IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

Joan Walton,	)	
	)	
Plaintiff,	)	
	)	**No. CVCV076909**
vs.	)	
	)	**RULING**
Martin Gaffey,	)	
	)	
Defendant.	)	

On this date, Plaintiff's First Motion for Partial Summary and Declaratory Judgment and Supplement thereto, as well as Plaintiff's First Motion for Class Certification, came before the undersigned for review. The Court finds a hearing on the Motions is unnecessary, and hereby enters the following ruling:

FACTUAL AND PROCEDURAL BACKGROUND

On December 1, 2014, Plaintiff filed a Petition at Law and in Equity, and for Class Action. Defendant has been, at all relevant times, Plaintiff's landlord. Plaintiff alleges Defendant has a standard lease, lease rules, and addenda. Plaintiff further alleges the lease contains provisions that violate Iowa Code chapter 562A, the Iowa Uniform Residential Landlord Tenant Act (IURLTA). Plaintiff specifically contends:

a. Defendant has violated Iowa Code § 562A.7 by using leases with unconscionable lease provisions, in particular, but not limited to, mandatory requirements of automatic carpet cleaning;

b. Defendant has violated Iowa Code § 562A.9 by including in leases terms and conditions that are prohibited by Iowa Code chapter 562A or other rule of law;

c. Defendant has violated Iowa Code § 562A.11(1) by using leases that limit Defendant's liability and that waive and forego tenants' rights under the IURLTA; in particular, but not limited to, charging fines, liquidated damages, subleasing, and other fees rather than landlord's actual damages;

d. Defendant has violated Iowa Code § 562A.11(2) by willfully using a lease containing provisions known by Defendant to be prohibited, in particular, but not limited to, automatic carpet cleaning;

e. Defendant has violated Iowa Code § 562A.12 by using leases that wrongfully withhold tenants' security deposits, and does so in bad faith;

f. Defendant has violated Iowa Code §§ 562A.14 and 562A.22 by using leases that waive tenants' right to possession and legal remedies for lack of possession;

g. Defendant has violated Iowa Code §§ 562A.15 and 562A.17 by using leases that shift Defendant's repair and maintenance responsibilities unlawfully onto tenants; in particular, but not limited to, requiring tenants to be responsible for all damages to the premises, regardless of source;

h. Defendant has violated Iowa Code § 562A.18 by using lease rules that were for an improper purpose, unfair, unreasonable and/or evaded the obligations of Defendant; and

i. Defendant has violated Iowa Code §§ 562A.27 and 562A.32 by using leases that, in particular, but are not limited to, charging penalties, fines, liquidated damages, and subleasing and other fees other than Defendant's actual damages.

Plaintiff seeks declaratory judgment as to the legality of Defendant's lease, plus actual damages for the use of illegal lease provisions, including the knowing and willful use of a rental agreement containing prohibited clauses and the bad faith retention of security deposits. Plaintiff also seeks punitive damages, attorney fees, and court costs. Plaintiff also requests that Defendant be permanently enjoined from including the challenged provisions in his leases or lease rules, and from enforcing the illegal lease provisions or lease rules.

Also on December 1, 2014, Plaintiff filed a First Motion for Partial Summary and Declaratory Judgment and First Motion for Class Certification. In support of her Motions, Plaintiff relies heavily on Judge Douglas S. Russell's Ruling entered in Johnson County case LACV073821, Brooke Staley, et al. v. Tracy Barkalow, et al. (hereinafter referred to as Staley). Plaintiff asserts the issues presented by this case are factually and legally similar to Staley, and requests the Court follow the Staley Ruling in considering the relief sought in Plaintiff's First Motion for Partial Summary and Declaratory Judgment and First Motion for Class Certification. Also relevant to Judge Russell's Ruling in Staley is the Iowa Court of Appeals opinion of Staley v. Barkalow, No. 12-1031, 2013 WL 2368825 (Iowa App. 2013). As Judge Russell found in Staley:

> There essentially were three main areas addressed by the Court of Appeals in its opinion, which can be found at Staley v. Barkalow, No. 12-1031, 2013 WL 2368825 (Iowa App. 2013). First, the Court of Appeals found that a landlord's inclusion of a provision prohibited in Iowa Code § 562A.11(1), even without enforcement, can be a "use" under Iowa Code § 562A.11(2). The Court of Appeals held that when read together, these subsections make a landlord liable for the inclusion of prohibited provisions in a rental agreement, even without enforcement, if the landlord's inclusion was willful and knowing. The Court of Appeals stated that in order to recover damages, the tenant has the burden of proving the landlord willfully used, i.e., willfully included, provisions known by the landlord to be prohibited. Second, the Court of Appeals found that the district court abused its discretion in failing to grant tenants' request for certification of a class, and the Court of Appeals remanded for further proceedings consistent with the opinion. Third, the Court of Appeals found that, on remand, the district court should consider whether the challenged lease provisions are provisions that "shall not be included," and whether the inclusion was made willfully and knowingly.

See Judge Russell's Staley Ruling, p. 1. The Court incorporates as if set forth in full herein the content of the Iowa Court of Appeals' opinion and Judge Russell's Ruling in the Staley case, and the Court adopts Judge Russell's summary of the Staley opinion issued by the Court of Appeals.

In her pending Motion, Plaintiff first argues that Defendant's leases and lease rules violate Iowa Code chapter 562A in that Defendant's standard lease includes illegal liability shifting clauses; the standard lease includes illegal fines, penalties, fees and charges exceeding actual damages; and the standard lease includes illegal automatic cleaning provisions. Plaintiff next argues that inclusion of the allegedly prohibited clauses by the landlord was knowing and willful. In support of this argument, Plaintiff relies on language from a ruling entered by Magistrate Karen Egerton in the small claims case of Gaffey v. Sigg, Johnson County case SCSC081780. Finally, with respect to class certification, Plaintiff asserts that pursuant to the Court of Appeals' opinion in Staley, the prerequisites for class certification have been established in this case, and the Court should grant class certification in this case. Plaintiff later supplemented her Motions to provide additional support for her Motion for Class Certification; Plaintiff has provided documentation stating that the lease and lease rules used by Defendant, which are at issue in this case, were used by more than fifty tenants.

Defendant filed an Answer on January 5, 2015, denying the allegations of the Petition that are adverse to him

Defendant has resisted Plaintiff's Motions. Defendant argues that Iowa law provides only that lease provisions may be prohibited or unconscionable, and there is no category of "illegal" provisions, as Plaintiff suggests. Defendant further argues that Staley does not control the ripeness of this case, and even if it did, only Plaintiff's claims regarding provisions allegedly specifically prohibited under the Iowa Code would be ripe for consideration at this time. Defendant also argues that the lease provisions Plaintiff claims are prohibited in fact do not violate the IURLTA, and Defendant did not willfully use provisions known by him to be prohibited. Finally, Defendant argues that Plaintiff is not a proper class representative because she has no claims against Defendant to provide her with proper standing in this action, and class certification is improper in this case because individual issues predominate over Plaintiff's claims. Defendant has submitted an affidavit in support of his Resistance.

Plaintiff replies that the Court should follow the Iowa Court of Appeals' ruling in Staley, and not require enforcement of the challenged provisions before declaring them illegal. Plaintiff reiterates her argument that the challenged provisions are, in fact, illegal, and Defendant knowingly and willfully used prohibited lease provisions. Plaintiff also reiterates her argument that class certification should be granted under these facts.

CONCLUSIONS OF LAW

The Court first considers Plaintiff's First Motion for Partial Summary and Declaratory Judgment. In considering this Motion, the Court notes it has found persuasive and draws from Judge Russell's Ruling in Staley. The parties also are informed that this Court finds the Iowa Court of Appeals' opinion in Staley to be persuasive, particularly with regard to a landlord's

inclusion of a provision prohibited in Iowa Code § 562A.11(1), even without enforcement, potentially being a "use" under Iowa Code § 562A.11(2).

"Summary judgment is appropriate if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." Kolarik v. Cory Intern. Corp., 721 N.W.2d 159, 162 (Iowa 2006) (citing Iowa Rule of Civil Procedure 1.981(3)). "Further considerations when reviewing a motion for summary judgment are summarized as follows:

> 'A factual issue is material only if the dispute is over facts that might affect the outcome of the suit. The burden is on the party moving for summary judgment to prove the facts are undisputed. In ruling on a summary judgment motion, the court must look at the facts in a light most favorable to the party resisting the motion. The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record.'"

Id. (citing Estate of Harris v. Papa John's Pizza, 679 N.W.2d 673, 677 (Iowa 2004) (quoting Phillips v. Covenant Clinic, 625 N.W.2d 714-717-18 (Iowa 2001)).

"To obtain a grant of summary judgment on some issue in an action, the moving party must affirmatively establish the existence of undisputed facts entitling that party to a particular result under controlling law." McVey v. National Organization Service, Inc., 719 N.W.2d 801, 802 (Iowa 2006). "To affirmatively establish uncontroverted facts that are legally controlling as to the outcome of the case, the moving party may rely on admissions in the pleadings…affidavits, depositions, answers to interrogatories by the nonmoving party, and admissions on file." Id. "Except as it may carry with it express stipulations concerning the anticipated summary judgment ruling, a statement of uncontroverted facts by the moving party made in compliance with rule 1.981(8) does not constitute a part of the record from which the absence of genuine issues of material fact may be determined." Id. at 803. "The statement required by rule 1.981(8) is intended to be a mere summary of the moving party's factual allegations that must rise or fall on the actual contents of the pleadings, depositions, answers to interrogatories, and admissions on file together with any affidavits." Id. "If those matters do not reveal the absence of genuine factual issues, the motion for summary judgment must be denied." Id.

"When two legitimate, conflicting inferences are present at the time of ruling upon the summary judgment motion, the court should rule in favor of the nonmoving party." Eggiman v. Self-Insured Services Co., 718 N.W.2d 754, 763 (Iowa 2006) (citing Daboll v. Hoden, 222 N.W.2d 727, 733 (Iowa 1974) ("If reasonable minds could draw different inferences and reach different conclusions from the facts, even though undisputed, the issue must be reserved for trial.").

"However, to successfully resist a motion for summary judgment, the resisting party must set forth specific evidentiary facts showing the existence of a genuine issue of material fact." Matter of Estate of Henrich, 389 N.W.2d 78, 80 (Iowa App. 1986). "[The resisting party] cannot rest on the mere allegations or denials of the pleadings." Id.

Iowa Rule of Civil Procedure 1.1101 provides:

> Courts of record within their respective jurisdictions shall declare rights, status, and other legal relations whether or not further relief is or could be claimed. It shall be no objection that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form or effect, and such declarations shall have the force and effect of a final decree. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The enumeration in rules 1.1102, 1.1103, and 1.1104, does not limit or restrict the exercise of this general power.

I.R.Civ.P. 1.1101.

"The purpose of a declaratory judgment is to determine rights in advance." Bormann v. Board of Sup'rs in and for Kossuth County, 584 N.W.2d 309, 312 (Iowa 1998). "The essential difference between such an action and the usual action is that no actual wrong need have been committed or loss incurred to sustain declaratory judgment relief." Id. at 312-13. "But there must be no uncertainty that the loss will occur or that the right asserted will be invaded." Id. "As with a writ of certiorari, the fact that the plaintiff has another adequate remedy does not preclude declaratory judgment relief where it is appropriate." Id.

"[D]eclaratory judgment is an action in which a court declares the rights, duties, status, or other legal relationships of the parties." Dubuque Policeman's Protective Ass'n v. City of Dubuque, 553 N.W.2d 603, 606 (Iowa 1996). "Declaratory judgments are res judicata and binding on the parties." Id. "'The distinctive characteristic of a declaratory judgment is that the declaration stands by itself, that is, no executory process follows as of course. In other words such a judgment does not involve executory or coercive relief.'" Id. (citing 22A Am.Jur.2d *Declaratory Judgments* § 1, at 670 (1988)).

"The burden of proof in a declaratory judgment action is the same as in an ordinary action at law or equity." Owens v. Brownlie, 610 N.W.2d 860, 866 (Iowa 2000). "The plaintiff bringing the action has the burden of proof, even if a negative declaration is sought." Id.

Plaintiff's first challenge is to the liability shifting clauses included in Defendant's standard lease agreement. Plaintiff points to two specific provisions in Defendant's lease:

> In the event of the failure of an appliance that is furnished by LANDLORD under this rental agreement, LANDLORD'S sole responsibility shall be the repair or replacement of the appliance at the LANDLORD'S sole discretion. In no event or circumstance will LANDLORD be responsible for any loss of use or consequential damages caused by said appliance failure. If problem with refrigerator/freezer exists TENANT agrees to take prudent steps to remove perishable items and store in cooler or refrigerator/freezer of friend, relative, etc., and to allow a reasonable amount of time for LANDLORD to remedy the problem, e.g. order new refrigerator, etc. LANDLORD is not responsible for spoiled food items caused by refrigerator/freezer malfunction.

See Residential Rental Lease, Plaintiff's Attachment One, section 20(e).

> INSURANCE. TENANT understands that LANDLORD is not an insurer of the TENANT'S personal property. LANDLORD shall not be liable for damage or loss of any of the TENANT'S personal property for any cause whatsoever. TENANT is responsible for obtaining renters' insurance to insure their personal property. TENANT may be held liable for damage to rental unit caused by TENANT'S neglect regardless of coverage by LANDLORD'S insurance. If TENANT desires a waterbed on the premises, TENANT must receive written permission from LANDLORD and must provide a Certificate of Insurance covering damages caused by waterbeds with LANDLORD named as additional insured.

See Residential Rental Lease, Plaintiff's Attachment One, section 23.

> Iowa Code § 562A.11 provides:
>
> 1. A rental agreement shall not provide that the tenant or landlord:
>
> a. Agrees to waive or to forego rights or remedies under this chapter provided that this restriction shall not apply to rental agreements covering single family residences on land assessed as agricultural land and located in an unincorporated area;
>
> 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.

Iowa Code § 562A.11 (2013).

> The Iowa Supreme Court has held:
>
> We conclude that a landlord, just as any other actor, owes a duty of due care to protect its tenants from reasonably foreseeable harm and
>
> > must act as a reasonable person under all of the circumstances including the likelihood of injury to others, the probable seriousness of such injuries, and the burden of reducing or avoiding the risk.... The questions of control, hidden defects and common or public use, which formerly had to be established as a prerequisite to even considering the negligence of a landlord, will now be relevant only inasmuch as they bear on the basic tort issues such as the foreseeability and unreasonableness of the particular risk of harm.

Sargent v. Ross, 113 N.H. 388, 308 A.2d 528, 534 (1973) (citations omitted). We agree that this "'reasonable care in all the circumstances standard will provide the most effective way to achieve an allocation of the costs of human injury which conforms to present community values.'" *Id.* (quoting *Mounsey v. Ellard,* 363 Mass. 693, 297 N.E.2d 43, 52 (1973)). This standard

> should help ensure that a landlord will take whatever precautions are reasonably necessary under the circumstances to reduce the likelihood of injuries from defects in his property. "It is appropriate that the landlord who will retain ownership of the premises and any permanent improvements should bear the cost of repairs necessary to make the premises safe...."

Sargent, 308 A.2d at 535 (quoting *Kline v. Burns,* 111 N.H. 87, 276 A.2d 248, 251 (1971)).

A duty of care arising out of a landlord-tenant relationship, like that of an innkeeper and guest under Restatement section 314A, does not make the landlord an insurer. Nor will the rule of law be equally applicable in every case.

> The duty in each case is only one to exercise reasonable care under the circumstances. The defendant is not liable where he neither knows nor should know of the unreasonable risk, or of the illness or injury. He is not required to take precautions against a sudden attack from a third person which he has no reason to anticipate, or to give aid to one whom he has no reason to know to be ill. He is not required to take any action where the risk does not appear to be an unreasonable one....

Restatement (Second) of Torts § 314A cmt. e, at 120.

This rule of liability, which requires reasonable foreseeability, must be distinguished from premises liability under Restatement section 344, which arguably presupposes foreseeability. *Martinko,* 393 N.W.2d at 323 (Carter, J., dissenting).

Tenney v. Atlantic Associates, 594 N.W.2d 11, 17-18 (Iowa 1999).

The Iowa Legislature has stated that a rental agreement shall not provide that the tenant or landlord agrees to the exculpation or limitation of any liability of the other party arising under law. The Iowa Supreme Court has held that a landlord owes a duty of care to protect tenants from reasonably foreseeable harm. The Court concludes that sections 20(e) and 23 of Defendant's lease allow exculpation or limitation of any liability arising under the law. Therefore, the Court concludes that the challenged clauses of the lease agreement providing for exculpation are provisions that shall not be included in the landlord's standard lease. Plaintiff's Motion for Summary and Declaratory Judgment should be granted on this issue.

Next, Plaintiff challenges the inclusion in the standard lease of a variety of fees, fines, penalties and charges that Plaintiff claims violate the requirement that landlords can only recover

actual damages for a tenant's breach of a lease or violation of chapter 562A. The following provisions/sections of the lease are challenged by Plaintiff:

a. $35 returned check fee (section 7)
b. $35 processing administrative fee for 3 day notice (section 8)
c. $40 administrative fee for failure to transfer utilities (section 12)
d. $40 administrative fee for not keeping utilities in tenant's name (section 13)
e. $500 fine for smoking (section 22)
f. $50 minimum trip charge (section 24)
f. $50 minimum service charge for lock outs (section 25)
g. $100 per occurrence for not informing landlord of additional occupants, $40 administrative fee for approved occupancy change (section 26)
h. $200 sublease fee (section 27)
i. $40 administrative fee for not keeping utilities in tenant's name (section 27(f))
j. $500 unauthorized animal fee (section 28)
k. $100 fee for additional move-out inspection due to tenant failure to vacate (section 37)
l. Various service charges on page 11 of the lease, including a $50 minimum trip charge for noise complaints, trash, parking or pet violations and posting notices

Plaintiff generally argues that Defendants cannot recover anything other than actual damages for a tenant's breach of a lease of violation of chapter 562A. Further, Plaintiff contends that a residential lease cannot include liquidated damages provisions. The Iowa Supreme Court has held that a landlord is not entitled to recover if no evidence substantiates that actual damage has been sustained. D.R. Mobile Home Rentals v. Frost, 545 N.W.2d 302, 306 (Iowa 1996). Considering the language utilized by the Iowa Legislature in chapter 562A in conjunction with the Iowa Supreme Court's holding that actual damage must be sustained in order for a landlord to recover, the Court concludes that a landlord may only recover actual damages that are proven to be owed to the landlord under the standards set forth in chapter 562A. The fees described by Plaintiff in this section of her Motion have been set without any consideration of what the landlord's actual damages and fees would be in each situation. Therefore, Plaintiff's Motion for Summary and Declaratory Judgment should be granted on this issue.

Plaintiff's next argument is the standard lease violates Iowa Code § 562A.12 by including automatic cleaning provisions. Iowa Code § 562A.12(3) provides:

> 3. a. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the dwelling unit, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:
>
> (1) To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.

> (2) To restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted.
>
> (3) To recover expenses incurred in acquiring possession of the premises from a tenant who does not act in good faith in failing to surrender and vacate the premises upon noncompliance with the rental agreement and notification of such noncompliance pursuant to this chapter.
>
> b. In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

Iowa Code § 562A.12(3) (2013).

> Plaintiffs have specifically challenged the following sections of the lease:
>
> VACATING PREMISES. TENANT agrees to vacate the premises on or before 5:00 p.m. on the lease expiration date. TENANT shall return the unit to LANDLORD in clean condition, reasonable wear and tear accepted. TENANT shall provide all keys to LANDLORD at lease expiration. LANDLORD shall have all carpeting professionally shampooed, paid out of tenants (sic) security deposit. If TENANT remains in possession of the premises after lease expiration without prior, written approval, the LANDLORD may bring an action for possession, under Iowa law.

See Residential Rental Lease, Plaintiff's Attachment One, section 29.

> TENANT agrees to regularly vacuum carpet, to treat spills immediately, and to pay for any damage to carpet caused by any unauthorized cleaning firm or person; smoking/tobacco materials; stains of any kind; cuts, holes, tears, etc. Carpet has been cleaned prior to move-in and is required to be cleaned at move out and at TENANT'S expense only by approved or authorized firms. At time of move-out a copy of the receipt for cleaning is to be provided to LANDLORD.

See Residential Rental Lease, Plaintiff's Attachment One, page 10, paragraph 5.

These clauses automatically impose on tenants certain fees for carpet cleaning regardless of whether the carpet is clean or not. Iowa Code § 562A.12(3) requires a landlord to provide the tenant with a specific reason for withholding any of the rental deposit, and also requires the landlord to prove, by a preponderance of the evidence, the reason for withholding any of the rental deposit, with ordinary wear and tear excepted. These sections of the lease may not be included in Defendant's standard lease because inclusion of these sections permits the landlord to avoid his obligations as defined by the Iowa Legislature in § 562A.12(3). Plaintiff's Motion for Summary and Declaratory Judgment should be granted on this issue.

The Court next considers Plaintiff's argument that Defendant willfully used provisions known to be prohibited. Plaintiff contends Defendant was well-aware that many of the clauses used in his leases are illegal, and points to language from Magistrate Egerton's small claims ruling advising Defendant that the law looks unfavorably upon unconscionable terms within a lease and willful violations of the IURLTA. Defendant counters with an affidavit challenging the assertion that he has used prohibited provisions in his lease. This is a fact question to be resolved by the trier of fact. Credibility determinations will be required to be made on Defendant's testimony on the question of whether the illegal clauses were included knowingly and willfully. Therefore, Plaintiff's Motion for Summary and Declaratory Judgment should be denied on this issue.

The Court turns to Plaintiff's First Motion for Class Certification. In Staley, under nearly identical class certification facts, the Iowa Court of Appeals determined that certification of a class is appropriate. Therefore, this matter should be and is certified as a class action. Plaintiff's counsel shall take all appropriate steps to effectuate this certification pursuant to the Iowa Rules of Civil Procedure.

RULING

IT IS THEREFORE ORDERED that Plaintiff's First Motion for Partial Summary and Declaratory Judgment is granted as to Plaintiff's request for a finding regarding the legality of the challenged lease provisions. The Court hereby declares that the lease provisions challenged by Plaintiff, as described in her First Motion for Partial Summary Judgment and Declaratory Judgment, are illegal and should not have been included in the standard lease utilized by Defendant. Plaintiff's Motion for Partial Summary and Declaratory Judgment is denied on the question of whether Defendant's inclusion of the challenged lease provisions was knowing and willful.

IT IS FURTHER ORDERED that Plaintiff's First Motion for Class Certification is **GRANTED**. This matter is certified as a class action.

Court Administration shall schedule a trial setting conference, with trial to be scheduled on the fact question of whether Defendant knowingly and willfully included prohibited clauses in his standard lease.

Clerk to notify.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV076909	JOAN WALTON V. MARTIN GAFFEY

So Ordered

Patrick R. Grady, Chief District Court Judge,
Sixth Judicial District of Iowa