

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

CHRISTOPHER COX)	CASE NO. CVCV077434
<i>Plaintiff,</i>)	
)	
vs.)	CONSENT DECREE
)	
RIVER CITY PROPERTY)	
MANAGEMENT & SALES, LLC,)	
<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 case. Plaintiff Christopher Cox ("Tenant") is a tenant of Defendant River City Property Management and Sales, LLC ("Landlord"). On July 17, 2015 Tenant 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 has 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 River City Property Management & Sales, LLC.

"Tenant" means Christopher Cox.

"Tenant's Counsel" is Christopher Warnock d/b/a the Iowa Tenants' Project and his successor entities.

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

IV. RELEASE OF CLAIMS

A. Tenant'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 Tenant, his 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, Tenant, his 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, including charges for trash removal, maintenance and repair and any associated charges previously billed to Tenant, including late fees, court costs, etc. 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 Tenant 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 Tenant.

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 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

Tenant, Tenant's 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, Tenant, and Tenant's 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. Tenant's Counsel may incorporate or form some other legal business entity and assign his responsibilities under this Decree thereto so long as any successor entity agrees to be bound by the Decree and the Decree is not evaded.

E. Modification & Enforcement

Only Tenant, Tenant's Counsel or Landlord may request that this Court modify, apply or enforce this Decree but Tenant, Tenant's 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 Tenant, Tenant's 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 Tenant agree that Tenant's Counsel does not have a conflict of interest in representing tenants due to Landlord being a source of Tenant's Counsel's compensation under this Consent Decree. Landlord will not attempt to influence Tenant's Counsel's representation of Tenant or tenants or interfere with Tenant's Counsel's independent professional judgment or loyalty to Tenant or tenants. Tenant's Counsel agrees not to compromise his independent professional judgment or loyalty to Tenant or tenants to accommodate Landlord. Landlord and Tenant agree that no attorney-client relationship or other fiduciary relationship will exist between Landlord and Tenant's Counsel as a result of this Consent Decree or Landlord's compensation of Tenant's Counsel. Landlord will not seek to have Tenant's Counsel disqualified from any representation, either under this Consent Decree or independent of this Consent Decree, due to Tenant's Counsel's representation of Tenant or tenants under the Consent Decree or Landlord's compensation of Tenant's 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, Tenant or Tenants' Counsel. The parties agree to re-execute this Consent Decree, after the creation of the Tenants' Project as a separate non-profit or profit entity, if necessary on the death or incapacitation of Christopher Warnock. Prior to the assignment of the Decree to a successor non-profit or for profit entity, the Court shall appoint a successor attorney or entity to perform the duties of the Tenants' Project under the Consent Decree.

VI. ATTORNEY FEES AND COSTS

Landlord and Tenant agree that Tenant's Counsel is entitled to fees and costs incurred in the prosecution of the instant action in the amount of \$3,000.00 to be paid by Landlord within 30 days after Entry of the Decree.

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 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", Tenant's 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 within 30 days after Entry of the Decree; 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 Tenant's 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.

B. Tenant's Counsel

Landlord and Tenant agree that the Iowa Tenants' Project will act as Tenant's Counsel for Landlord's current and future tenants for the term of the Decree, if desired by tenants. Tenant's Counsel's contact information will be provided in the written explanation of the Complaint Process. Tenant's Counsel will be compensated by Landlord at a rate of \$150 (one hundred and fifty dollars) per hour for attorneys and no more than \$75 (seventy-five dollars) per hour for Tenant's 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. Tenant's 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 Tenant's Counsel by Landlord hereunder shall not exceed

forty five thousand dollars (\$45,000.00) over the term of this Decree. Tenant's 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.

Tenant's 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. Tenant's Counsel shall not initiate litigation on behalf of a tenant if Tenant's 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 Tenant's 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 Dave Fomon, the principal of the Landlord. 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 Tenant's Counsel for assistance. Upon receipt of a complaint from a tenant, Tenant's Counsel agrees to ensure said tenant has first attempted to resolve the complaint with David Fomon. If tenant has not brought the complaint to the attention of Mr. Fomon, Tenant's Counsel will refer the

tenant to Mr. Fomon as the first step in the complaint process and Tenant's Counsel shall not bill Landlord for time associated with said contact.

3. The Tenant's 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 Tenant's Counsel, unfairly violated the IURLTA or this Decree. Tenant's 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, Tenant's Counsel will not inform Landlord. Any fees for said contact shall not exceed fifteen (15) minutes. Other fees for representation of Tenant by Tenant's Counsel during the investigatory phase will be provided by Landlord as provided above. Fees for representation of tenant by Tenant's 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, Tenant's Counsel will contact Landlord and attempt to informally resolve the complaint. Fees for representation of tenant by Tenant's 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 Tenant's 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 Tenant's 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 Tenant's 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, Tenant's 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 litigation 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, or
- ii) the complaint involves a non-complex legal issue, or
- 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 Tenant's Counsel during the litigation 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 Tenant's Counsel during the litigation phase will be paid by Landlord as provided above.

C. If a complaint involves willful disobedience of the IURLTA or this Decree, Tenant's 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 Tenant's Counsel during the litigation phase will be paid by Landlord as provided above.

8. Either Landlord or tenant may appeal a small claims decision or decision of the district court. If Tenant wishes to appeal and Tenant's 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 Tenant's 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 Tenant's Counsel will be paid by Landlord.

9. If a dispute over a legal issue arises under the IURLTA or this Decree that both Tenant's Counsel and Landlord agree is important or complex, Tenant's 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 Tenant's Counsel will be paid by Landlord.

10. If there is a significant violation of the IURLTA or this Decree without a complaint by a tenant, Tenant's 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, Tenant's Counsel may initiate contempt proceedings. Fees for litigation under this provision by Tenant's Counsel will be paid by Landlord.

11. 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.

12. 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 NonCompliance, 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 5 day of November 2015.



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ATTORNEY FOR LANDLORD



State of Iowa Courts

Type: OTHER DECREE

Case Number CVCV077434 **Case Title** CHRISTOPHER COX V. RIVERCITY PROPERTY MANAGEMENT

So Ordered

A handwritten signature in cursive script that reads "Paul D. Miller".

Paul D. Miller, District Court Judge,
Sixth Judicial District of Iowa