

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

SHIRLEY SALEEM,
Plaintiff,

)
) CASE NO. CVCV077627
)

vs.

) CONSENT DECREE
)

KACENA PROPERTY MANAGEMENT
Defendant.

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I. INTRODUCTION

This consent decree is made and entered into by the Plaintiff and Defendant in the above captioned matter in order to fully and finally resolving this case. Plaintiff Shirley Saleem was a tenant of Defendant Kacena Property Management ("Landlord"). On October 7, 2015 Plaintiff filed a petition alleging that Landlord's standard lease violated the Iowa Uniform Residential Landlord Tenant Act, ("IURLTA") codified at Iowa Code Chapter 562A seeking declaratory judgment, actual and punitive damages, attorney fees, costs and injunctive relief. Landlord answered and denied violating the IURLTA.

II. JURISDICTION

The Iowa District Court for Johnson County ("Court") has jurisdiction over the parties and subject matter of the instant action. The claims asserted in the petition, if proved, would authorize the Court to grant the equitable and legal relief set forth in this Decree. Venue is proper in the Court. The Court shall maintain jurisdiction of this action for the duration of the Decree in order to enter all orders and judgments authorized under this Decree which may be necessary to implement the relief provided by this Decree.

This Decree resolves all claims alleged in the petition.

III. DEFINITIONS

“Court” means the Iowa District Court for Johnson County.

“IURLTA” is the Iowa Uniform Residential Landlord Tenant Act, codified at Iowa Code §562A.

“Landlord” means Kacena Property Management

“Plaintiff” means Shirley Saleem.

“Tenants’ Counsel” is the Iowa Tenants' Project.

"tenants" are Landlord's current and future tenants for the term of the Decree.

IV. RELEASE OF CLAIMS

A. Plaintiff's Release

Upon entry of the Decree, Landlord, its owner, manager, employees, agents, attorneys, insurers, as well as the owners of properties it manages, and their respective heirs, successors and assigns, shall be fully and forever discharged by Plaintiff, their heirs, assigns and successors from any and all claims, demands, charges, complaints, rights and causes of action of any kind, known or unknown, arising from Landlord's use of its Standard Lease under the IURLTA, whether seeking legal, including monetary or equitable relief. This Release is final and shall survive the expiration of the Term of this Decree.

B. Landlord's Release

Upon entry of the Decree, Plaintiff, their heirs, assigns and successors, shall be fully and forever discharged by Landlord, its owner, manager, employees, agents, attorneys, insurers, as well as the owners of properties it manages, and their respective heirs, successors and assigns, from any and all claims, demands, charges, complaints,

rights and causes of action of any kind, known or unknown, arising prior to the date of the execution of this Decree. This Release is final and shall survive the expiration of the Term of this Decree.

C. No Bar to Future Claims

Nothing in this Decree shall be construed to bar any claims of Landlord or Plaintiff based on or arising out of events after the entry of this Decree. Nothing in this Decree shall bar any claims of past, current or future tenants other than Plaintiff.

D. Return of Security Deposits

Landlord warrants that it has returned both Plaintiff's security deposit in full.

V. MISCELLANEOUS PROVISIONS

A. No Admission of Liability

This Decree does not constitute and shall not be deemed a finding or determination by the Court, nor an admission by any party, regarding the merits, validity or accuracy of any of the allegations, claims or defenses in the Petition. This Decree represents the compromise of disputed claims that the parties recognize would require protracted and costly litigation to determine. Landlord in its Answer denies breaching its leases with Plaintiff or that its standard lease violates IURLTA in any way. Landlord's entry into this Decree is not and may not be used by any person or entity in any proceeding as an admission or evidence that Landlord, its owner, manager, employees or owners whose property it manages have on any occasion violated the IURLTA, which Landlord, for itself and on behalf of any and all owners of the properties managed by Landlord, expressly denies. The parties have voluntarily entered into this Consent

Decree for the express purpose of avoiding costly and protracted litigation, the outcome of which is uncertain.

B. Landlord's Mission and Intent Landlord is in the business of managing residential properties. As such, Landlord recognizes that its relationship with its tenants is an important aspect of its business and is committed to continually striving to improve those relationships. Therefore, Landlord desires to work cooperatively and respectfully with tenants generally to remove unnecessary barriers to strong, positive, mutually-beneficial relationships with its tenants.

C. Duty to Defend and Support the Decree

Plaintiff, Tenants' Counsel and Landlord, each agree to abide by the terms of the Decree in good faith and to support it fully and to use their best efforts to defend the Decree from any legal challenge by appeal or collateral attack.

D. Duty not to Evade Decree

Landlord, Plaintiff, Tenants' Counsel and Tenants' Counsel agree not to evade or attempt to evade the Decree. Landlord may sell or reorganize so long as any new entity or owner agrees to be bound by the Decree and the Decree is not evaded.

E. Modification & Enforcement

Only Plaintiff, Tenants' Counsel or Landlord may request that this Court modify, apply or enforce this Decree but Plaintiff, Tenants' Counsel and Landlord may request Court modification of this Decree.

F. Unenforceability & Voidness

If a provision of the Decree is found to be unenforceable or void, if Plaintiff, Tenants' Counsel or Landlord did not seek to find the provision unenforceable or void, they may void the entire Decree.

G. Term of the Decree

The Term of the Decree shall be three years. Thus, the Decree will be in effect for tenants with leases for the 2015-2016 term, the 2016-2017 term and the 2017-2018 term. Tenants must make complaints within 120 days after the 2017-2018 leases end. The Decree terminates when all timely complaints have been resolved.

H. No Conflict of Interest or Disqualification

Landlord and Plaintiff agree that Tenants' Counsel does not have a conflict of interest in representing tenants due to Landlord being the source of Tenants' Counsel's compensation under this Consent Decree. Landlord will not attempt to influence Tenants' Counsel's representation of Plaintiff or tenants or interfere with Tenants' Counsel's independent professional judgment or loyalty to Plaintiff or tenants. Tenants' Counsel agrees not to compromise its independent professional judgment or loyalty to Plaintiff or tenants to accommodate Landlord. Landlord and Plaintiff agree that no attorney-client relationship or other fiduciary relationship will exist between Landlord and Tenants' Counsel as a result of this Consent Decree or Landlord's compensation of Tenants' Counsel. Landlord will not seek to have Tenants' Counsel disqualified from any representation, either under this Consent Decree or independent of this Consent Decree, due to Tenants' Counsel's representation of Plaintiff or Tenants under the

Consent Decree or Landlord's compensation of Tenants' Counsel under this Consent Decree.

I. Iowa Tenants' Project & Successor Entities

Currently the Iowa Tenants' Project is a trade name of attorney Christopher Warnock. Landlord and Tenant agree that if the Iowa Tenants' Project becomes a separate non-profit or for profit entity that this will not affect the validity of this Consent Decree or the obligations of Landlord, Plaintiff or Tenants' Counsel. If necessary the parties agree to re-execute this Consent Decree, after the creation of the Tenants' Project as a separate non-profit or profit entity. On the death or incapacitation of Christopher Warnock, the Court shall appoint a successor attorney or entity to perform the duties of the Tenants' Project under the Consent Decree. Preference shall be given to Christine Boyer as successor if she is willing and able to perform as Tenants' Counsel under this Consent Decree.

VI. ATTORNEY FEES AND COSTS

Landlord and Plaintiff agree that Tenants' Counsel is entitled to fees and costs incurred in the prosecution of the instant action in the amount of \$4,000.00 to be paid by Landlord within 30 days after Entry of the Decree. This \$4,000 is not included in the \$45,000 limit for payments to Tenants' Counsel set forth in §IX.B.

VII. GENERAL INJUNCTIVE PROVISION

For the term of the Decree, Landlord will not violate the IURLTA or this Decree.

VIII. DEVELOPMENT PERIOD.

Following the entry of this Consent Decree, Landlord shall develop a proposed lease to be used by Landlord in its operations and shall, upon completion, submit to

Tenants' Counsel a copy of said lease. Tenants' Counsel agrees to review said lease and identify any provisions of said lease that it believes are, expressly or implicitly, contrary to the provisions of the IURLTA which will be removed from the lease by Landlord.

Any current tenants with Landlord's lease that contains provisions identified by the Tenants' Counsel as illegal will be informed by Landlord, without any admission of liability, that these specific provisions will not be enforced. Further, upon the entry of this Consent Decree, Landlord and Tenants' Counsel shall work cooperatively to develop an informational handout to be provided to all tenants advising them of the Complaint Procedure described below and an informational handout entitled "Rights and Responsibilities of Landlord and Tenants" to be distributed to all tenants of Landlord. Said informational handout shall emphasize the rights and obligations of the parties as identified in the IURLTA and such other matters as the parties may otherwise agree.

Notwithstanding the foregoing, however, the parties acknowledge and agree that Landlord shall have the unqualified right to operate its business and manage its operations in the manner it deems appropriate or advisable, except as expressly otherwise provided herein. Upon completion of the written description of the Complaint Process and the informational handout entitled "Rights and Responsibilities of Landlord and Tenants", Tenants' Counsel and Landlord shall meet jointly with Landlord's staff to introduce and explain the Complaint Process and the requirements of this Consent Decree.

IX. TENANT COMPLAINT PROCESS

Landlord agrees to adopt the Complaint Process for all of its current and future tenants during the term of the Decree. Current and future tenants are not required to use the Complaint Process, but it is provided to assist them in understanding, asserting and fulfilling their rights and responsibilities. The target date for the initiation of the Complaint Process is July 1, 2016 or another date as mutually agreed by Landlord and Tenants's Counsel.

A. Notification

Landlord agrees to notify all tenants of the Complaint Process: (1) current tenants by June 1, 2016 or such other time as Landlord and Tenants' Counsel may mutually agree; and (2) future tenants upon the execution of their lease and (3) any current or future tenant immediately upon request by the tenant, their representative or the Tenants' Counsel. Notification of the Complaint Process will require Landlord to provide a tenant with the written informational handout entitled "Rights and Responsibilities of Landlords and Tenants" and the mutually agreed upon explanation of the Complaint Procedure. Tenants' Counsel will also maintain webpages with information regarding this Decree and the Complaint Process.

B. Tenants' Counsel

Landlord and Plaintiff agree that the Iowa Tenants' Project will act as Tenants' Counsel for Landlord's current and future tenants for the term of the Decree. Tenants' Counsel's contact information will be provided in the written explanation of the Complaint Process. Tenants' Counsel will be compensated by Landlord at a rate of \$150 (one hundred and fifty dollars) per hour for attorneys and no more than \$100 (one

hundred dollars) per hour for Tenants' Counsel's non-attorney staff or contractors, including paralegals, investigators and experts. Payment will be made for administration, but only for administration directly related to Landlord and Landlord's tenants, review of Landlord's practices and policies, investigation of complaints, mediation, settlement, and legal representation during all litigation, including appeals and ancillary matters for all complaints initiated under the Complaint Process and other representation and duties authorized or required under this Decree. Tenants' Counsel's compensation will be billed monthly to Landlord and paid by Landlord within 30 days. Notwithstanding the foregoing, however, the total compensation payable to Tenants' Counsel by Landlord hereunder shall not exceed forty five thousand dollars (\$45,000.00) over the term of this Decree. Tenants' Counsel may apply to the Court for an award of attorney's fees incurred only during the litigation phase of its involvement and any such award made by the Court, not previously paid by Landlord pursuant to the provisions hereof, shall not be included in the \$45,000.00 limit on attorney's fees payable hereunder.

Tenants' Counsel has an obligation to perform its administration, review, investigation, mediation and negotiation services and its representation in good faith and in a reasonable manner. Tenants' Counsel shall not initiate litigation on behalf of a tenant if Tenants' Counsel does not reasonably believe that Landlord's action is contrary to the requirements of IURLTA or is otherwise illegal or unconscionable or if it would be otherwise inequitable to do so. If Landlord believes Tenants' Counsel's compensation as billed to be fraudulent or grossly excessive, it may ask the Court to set aside the compensation on those grounds.

C. Complaint Procedure

1. Current and future tenants of Landlord may initiate a complaint of violation of the IURLTA or this Decree by contacting Landlord's primary contact, whom Landlord shall designate, either via e-mail or in writing and for whom Landlord shall provide a working e-mail address and mailing address. Unless a shorter period is required by law, or in an emergency situation, Landlord has 10 business days after receipt of the e-mail or the postmarked date of a written complaint, to resolve a tenant's initial complaint. During the tenancy turnover of period August 27 to September 27, Landlord shall have 15 business days to resolve a complaint.

2. If the appropriate time period set forth in §1 has lapsed, has not been extended by mutual agreement of Landlord and Tenants' Counsel and complaint is not resolved to the satisfaction of the tenant, tenant may contact the Tenants' Counsel for assistance. Upon receipt of a complaint from a tenant, Tenants' Counsel agrees to ensure said tenant has first attempted to resolve the complaint with Landlord's designated primary contact. If tenant has not brought the complaint to the attention of Landlord's designated primary contact, Tenants' Counsel will refer the tenant to Landlord's designated primary contact as the first step in the complaint process. Tenants' Counsel is permitted to contact Landlord's designated contact and Landlord directly, rather than proceeding through Landlord's counsel during the pendency of this decree, including cases in litigation, unless given specific instructions in writing for a particular case or complaint.

3. Tenants' Counsel will investigate the complaint and make a determination whether the complaint is legally well-founded and just and whether

Landlord has, in the opinion of Tenants' Counsel, unfairly violated the IURLTA or this Decree. Tenants' Counsel will inform the tenant and the Landlord of this determination, but, if (1) Landlord not has previously been notified of the complaint; (2) the complaint is determined to be unfounded or if the tenant does not wish to proceed and (2) the tenant wishes confidentiality, Tenants' Counsel will not inform Landlord. Fees for representation of tenant by Tenants' Counsel during the investigatory phase will be paid by Landlord as provided above.

4. If the complaint is well-founded and just and tenant wishes to proceed, Tenants' Counsel will contact Landlord and attempt to informally resolve the complaint. Fees for representation of tenant by Tenants' Counsel during the informal resolution stage will be paid by Landlord as provided above.

5. If informal discussion does not resolve the complaint, with the agreement of the tenant and Landlord, the Tenants' Counsel will arrange for a third party, at Landlord's cost, to either mediate or provide non-binding arbitration. Fees for representation of tenant by Tenants' Counsel during the mediation or arbitration phase will be paid by Landlord as provided above.

6. If neither mediation nor non-binding arbitration resolves the complaint or if mediation or non-binding arbitration are refused by either the tenant or Landlord, the Tenants' Counsel, if the tenant wishes to proceed with the complaint, will follow the procedures with regard to notice of violations set forth in the IURLTA, if applicable.

7. If after following the IURLTA procedures with regard to violations, if applicable, or after the failure of mediation or non-binding arbitration, if the IURLTA notice procedures are not applicable, Tenants' Counsel may (i) represent tenant in a

separate small claims action; (ii) seek declaratory judgment and/or equitable relief before this Court; or iii) initiate a contempt action. This shall commence the representation phase of the complaint process.

A. The tenant must proceed in a separately filed small claims case and initially pay the court costs, including filing fees and service fees or must obtain judicial permission to proceed *in forma pauperis* if:

- i) the complaint involves \$5000 or less of monetary damages,
- ii) the complaint involves a non-complex legal issue,
- iii) the complaint is not an issue of first impression; or
- iv) the dispute does not apply to all or a significant number of

Landlord's tenants.

Fees for representation of tenant by Tenants' Counsel during the representation phase will be paid by Landlord as provided above.

B. If the complaint involves a complex legal issue under the IURLTA or this Decree, particularly one of first impression, or an issue that applies to all or a significant number of Landlord's tenants or a request for injunctive relief, then this Court will retain the complaint for hearing and disposition as a declaratory judgment and/or for appropriate equitable or legal relief. Fees for representation of tenant by Tenants' Counsel during the representation phase will be paid by Landlord as provided above.

C. If a complaint involves willful disobedience of the IURLTA or this Decree, Tenants' Counsel may initiate contempt proceedings on behalf of tenant. This Court will retain the complaint for hearing and disposition of contempt proceedings. Fees for

representation of tenant by Tenants' Counsel during the representation phase will be paid by Landlord as provided above.

7. Either Landlord or tenant may appeal a small claims decision or decision of the district court. If s tenant wishes to appeal and Tenants' Counsel believes an appeal is legally warranted and that the legal issues involved are appropriate for appellate resolution, the tenant must pay the filing fee and other court costs, though the Tenants' Counsel may advance the filing fee and court costs if it chooses to do so. However, said expenses shall not be borne by Landlord unless and until assessed against Landlord by the Court. Fees for representation of tenant on appeal by Tenants' Counsel will be paid by Landlord.

8. If a dispute over legal issue arises under the IURLTA or this Decree that both Tenants' Counsel and Landlord agree is important or complex Tenants' Counsel and Landlord will mutually seek declaratory judgment and/or equitable and legal relief from this Court on this issue. Fees for litigation under this provision by Tenants' Counsel will be paid by Landlord.

9. If there is a significant violation of the IURLTA or this Decree without a complaint by a tenant, Tenants' Counsel, after first attempting informal resolution with Landlord, may directly seek a declaratory judgment and/or equitable or legal relief from this Court. If there is a significant and willful disobedience of the IURLTA or this Decree, without a complaint by a tenant, Tenants' Counsel may initiate contempt proceedings. Fees for litigation under this provision by Tenants' Counsel will be paid by Landlord.


10. The parties agree that it is important to obtain, maintain and preserve evidence regarding alleged damages to residential apartments for which Landlord intends to withhold amounts from tenants' security deposits and for which Landlord otherwise intends to bill tenants. Therefore, the parties agree that Landlord shall take photographic evidence of any soiling or damages which it believes are caused by or are otherwise the responsibility of tenants, said photographs to include not only close up images of the damages at issue but also images of the apartment or residence as a whole to place those alleged damages in context. In the event of any soiling or other damages that Landlord believes are caused by or are otherwise the responsibility of tenants but which are not readily visible in photographic documentation as a result of the nature of said soiling or damage (e.g. urine or grease), Landlord shall use reasonable efforts to preserve other evidence of the existence of the same, Landlord shall not impede tenant from having independent inspections of the unit.

11. Notwithstanding anything herein to the contrary, nothing within this Consent Decree is intended to or shall prevent, limit or prejudice Landlord's right to proceed against tenants for failure to pay rent or failure to comply with the lease terms or to assess damages against the tenant for breach of any of its duties or for damages caused by tenant. Landlord shall, at all times, have the right to provide tenants with a Notice to Quit, Notice of Non Compliance, a 3 day Notice to Pay Rent, or any other notice under IURLTA or to file suit against tenants, seeking either forcible entry or detainer or money judgment against tenants for claims arising under their lease agreements. The complaint process outlined herein is not intended to be applicable to claims Landlord may have

against tenants for failure to pay rent, breach of their lease, or for damages caused during their tenancy.

DATED this 2nd day of May, 2016.


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State of Iowa Courts

Type: OTHER DECREE

Case Number CVCV077627
Case Title SHIRLEY SALEEM V. KACENA REAL ESTATE MANAGEMENT

So Ordered

A handwritten signature in black ink, appearing to read "Mary E. Chocchelly", written over a horizontal line.

Mary E. Chocchelly, District Court Judge
Sixth Judicial District of Iowa