

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

JUSTIN MIGLIORE,)	
<i>Plaintiff,</i>)	CASE NO. CVCV077514
)	
vs.)	CONSENT DECREE
)	
APTS. DOWNTOWN, INC.)	
<i>Defendant.</i>)	



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 resolve this lawsuit. Plaintiff Justin Migliore ("Tenant") is a tenant of Defendant Apts. Downtown, Inc. ("Landlord"). Tenant filed a petition alleging that his lease with Landlord 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 Apts. Downtown, Inc., including Apartments Downtown, Apts. Near Campus and Apartments Near Campus and will also include Apartments at Iowa, if and when that entity is added to this Decree.

“Plaintiff” means Justin Migliore.

“Tenants' Counsel” is Christopher Warnock.

"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 owners, managers, 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, his heirs, assigns and successors from any and all claims, demands, charges, complaints, rights and causes of action of any kind, known or unknown, including but not limited to those 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, his heirs, assigns and successors, shall be fully and forever discharged by Landlord, its owners, managers, 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 occurring after the entry of this Decree. Nothing in this Decree shall bar any claims of past, current or future tenants other than Plaintiff.

D. Termination & Return of Security Deposit

Landlord agrees that Plaintiff and his roommates' lease is terminated and to return his security deposit and the security deposit of his roommates.

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 contract with Tenant 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 owners, managers, 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

Plaintiff, Tenant, and Tenants' Counsel agree not to evade or attempt to evade the Decree. The rights and obligations established by this Consent Decree may not be assigned or otherwise transferred by Landlord without the express written consent of Tenants' Counsel, which shall not unreasonably be withheld; provided however, that Landlord may, without such consent, assign its rights and obligations hereunder to an affiliate or to a purchaser of all or substantially all of Landlord's assets. Any purported in

assignment in violation of this section shall be void and of no effect. Any permitted assignee shall assume all assigned obligations of Landlord under this Consent Decree.

E. Modification & Enforcement

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

F. Unenforceability & Voidness

If a provision of this Decree is found to be unenforceable or void, if Tenant, 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

This Decree will be in effect for tenants with leases for the 2015-2016 term, the 2016-2017 term, the 2017-2018 term and 2018-19 term. Tenants must make complaints within 120 days after the end of their respective and applicable lease terms. The Decree terminates when all timely complaints have been resolved. The Decree may be extended for additional three year lease terms by mutual application of Landlord and Tenants' Counsel.

H. No Conflict of Interest or Disqualification

Plaintiff agrees that Tenants' Counsel does not have a conflict of interest in the instant representation or in Tenants' Counsel's representing future tenants due to Landlord's agreement as part of the settlement process to pay Tenants' Counsel's reasonable attorney fees under this Consent Decree. Landlord will not attempt to influence Tenants' Counsel's representation of Plaintiff or other tenants or interfere with Tenants' Counsel's independent professional judgment or loyalty to Plaintiffs or other

tenants. Tenants' Counsel agrees not to compromise its independent professional judgment or loyalty to Plaintiff or other 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 agreement to pay Tenants' Counsel's reasonable attorney fees, as outlined in this Consent Decree. 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 other tenants under the Consent Decree or Landlord's payment of Tenants' Counsel's reasonable attorney fees 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, Tenant or Tenants' Counsel. The parties agree to re-execute this Consent Decree, upon the creation of the Iowa 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 Iowa Tenants' Project under this 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.

J. Global Settlement

It is the intention of Plaintiff, Tenants' Counsel and Landlord that this Decree is one part of a larger settlement, including settlement of *Conroy v. Apts. Downtown*, LACV072840 and a mutually agreed upon internal complaint process with regard to Apartments at Iowa, a separate corporate entity associated with Landlord. Plaintiff, Tenants' Counsel and Landlord wish that Apartments at Iowa and its tenants be governed by this Decree.

The Apartments at Iowa Complaint Process Agreement is attached as Appendix A. Upon the first well founded complaint by an Apartments at Iowa tenant that results in the filing of an action in this Court, Landlord and Tenants' Counsel have agreed to mutually move this Court to add Apartment at Iowa and its tenants to this Consent Decree on the same terms and conditions as Landlord and its tenants.

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 \$10,000.00 to be paid by Landlord within 30 days after the execution of this agreement by the parties.

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. The parties acknowledge and agree that said review process shall not, in any way, abrogate or limit Landlord's ability to contract or to exercise its independent judgment in its business operations within the legal limits imposed by the IURLTA but is intended solely as an opportunity to proactively identify and avoid, if possible, potential problem areas.

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 Tenant" 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. Any disagreement with regard to the informational handout or explanation of the complaint process will be determined by this Court. 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 Tenant", 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.

A. Notification

Landlord agrees to notify all tenants of the Complaint Process: (1) current tenants upon a date mutually agreed by Landlord and Tenants' Counsel, but not later than July 1, 2016; 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 informational handout (either in paper format or via email) entitled "Rights and Responsibilities of Landlords and Tenant" and the mutually agreed upon explanation of the Complaint Procedure.

B. Tenants' Counsel

For purposes of utilizing the Complaint Procedure, Landlord and Tenant 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 and Tenants' Counsel's staff's compensation will be billed monthly to Landlord and paid by Landlord within 30 days.

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, in its sole discretion, 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 sending an e-mail to Landlord's designated complaint e-mail address. Unless a shorter period is required by law, or in an emergency situation, Landlord has 10 business days to resolve a tenant's initial complaint.

2. If the appropriate time period set forth in §1 has lapsed 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 and has sent

an e-mail to Landlord's designated complaint e-mail address. If tenant has not sent an e-mail to Landlord's designated complaint e-mail address, Tenants' Counsel will have tenant do this as the first step in the complaint process.

3. The Tenants' Counsel will investigate the complaint and make a determination whether the complaint is factually and 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 (3) 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. If a tenant wishes to proceed with a complaint after it is found to be factually and legally well-founded and just by Tenants' Counsel, a \$20 complaint charge is payable to the Iowa Tenants' Project before further investigation or representation can commence. If, upon investigation or during representation a complaint is later found to be unfounded and Tenants' Counsel declines to proceed further or tenants dismiss the complaint, the \$20 complaint charge paid will be refunded to tenant.

4. If the complaint is factually and legally well-founded and just and tenant wishes to proceed and has paid the \$20 complaint charge, Tenants' Counsel will contact Landlord and attempt to informally resolve the complaint. Tenants' Counsel is permitted to speak directly with Landlord's designated staff and employees during the

informal dispute resolution phase. 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 mutually agreeable 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. Unless instructed in writing to the contrary, Tenants' Counsel may contact a duly designated staff member of Landlord directly during mediation or arbitration phase.

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. Unless instructed in writing to the contrary, Tenants' Counsel may contact a duly designated staff member of Landlord directly during the representation phase, including litigation and appeals.

8. 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.

9. 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.

10. 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.

11. Either Landlord or tenant may appeal a small claims decision or any decision of the district court. If Tenant wishes to appeal and Tenants' Counsel believes

an appeal is factually and legally warranted and that the issues presented 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 with a limit of \$5,000 per separate appeal of a small claims case to the district court and \$10,000 for each separate appeal to the Supreme Court or Court of Appeals. Each Notice of Appeal or separately docketed appeal counts as a separate appeal and more than one separate appeal may be filed in a particular case.

12. 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 by Tenants' Counsel under this provision, including appeal with the fee limitations set forth in section 8 will be paid by Landlord.


13. 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 by Tenants' Counsel under this provision, including appeal with the fee limitations set forth in section 8 will be paid by Landlord.

X. LANDLORD RIGHTS

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 12th_ day of February, 2016.

Agreed to as to form and substance:

 <hr/> <p>CHRISTOPHER WARNOCK AT0009679 <i>Iowa Tenants' Project</i> 532 Center Street Iowa City, IA 52245 (319) 358-9213 chriswarnock@gmail.com TENANT'S COUNSEL</p>	<p><u>/s/ Stephen J. Holtman</u> Stephen J. Holtman AT0003594 Lisa A. Stephenson AT0007560 Simmons Perrine Moyer Bergman, PLC 115 3rd Street SE, Suite 1200 Cedar Rapids, IA 52401 Telephone: 319-366-7641 Facsimile: 319-366-1917 Email: sholtman@simmonsperine.com lstephenson@simmonsperine.com ATTORNEYS FOR DEFENDANT/LANDLORD</p>
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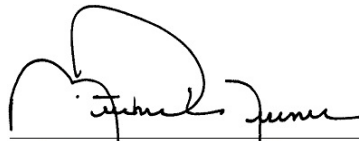


State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV077514
Case Title JUSTIN MIGLIORE V. APTS. DOWNTOWN

So Ordered



Mitchell E. Turner, District Court Judge,
Sixth Judicial District of Iowa