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**IN THE SUPREME COURT OF IOWA**
No. 14-0820
(Johnson County Small Claims No. SCSC080575)

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ELYSE DE STEFANO,

Plaintiff-Appellant/Cross-Appellee,

vs.

APTS. DOWNTOWN, INC.,

Defendant-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court in and for Johnson County
The Honorable Nancy A. Baumgartner, Judge

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# Defendant-Appellee/Cross-Appellant's Reply Brief in Final Form

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## INTRODUCTION

De Stefano asserts that she should prevail under the IURLTA, but often her arguments are made without regard for the actual statutory language. Without citation to any statute or any other authority, she suggests that when a tenant prevails "against all odds," it would be unfair to dismiss the claim for a "procedural error," or to deny attorney's fees creating a "hollow victory" for the tenant. Further, she argues that the statutory term "wear and tear" means "deterioration" which, she claims, somehow includes "dirt." Applying the actual statutory language, however, this court should reverse the district court's ruling and vacate the small claims court's decision because of lack of small claims court jurisdiction above $5,000, or, in the alternative, should reverse the district court's reductions in the amount Apts. Downtown withheld from the deposit.

## REPLY ON CROSS-APPEAL ARGUMENTS

### I. De Stefano Failed To Show That The Small Claims Court Had Jurisdiction Over This Case Once She Claimed Attorney's Fees That, By Themselves And When Combined With The Damage Award, Exceeded The Small Claims Court's Monetary Jurisdictional Limits.

On pages 31 to 38 of her brief, De Stefano attempts to address the issues of attorney's fees including the jurisdictional argument raised by Apts. Downtown based on the claim by De Stefano's counsel for $6,626 in

attorney's fees. (Warnock Attorney Fee Affidavit, 6/21/13, App. 18-20; Boyer Attorney Fee Affidavit, 6/21/13, App. 21-22). De Stefano argues that the court should not "restric[t] the ability of the trial court to award statutory attorney fees" because it would be a "somewhat hollow victory." (De Stefano Reply Br. at 32). Further, De Stefano argues that it would be "harsh and oppressive" to dismiss the case because of a "procedural error." (De Stefano Reply Br. at 37). De Stefano's arguments ignore the plain language of Iowa Code § 631.1(1), which limits the "amount in controversy" to $5,000 "exclusive of interest and costs." Her arguments also ignore the fact that it was her choice to file this case in small claims court. It was also her counsel's choice to seek $6,626 in attorney's fees, rather than the $280 available under the jurisdictional limit after the small claims court's ruling.

De Stefano argues that attorney's fees should not be treated as "damages" but rather as "costs." (De Stefano Br. at 33-34). Iowa law is clear, however, regardless of whether attorney's fees are "damages" or not, they are clearly not "costs" within the statutory phrase, "exclusive of interest and costs." Iowa Code § 631.1(1). That is why the Iowa Legislature has repeatedly listed "costs" and "attorney's fees" as distinct items of recovery. (Apts. Downtown Br. at 31-32 (collecting authorities)).

It is also why the Iowa Court of Appeals treated them as separate items in Baculis v. McDougall, 460 N.W.2d 186, 188-89 (Iowa Ct. App. 1990).

De Stefano's reliance on a 2013 amendment to the IURLTA, which made two months' rent available as punitive damages for a wrongful withholding of a security deposit, (De Stefano Reply Br. at 28 n.10, 29, & 37, citing 2013 Acts, ch. 97, §§ 4,6), is also unavailing. This amendment does not relate to the jurisdictional limit of small claims court. Moreover, it shows that it is for the Legislature, not this court, to exclude "attorney's fees" from the maximum jurisdictional limit of small claims court, if that is what the Legislature wants to do.

Finally, De Stefano argues that if a remedy is required, "the case must be transferred from small claims to the district court, rather than dismissed as argued by Landlord." (De Stefano Br. at 36, citing Wilson v. Iowa District Court, 297 N.W.2d 223 (Iowa 1980)). This does not contradict Apts. Downtown's request. Rather, Apts. Downtown is seeking to have the district court's appeal decision reversed and the small claims court's decision vacated, because this case should have been tried by regular procedure once De Stefano's counsel claimed attorney's fees above the maximum jurisdictional limit. Iowa Code § 631.8(2). As Wilson recognized, a small claims court proceeding is "a simple, swift, and

inexpensive proceeding" that does not provide the procedural protections of a regular proceeding. 297 N.W.2d at 224-25. When De Stefano asserted claims for damages and attorney's fees in excess of $5,000, Apts. Downtown was entitled to the procedural protections of regular proceedings in district court. Because De Stefano's counsel claimed attorney's fees which, by themselves and when combined with the damages sought, exceeded the maximum jurisdictional limit, this court should reverse the district court and vacate the small claims court's decision.

## II. De Stefano Failed To Show That Dirt Was "Ordinary Wear And Tear" For Which A Landlord Is Responsible.

De Stefano argues that the statutory language, "ordinary wear and tear," Iowa Code § 562A.12(3)(b), includes "deterioration" of a carpet which, she suggests, also includes accumulation of dirt which the landlord can clean. (De Stefano Br. at 14-27). Although De Stefano cites various authorities from around the country, she concedes that no Iowa appellate case has previously resolved this issue. Thus, at a minimum, Apts. Downtown should not be subjected to a statutory penalty for bad faith retention of the security deposit.

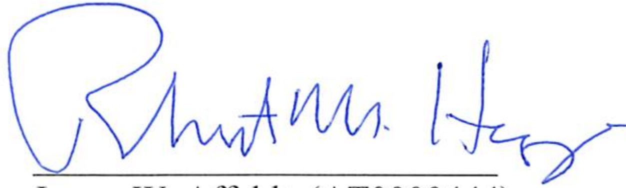
Moreover, even accepting that "ordinary wear and tear" includes "deterioration," nothing about those terms suggests that the accumulation of

dirt which can be cleaned is "wear and tear" or "deterioration." The phrase "wear and tear" suggests permanent physical damage, not "accumulation of dirt." Miller v. Geels, 643 N.E.2d 922, 927-28 (Ind. Ct. App. 1994). Dirt does not physically damage "the nap or the fibers within a carpet." Castillo-Cullather v. Pollack, 685 N.E.2d 478, 483 n. 4 (Ind. Ct. App. 1997), abrogated on other grounds, Mitchell v. Mitchell, 695 N.E.2d 920 (Ind. 1998). The plain language of "wear" and "tear" includes "to cause to deteriorate, diminish, or waste by some constant or repetitive action" and "to pull apart and in pieces, by force." Webster's Collegiate Dictionary 1342, 1479 (Random House ed. 2000). Dirt that can be cleaned does not cause any "wear and tear." Thus, Apts. Downtown was free to withhold from the security deposit the amount De Stefano had agreed to pay to clean the carpets professionally to restore their condition from the start of her tenancy. Iowa Code § 562A.12(3)(b).

## CONCLUSION

Apts. Downtown believes that all other issues were adequately addressed in its initial brief. For the reasons given above, and the reasons given in Apts. Downtown's initial brief, the district court's ruling should be reversed and the small claims court's decision vacated because it lost jurisdiction when De Stefano's counsel claimed attorney's fees in excess of

the maximum jurisdictional amount. In the alternative, this court should reverse the reduction for carpet cleaning ($191), the statutory penalty for "bad faith" retention of the security deposit ($200), and the award of attorney's fees ($1,160), on cross appeal, and on all other issues affirm the district court's ruling.



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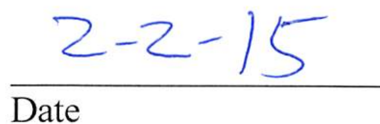


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