IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

Daniel Kline, Frank Sories, and Amaris McCann,	)	
Plaintiffs,	)	**No. CVCV076694**
vs.	)	
Southgate Property Management, LLC,	)	**RULING**
Defendant.	)	

On this date, Plaintiffs' First Motion for Partial Summary and Declaratory Judgment; Plaintiffs' First Motion for Class Certification; and Defendant's Motion for Summary Judgment 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 August 29, 2014, Plaintiffs filed a Petition at Law and in Equity, and for Class Action. Defendant has been, at all relevant times, Plaintiffs' landlord. Plaintiffs allege Defendant has a standard lease, lease rules, and addenda. Plaintiffs further allege the lease contains provisions that violate Iowa Code chapter 562A, the Iowa Uniform Residential Landlord Tenant Act (IURLTA). Plaintiffs specifically contend:

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;

e. Defendant has violated Iowa Code § 562A.12 by using leases that wrongfully withhold tenants' security deposits, and does so in bad faith, in particular, but not limited to, requiring automatic carpet cleaning and waiving the right to not be responsible for cleaning beyond normal wear and tear;

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.17 by using leases that, in particular, but not limited to, requiring tenants to repair the premises or 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; and

j. Defendant has violated Iowa Code §§ 562A.27(4) and 562A.23 by using leases that restricted tenants' rights to seek repairs or restore services at landlord's expense.

Plaintiffs seek 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. Plaintiffs also seek punitive damages, attorney fees, and court costs. Plaintiffs also request that Defendant be permanently enjoined from including the challenged provisions in its leases or lease rules, and from enforcing the illegal lease provisions or lease rules.

Also on August 29, 2014, Plaintiffs filed a First Motion for Partial Summary and Declaratory Judgment and First Motion for Class Certification. In support of their Motions, Plaintiffs rely 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). Plaintiffs assert 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 Plaintiffs' 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 their pending Motion, Plaintiffs first argue that Defendant's standard lease includes illegal fines, penalties, fees and charges exceeding actual damages; the standard lease includes illegal automatic cleaning provisions; and that the lease includes illegal waiver provisions that violate Iowa Code chapter 562A in that Defendant's standard lease includes illegal liability shifting clauses. With respect to class certification, Plaintiffs assert 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. Plaintiffs later supplemented their Motion seeking class certification, stating that Defendant has admitted that over 50 tenants used the standard lease at issue in this case, thus meeting the numerosity requirement for class certification.

Defendant filed an Answer on September 17, 2014, denying the allegations of the Petition that are adverse to it, and setting forth affirmative defenses to Plaintiffs' claims.

Defendant has resisted Plaintiff's Motions. Defendant argues that Plaintiffs stipulate that they have no evidence that Defendant included provisions it knew to be prohibited, and Defendant had no such knowledge. Defendant claims it properly supported charges for professional carpet cleaning. Defendant also claims it could not have known its inclusion of certain provisions was prohibited sooner than August 6, 2013, and therefore Defendant cannot be liable for leases terminating before that date. Defendant argues that it has asserted the defense of the statute of limitations, and summary judgment is inappropriate before Defendant has had time to develop this defense through discovery. Defendant also argues that class certification is improper in this case because individual issues predominate over Plaintiff's claims. Defendant has submitted an affidavit from Chris Villhauer to support the Resistance.

Defendant later supplemented its Resistance to argue that Iowa law provides only that lease provisions may be prohibited or unconscionable, and there is no category of "illegal" provisions as argued by Plaintiffs; Staley does not control the ripeness of this case, and even if it did, only Plaintiffs' claims regarding provisions allegedly specifically prohibited under the Iowa Code would be ripe for consideration at this time; the two lease provisions Plaintiffs claim are prohibited do not violate the IURLTA; Plaintiffs have no evidence of any willful inclusion of provisions known by Defendant to be prohibited; the issues of carpet cleaning charges and subleasing fees are not ripe, as none of the Plaintiffs have asserted damages as a result of their inclusion; even if the issue of Defendant's recovery of damages for the use of its own maintenance and cleaning staff were ripe for consideration, Defendant's recovery in such

instances has been self-limited to its actual and reasonable damages, rather than all maintenance work on the apartments; Plaintiffs are improper class representatives because they have no claims against Defendant to provide them with proper standing in this action; and class certification is improper because individual issues predominate over prospective Plaintiffs' claims.

Plaintiffs reply that Defendant has not addressed the issues raised by Plaintiffs, and Plaintiffs have only presented, at this time, the issue of whether Defendant's standard lease contained illegal provisions. Plaintiffs argue that, under Staley, Plaintiffs may challenge the inclusion of illegal provisions in a lease, even without enforcement thereof. Plaintiff reiterates her argument that the challenged provisions are, in fact, illegal. Plaintiff also reiterates her argument that class certification should be granted under these facts.

Defendant also has filed a Motion for Summary Judgment. Defendant argues that Plaintiffs cannot establish any of the lease provisions of which they complain are prohibited under Iowa Code § 562A.11(1); Plaintiffs admit none of the allegedly unenforceable clauses have been applied to them; Plaintiffs Kline and Sories admit they have not been damaged as a result of any provisions in the lease; and Plaintiff McCann's only potential claim in this case relates to whether cleaning charges well below the jurisdictional amount for this Court were appropriate. Defendant challenges the assertion that it may have knowingly and willfully included prohibited clauses in its lease.

Plaintiffs resist the Motion, arguing the Court should first determine whether or not the challenged provisions are prohibited, before considering the issue of their knowing and willful use.

Defendant replies that Defendant's lack of knowledge as to whether any provisions were prohibited is determinative of Plaintiffs' claims for actual and punitive damages, and Plaintiffs' failure to identify any genuine issue of material fact as to whether Defendant made use of a provision it knew to be prohibited makes the issue proper for summary judgment at this time.

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.

Plaintiffs' first challenge is to the inclusion in the standard lease of a variety of fees, fines, penalties and charges that Plaintiffs claim 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 Plaintiffs:

Lease

a. $25 NSF or returned check charges
b. $50 per month additional occupant charge
c. $50 handling fee, $50 reconnection fee
d. Maintenance call bills, "current rate per hour as determined by Landlord" plus trip charge
e. $500 liquidated damages for unauthorized pet
f. $300 sublease administrative fee
g. $300 per day for holding over "and any damages"
h. Acceleration clause making all rent for entire lease due immediately if lease terminated

Building and Property Rules

a. $45 lockout service calls during business hours, $85 lockout fee at other times, $15 per duplicate key
b. Minimum $25 charge for violations of lease or lease rules

See Plaintiffs' Exhibit 3.

Plaintiffs generally argue that Defendant 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 Plaintiffs in this section of their Motion have been set without any consideration of what the landlord's actual damages and fees would be in each situation. Therefore, Plaintiffs' Motion for Summary and Declaratory Judgment should be granted on this issue.

Plaintiffs' next argument is the standard lease violates Iowa Code § 562A.12 by including automatic carpet 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 provision in the "Building and Property Rules" attachment to Defendant's standard lease:

> All carpets are professionally cleaned at the end of each tenancy. The departing tenant had professionally cleaned carpet at move-in, and the tenant will be charged for

> professionally cleaned carpet at departure. Any extra painting or carpet cleaning needed to be done will be deducted from Tenant's Rental Deposit.

See Plaintiffs' Exhibit 1, "Building and Property Rules," para. 9.

This clause automatically imposes 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. This section of the lease may not be included in Defendant's standard lease because inclusion of this section permits the landlord to avoid its obligations as defined by the Iowa Legislature in § 562A.12(3). Plaintiffs' Motion for Summary and Declaratory Judgment should be granted on this issue.

Plaintiffs next challenge the limitation of liability clauses included in Defendant's standard lease agreement. Plaintiffs point to two specific provisions in Defendant's lease:

> DELAY OF POSSESSION. Subject to other remedies at law, if Landlord, after making a good faith effort, is unable to give Tenant possession at the beginning of the term, the rent shall be rebated on a pro rata basis until possession can be given. The rebated rent shall be accepted by Tenant as full settlement of all damages occasioned by the delay, and, if possession cannot be delivered within ten (10) days of the beginning of the term, this Rental Agreement may be terminated by either party giving five (5) days written notice.

See Plaintiff's Exhibit 1, para. 11.

> Within three (3) days of the commencement of occupancy, Tenant shall complete and return to Landlord the Apartment Inspection Checklist, Smoke Alarm and Fire Extinguisher checklists (if applicable). If tenant does not within three (3) days complete and return those checklists, Tenant shall be presumed as acknowledging that there are no defects or damages in the Dwelling Unit. Landlord agrees to review the checklists and notify Tenant of any objections within seven (7) days of receipt of completed checklists. If Landlord does not notify Tenant of Landlord's objections within seven (7) days of receipt of completed checklists, Tenant's evaluation shall be deemed accepted by Landlord. These checklists and objections (if any) shall be retained by Landlord.

See Plaintiff's Exhibit 1, para. 30.

> 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).

> Iowa Code § 562A.14 provides:
>
> At the commencement of the term, the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and section 562A.15. The landlord may bring an action for possession against a person wrongfully in possession and may recover the damages provided in section 562A.34, subsection 4.

Iowa Code § 562A.14 (2015).

> Iowa Code § 562A.15 provides:
>
> 1. a. The landlord shall:
>
> (1) Comply with the requirements of applicable building and housing codes materially affecting health and safety.
>
> (2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.
>
> (3) Keep all common areas of the premises in a clean and safe condition. The landlord shall not be liable for any injury caused by any objects or materials which belong to or which have been placed by a tenant in the common areas of the premises used by the tenant.
>
> (4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord.
>
> (5) Provide and maintain appropriate receptacles and conveniences, accessible to all tenants, for the central collection and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal.

(6) Supply running water and reasonable amounts of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

b. If the duty imposed by paragraph "a", subparagraph (1), is greater than a duty imposed by another subparagraph of paragraph "a", the landlord's duty shall be determined by reference to paragraph "a", subparagraph (1).

2. The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in subsection 1, paragraph "a", subparagraphs (5) and (6), and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.

3. The landlord and tenant of a dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only:

a. If the agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration;

b. If the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

4. The landlord shall not treat performance of the separate agreement described in subsection 3 as a condition to an obligation or performance of a rental agreement.

Iowa Code § 562A.15 (2015).

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. Further, pursuant to Iowa Code §§ 562A.14 and 15, the landlord may not waive its repair, maintenance and cleaning obligations simply because a tenant fails to use Defendant's checklist, fails to complete a checklist, or fails to return a checklist within three days. The Court concludes that paragraphs 11 and 30 of Defendant's lease allow exculpation or limitation of any liability arising under the law, and allow Defendant to waive its obligations under §§ 562A.14 and 15. Therefore, the Court concludes that the challenged clauses of the lease agreement providing for exculpation or limitation of liability, and for waiver of Defendant's responsibilities under §§ 562A.14 and 15, are provisions that shall not be included in the landlord's standard lease. Plaintiffs' Motion for Summary and Declaratory Judgment should be granted on this issue.

The Court next considers the issue of whether Defendant willfully used provisions known to be prohibited. This is a fact question to be resolved by the trier of fact. Credibility determinations will be required to be made on Defendant's representatives' testimony on the question of whether the illegal clauses were included knowingly and willfully. Therefore, Defendant's Motion for Summary Judgment should be denied on this issue. Further, the other arguments raised by Defendant in its Motion for Summary Judgment should be denied for the same reasons that Plaintiffs' Motion for Summary and Declaratory Judgment should be granted.

The Court turns to Plaintiffs' 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. Plaintiffs' counsel shall take all appropriate steps to effectuate this certification pursuant to the Iowa Rules of Civil Procedure.

RULING

IT IS THEREFORE ORDERED that Plaintiffs' First Motion for Partial Summary and Declaratory Judgment is granted as to Plaintiffs' request for a finding regarding the legality of the challenged lease provisions. The Court hereby declares that the lease provisions challenged by Plaintiffs, as described in their First Motion for Partial Summary Judgment and Declaratory Judgment, are illegal and should not have been included in the standard lease utilized by Defendant.

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

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment is **DENIED**.

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**
CVCV076694	KLINE, ET AL V. SOUTHGATE PROPERTY MANAGEMENT

So Ordered

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