible for the damage" could be apprehended, the Defendant also requires the tenant to be responsible for the damage to avoid any liability by the Defendant for cost of his property insurance deductible. In essence, the Defendant has now required the tenant to be the insurer of his own property for damages caused by others, through no fault of the tenant. *See* Mastland v. Evans Furniture, Inc, 498 N.W. 2d 682, 686 (Iowa 1993). The specific provisions within this lease requiring the tenants to be responsible for the common area, windows, door, exterior doors and a "15 foot area around the apartment entry door," removes the landlords obligations under Chapter 562A and places them in the lap of the tenant. 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 and keeping all common areas of the premises in a clean and safe condition. The written provision that the tenants be liable for acts of another not under his/her control or knowledge, in this case, can only be found to be for the purpose of evading the obligations of the landlord, specifically the obligation to file an insurance claim or pay the deductible for an insurance claim for damage to the property caused by the criminal acts of an unknown person, in violation of §562A.18. The Court FINDS these provisions abdicating the landlords responsibilities and for the purpose of evading the landlord's obligations to be unconscionable

and not enforceable. Based upon the Court's finding that the amounts assessed to the Plaintiff and other tenants was improper, the late fees assessed for the non-payment of the repairs to the door and door frame are also unreasonable and should not have been withheld from the tenants security deposit.

Based upon the evidence presented in this case, the Court FINDS that $385.00 is the amount reasonably necessary to restore the dwelling to its condition at the commencement of the tenancy and that amount should be withheld from the Plaintiff's security deposit. The Plaintiff is entitled to an award of $1,250.00, the balance of the security deposit wrongfully withheld by the Defendant.

The Plaintiff additionally requests that the Court award her damages in the amount of $200.00 for the bad faith retention of the security deposit and for damages for the Defendant's unreasonable refusal to allow her to sublease the property for a period of two months due to the outstanding balance on their account. Paragraph 56 of the lease agreement sets forth that: "*Tenants shall not sublet the dwelling unit, or any portion thereof, without the written consent of Landlord. If consent is given, the forms provided by the Landlord for subleases must be used or the sublease will not be recognized by the Landlord.*" Paragraph 57 states that "*It is the subleasing Tenant's sole responsibility to find someone to assume the Rental Agreement. Subleasing does not release the original Tenant from liability under the Lease. The Landlord reserves the right to accept or reject any sublease.*" Subsection (c) of paragraph 57 requires that "*Only apartments whose rental accounts are in good standing may sublease. All rent/fees on account must be paid before Landlord consents to a sublease.*"

The Plaintiff testified that she and the other tenants had located appropriate persons to sublease the apartment while they returned home for the summer to work. The Plaintiff obtained the appropriate form approved by the Defendant, located tenants to sublease, but was refused by the Defendant due to the remaining balance assessed for the damage caused by the burglary and contested by the Plaintiff and other tenants. While subleasing under the lease is not an absolute right afforded to the tenants, the inability to exercise that option under the lease because of the Defendant's refusal based upon improper charges on the Plaintiff's account, caused damages to the Plaintiff and other tenants in the amount of two month's rent, said rent being joint and several.

The Court now FINDS that, based upon the Defendant's assessment of charges and damages withheld from the security deposit for unreasonable costs for repair, the unconscionable and unenforceable provisions in the lease, and violations within the lease of the statutory requirements under IURLTA, a punitive damages for the bad faith retention of the security deposit is appropriate and is awarded to the Plaintiff in the amount of $200.00. 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 33(d) and 30), which caused damages to the Plaintiff in the amount of $3,270.00.

Of greatest concern to the Court in this case is the larger picture of a pattern of business practices used and certain communications sent to these tenants who were young college students. The lease requires that only Iowa City Maintenance be utilized for repairs at their own controlled costs and fees. The lease provisions require tenants to relinquish their rights to contest unfair charges withheld from their security deposit. The lease requires that "all social gatherings/ parties must be registered at the management office at least 24 hrs in advance." A

letter was sent to these tenants from the Defendant's "Department of Collections and Litigation", along with the threat that *this debt may be taken to small claims court as well as reported to credit agencies.*" These practices and actions by the Defendant in this case are reflective of the concerning issues addressed in the recent Iowa Court of Appeals ruling in Staley v. Barkalow, 2012 WL 2368825, (Iowa App.2013) May 30, 2013. In Staley, the tenants argued that the conduct of simply asserting a clause into a lease that is in violation of the Uniform Residential Landlord and Tenant Act "prohibited provision" section constitutes a violation, even if the landlord does not "willfully use" or enforce the clause. The Plaintiff in Staley cited to the Wisconsin Supreme Court's analysis of its similar "prohibited provisions" to Iowa's §562A.11 in Baieri v. McTaggert, 629 N.W. 2d 277, (Wisc. 2001). The Wisconsin Court's ruling referred to the Wisconsin Administrative Department's regulatory intent to prevent "the chilling effect" created by landlords by including prohibited provisions in their leases, stating:

"[The] realm of residential landlord-tenant relations [is] an area fraught with consumer protection concerns. Courts have long acknowledged an inherent inequality of bargaining power [and our] regulations are an attempt to alleviate the residential tenant's limited bargaining power."

"The general problem with respect to lease provisions is not only the concessions that they force from tenants but also the extent to which they intimidate tenants from pursuing their rights. In other words, many lease provisions have been found to be void ... but their existence in a lease continues to have an unjust effect because tenants believe them to be valid. As a result, tenants either concede to unreasonable requests of the landlords or fail to pursue their own lawful rights."

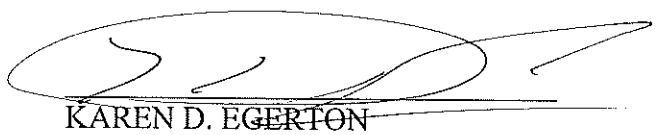
"If [these provisions are not actually enforced], however, there can be no explanation for the inclusion of the provisions in the rental agreement, unless they are intended solely for the purpose of intimidation. This purpose, far from legitimizing the provisions, merely compounds the alleged unfairness."

Accordingly, the Court now ORDERS that judgment enter in favor of Plaintiff Elyse De Stefano and against the Defendant Apartments Downtown, Inc. in the amounts of $1,250.00 (balance of security deposit wrongfully withheld); $200.00 (punitive damages for bad faith retention of security deposit); $3,270.00 in actual damages incurred by the Plaintiff 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 **$4,720.00**. The Court is unable to award attorney fees in this matter as the required attorney fee affidavit was not filed with the Court. The Defendant's counterclaim is denied and court costs are assessed to the Defendant.

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