

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

MARTIN GAFFEY,

NO. SCSC081780

Plaintiff(s),  
vs.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND JUDGMENT

LIDA SIGG,

Defendant(s).

May 28, 2012

FILED  
2012 MAY 29 PM 12:04  
CLERK  
JOHNSON COUNTY  
IOWA

On the 23<sup>rd</sup> day of May, 2012, this matter came before the Court for trial upon Plaintiff's claim for money judgment for unpaid rent and damages to the property and the Defendants counterclaim for breach of settlement agreement. The Plaintiff appeared in person and pro se. The Defendant appears in person, with her daughter Martha Rasmussen, and with their attorney Christopher Warnock. The Defendant moved to dismiss the claim as to Defendant Martha Rasmussen, which the Court took under advisement. The Court, having heard the testimony of the parties and reviewed file and the evidence herein, DOES HEREBY DISMISS the claim as to Defendant Martha Rasmussen. The Court received the testimony of the parties and exhibits submitted by the Plaintiff and the Defendant. Upon the matter submitted, the Court now makes the following findings of fact.

On or about April 15, 2011, the Plaintiff Martin Gaffey and Defendant Lida Sigg entered into a written lease agreement (renewed) for a property located at 2315 Rochester Avenue, Apt. 104, Iowa City, Johnson County, Iowa. Pursuant to the terms of the lease, which ran from August 1, 2011 until July 29, 2012, the Defendant agreed to pay \$910.00 per month for rent of the apartment. Pursuant to the renewed lease, the Defendant was not required to pay a security deposit, however the Defendant had previously provided \$500.00 as a security deposit to the Plaintiff. Also, approximately two years earlier, the Plaintiff had allowed the Defendant to have cats in the home, with the agreement that the Defendant would make repairs (carpet and padding) for any pet damage.

At the end of March 2012, the Plaintiff received written notice from the Defendant's family that she was seriously ill and that they had moved all of her belongings out of the apartment. The letter sent to the Plaintiff dated March 29, 2012, set forth that the Defendant was seriously ill, had been hospitalized and required nursing home care. Martha Rasmussen, the Defendant's daughter and attorney-in-fact, sent the letter and requested that the security deposit and pet deposit be sent to her address and that she would make arrangement to have the carpeting cleaned. The Plaintiff responded and, based upon his reliance of the information provided by Martha Rasmussen, agreed to release the Defendant from the lease and agreed that, if she paid the month of April 2012, the remaining months on the lease did not have to be paid and that the pet deposit would be returned. The Plaintiff additionally set forth that the damage deposit would be retained to cover the replacement of the carpeting and the carpet padding due to the strong pet odor in the home. On April 3, 2012, Ms. Rasmussen sent another letter to the Plaintiff confirming and accepting his offer to terminate the lease and retain the original deposit. Ms. Rasmussen also enclosed a check for April rent in the amount of \$910.00. However, by April 19, 2012, the Defendant had learned that the Defendant was no longer hospitalized and no longer residing in a care center. The Plaintiff has also learned that on or about April 19, 2012, the Defendant has been seen operating a motor vehicle.

Based upon this new information, the Plaintiff sent a letter to Ms. Rasmussen revoking the earlier agreement to allow the Defendant to terminate the lease. The Plaintiff informed the Defendant, through Martha Rasmussen, that she continued to be obligated on the lease until the end of the tenancy but that he would consider subleasing the property upon his approval of the new tenant. Based upon the Plaintiff revoking the agreement to allow the Defendant to terminate the tenancy, Ms. Rasmussen placed a stop payment on the April rent check. When the Defendant did not pay April or May rent, the Plaintiff filed this action, requesting \$5,000 in damages for unpaid rent for April, May, June and July 2012, as well as damages for carpet replacement and cleaning of the apartment.

The Plaintiff testified that he did not provide the Defendant with a three-day notice for non-payment of rent, that he did not file a forcible entry and detainer action, that he has not attempted to mitigate his damages by advertising or attempting to re-rent the property, and further agreed that June and July payments were not due on the date of trial and thus those damages have not occurred. The Plaintiff provided no receipts for cleaning costs or carpet replacement costs and agreed that the Defendant continued to have legal possession of the property.

The Defendant testified that she agreed that she did not pay April or May rent and that the rent was owed to the Plaintiff, even though at 92 years of age, she was not able to live on her own without assistance. On behalf of the Defendant and pursuant to the counterclaim, Mr. Warnock urged the Court to enforce the settlement agreement offered by the Plaintiff and then accepted by the Defendant's daughter based upon the Plaintiff's belief that the Defendant was seriously ill and required hospitalization and nursing home care. The Court declines to do so as the Plaintiff's offer was based upon facts later determined not to be accurate, even though the Defendant is elderly and most likely requires additional care at this stage in her life. IT IS THEREFORE ORDERED that judgment shall enter against the Defendant and for the Plaintiff regarding the Defendant's counterclaim.

Pursuant to section 562A.27(2) of the Code of Iowa (2011), if rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement, if rent is not paid within that period of time, the landlord may terminate the rental agreement.

Section 562A.12 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.

Pursuant to section 562A.29(3), if the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins. The rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment, if the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or the landlord accepts the abandonment as a surrender. A landlord has a statutory duty and common law duty to mitigate and the landlord must allege and

prove what was done in attempting to re-rent the premises after the landlord know or should have known it was abandoned. D.R. Mobile Home Rentals v. Frost, 545 N.W.2d 302 (Iowa 1996).

Upon the evidence submitted, the Court FINDS that the Plaintiff has met his burden as to a breach of contract regarding his claim for rent for April 2012 and May 2012. The Plaintiff has not terminated the rental agreement and apparently does not view the Defendant's moving out of the property as abandonment as he has not made any efforts to mitigate his damages. The Court was presented no evidence as to the amount of damages for carpet replacement or for cleaning the apartment. THEREFORE, the Court FINDS that the Defendant remains in possession of the property and that rent for the months of April 2012 and May 2012 are due and owing.

Of great concern to the Court, however, is the Plaintiff's use of clauses within his rental agreement addendums which are clearly in violation of the law and/or unconscionable. Within the Plaintiff's "**Gaffey Apartments Rules**," the Plaintiff sets forth mandatory deposit forfeitures, a provision that alleviates the Plaintiff's requirement to mitigate damages, a requirement that all renters have renter's insurance, a provision that failure to have carpeting professionally cleaned will result in automatic deduction from the security deposit, and that if rent is late three times in a row "you will be evicted." In addition, the Plaintiff has included an addendum that sets forth a clear violation of the law regarding late fees, assessing fees in the amount of \$110.00 if rent is not paid by the 11<sup>th</sup> of the month. When asked why the Plaintiff would set forth these fee amounts in clear violation of the landlord/tenant laws, the Plaintiff replied, "It gets their attention."

The Plaintiff is therefore put on notice in order to "get his attention," that the law looks unfavorably upon unconscionable terms within a lease agreement and willful violations of the uniform landlord and tenant chapter. As a matter of law and as provided and authorized by section 562A.7, this Court FINDS that the "**Gaffey Apartments Rules**," as an addendum to the Defendant's lease, to be unenforceable as a whole. In addition, the Court FURTHER FINDS, as a matter of law, that the "**Gaffey Apartment Late Fee Schedule**" to be unenforceable. The Plaintiff is further advised that, pursuant to section 562A.11, in the event the Plaintiff willfully uses these rental agreement provisions known by the Plaintiff to have been found to be prohibited, the Defendant or other tenant may recover actual damages not exceeding three month's rent and reasonable attorney's fees.


Accordingly, the Court enters judgment for the Plaintiff Martin Gaffey and against Defendant Lida Sigg in the amount of **\$1,820.00**. The Court ORDERS court costs to be assessed to the Defendant. The Court's ruling was announced to the parties in open court.

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.

pk 5/24/12  
cc: JLF  
Wainwright

  
KAREN D. EGERTON  
Magistrate, Sixth Judicial District