IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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| **GRETCHEN UHLENHAKE,** PK 2636713<br>**Plaintiff/Appellant,**<br><br>**vs.**<br><br>**PROFESSIONAL PROPERTY MANAGEMENT, INC.,**<br><br>**Defendant/Appellee,**<br><br>**vs.**<br><br>**RICHARD UHLENHAKE,**<br><br>**Third-Party Defendant.** | **CASE NO. CL82571**<br>**(Small Claims No. 320992)**<br><br>**RULING ON SMALL CLAIMS APPEAL** |



Plaintiff appeals from the ruling of the trial court dismissing her claim and in finding in favor of defendant on its counterclaim. The standard of review by this court is de novo on the record presented to the trial court. Iowa Code §631.13(4)(a) (1999). The court has reviewed the entire record in this matter, and finds that it is adequate for purposes of rendering a judgment on appeal. See Iowa Code §631.13(4)(b)(1999). Having reviewed the authorities presented to it for consideration and heard the oral arguments made by the parties, the court finds as follows:

Plaintiff and defendant were parties to a residential apartment lease, which was reduced to writing and introduced into evidence as Exhibit A. The lease specified an initial term from July 1, 1998 through June 30, 1999. It provides that it will be extended to a month-to-month tenancy after the initial term and may thereafter be terminated in writing, said written notice to be given "no later than noon . . . on the last day of the

month preceding the ending month of the term." The lease specified that rent was due on the first day of each month. Plaintiff gave a security deposit in the amount of $175 at the time she executed the lease.

Plaintiff gave a written notice of her intent to vacate the apartment as of August 31, 1999. That document (Exhibit D) is not dated by plaintiff, but it is noted as having been received by defendant on August 2. Plaintiff testified that she dropped the notice off on July 31, 1999, which was a Saturday. Defendant offered testimony that the drop box utilized by the plaintiff was periodically checked and the notice given by her was not discovered until approximately 10:00 a.m. on August 2.

After plaintiff left the apartment, defendant had the carpets in the apartment professionally cleaned and assessed the cost of the cleaning ($36.75) against the deposit given by plaintiff. Defendant relies upon a provision in the written lease that states that the tenant is to have the carpets professionally cleaned upon vacating the apartment, otherwise the defendant may incur such charges and assess those charges to the tenant. (Paragraph 18, Exhibit A.)

Defendant also charged plaintiff with rent for September of 1999, claiming that her notice of termination was not in time to discharge her obligation for September rent. Taking into account various fees and charges attributable to the September rent payment which was never made by plaintiff, as well as the carpet cleaning charge, defendant claims it is owed $381.75 over and above the security deposit of $175 posted by plaintiff. Plaintiff claims entitlement to her entire deposit and no responsibility for the September rent, arguing that her notice was given timely and that defendant is precluded from charging for carpet cleaning against a tenant's security deposit.

There is no dispute that the relationship between the parties is governed by the Uniform Residential Landlord and Tenant Act (hereinafter "URLTA"), Chapter 562A of the Iowa Code. There is also no dispute that the notice of intent to vacate the apartment was given no later than August 2, 1999, the date defendant noted its receipt. Likewise, there is no dispute that the cleaning of the carpets in the apartment was not needed to remove pet stains, spills or anything other than the dirt and debris that would otherwise be incident to someone walking on the carpets. There is also no argument that the lease language regarding payment of rent, termination of tenancies and carpet cleaning is ambiguous or otherwise in need of interpretation or construction.

Notice of terminating tenancy. The URLTA specifies the timeframe for the termination of a month-to-month tenancy by either the landlord or tenant. That notice must be in writing and be given "at least thirty days prior to the periodic rental date specified in the notice." Iowa Code §562A.34(2) (1999). In this case, the periodic rental date would be the date on which rent would be otherwise due if the tenancy were not terminated, or September 1, 1999. Thirty days before this date would be August 2, the date the notice by plaintiff was received. As a result, under this section of the URLTA, plaintiff's notice would be timely.

Defendant argues it is entitled to calculate the applicable time period for giving such notice according to the lease itself rather than the URLTA. The lease provides that notice must be given not later than on noon of the last day of the preceding month, or in this case July 31, 1999. Defendant argues that this is a simpler method of calculation, which takes out any guesswork when one is dealing with months with other than thirty days. It cites Iowa Code §562A.2(2)(a) in support of its argument. That code section

states that one of the purposes of the URLTA is to simplify and clarify the rights and obligations of landlord and tenant. Id.

The court acknowledges the underlying purpose of the URLTA as argued by defendant. However, as applied to this question, the more specific code section should control over the general. See Iowa Code §4.7 (1999); Hillview Assocs. v. Palmer, 456 N.W.2d 909, 910 (Iowa 1990). The method of calculating notice of terminating a tenancy is governed by section 562A.34, and to the degree the lease calls for a different method of calculation, the statute controls. See Iowa Code §562A.9(1) (1999) (terms and conditions not prohibited by URLTA may be included in rental agreement).

Under the terms of section 562A.34, plaintiff's notice of intent to terminate tenancy was timely given, even when viewed in a light most favorable to defendant. As a result, tenant is not obligated for rent and associated charges for September of 1999.

Charges against security deposit. The parties agree that the applicable provision of the URLTA is §562A.12(3)(b) (1999), which allows amounts to be withheld from a tenant's security deposit "[t]o restore the dwelling unit to its condition at the commencement of the tenancy, **ordinary wear and tear excepted.**" The disagreement is on what is meant by "ordinary wear and tear." Plaintiff contends that the cleaning of the carpets was for the usual amount of dirt left on carpets caused by typical traffic during the term of the lease, and therefore is ordinary wear and tear. Defendant contends that the tenant is obligated to clean the carpet pursuant to the lease and §562A.17 of the Iowa Code, and that it may assess such charges when it does so upon the failure of the tenant to clean the carpet.

The court concludes that as applied to the undisputed facts in this record, the cleaning charges associated with the carpet were as the result of ordinary wear and tear of the carpet. While it is true that "ordinary wear and tear" is not defined in the Code or case law, it is clear to the court from the context of the URLTA that it means something more than what is presented here. The legislature obviously intended that not all charges associated with the restoration of the dwelling unit could be withheld, otherwise there would be no need for the "ordinary wear and tear" exception. The court may not construe a statute in a manner that renders statutory language superfluous. In re Interest of G.J.A., 547 N.W.2d 3, 6 (Iowa 1996). Since the parties agree that the amount of dirt in the carpet came from the anticipated use of the carpet, it follows that it resulted from "ordinary wear and tear." If this is the only claimed damage to the apartment, it is insufficient to justify the retention of plaintiff's deposit. "[The tenant] could have vacated the apartment, leaving the normal amount of wear and soil, without forfeiting any portion of his security." Southmark Management Corp. v. Vick, 692 S.W.2d 157, 160 (Tex.App. 1985) ("normal wear and tear.")

Defendant argues that such a construction will allow a tenant to leave an apartment in a filthy condition (spoiled food in the refrigerator, splattered grease on the counters, juice stains on the carpet) and not be responsible for the charges associated with cleaning such a condition. Absent a definition by either the legislature or the appellate courts, all the court can say in response to defendant's argument is that the determination of what constitutes "ordinary wear and tear" should be made on a case-by-case basis.

Finally, defendant may not rely upon the lease provision requiring tenant to clean the carpets as justification for retaining a portion of plaintiff's deposit. The URLTA is

specific as to what can and cannot be withheld from the deposit, and a lease may not be written which is inconsistent with the statute or designed the circumvent the statute. The court is not saying that defendant may not require a tenant to clean the carpet under circumstances outside the "ordinary wear and tear" exception, or that this lease provision may not be used to justify defendant going forward and retaining a part of the deposit where there has been wear and tear to the carpet that is extraordinary. What the court is saying is that the defendant may not rely upon this lease language to justify the imposition of such charges against a deposit in every case simply because the lease provision exists. Otherwise, the lease would be used to circumvent the URLTA in cases such as this one where there has been no showing of extraordinary wear and tear.

Disposition. The trial court awarded defendant the full amount prayed for in its counterclaim and third-party claim and dismissed plaintiff's claim for the return of her security deposit. That ruling should be reversed, for the reasons set forth in this decision. Plaintiff should be allowed the return of her entire security deposit, and defendant's claim arising out of the September rent payment and cleaning charges should be dismissed. Likewise, defendant's claim against the third-party defendant as the guarantor of plaintiff's obligations under the lease should be dismissed, as plaintiff has no further obligations under the lease. The court further concludes that the retention of the deposit was not in bad faith, as there was a good faith dispute over the construction of the lease provisions and URLTA provisions set forth herein. Therefore, no punitive damages shall be awarded to plaintiff.

**IT IS THEREFORE ORDERED** that the decision of the trial court in this matter should be reversed, and that judgment should be entered in favor of plaintiff and

against defendant in the amount of $175.00, plus interest at the applicable rate from the date of filing.

**IT IS FURTHER ORDERED** that defendant's claim on its counterclaim and third-party claim are dismissed with prejudice.

**IT IS FURTHER ORDERED** that the costs of this action shall be taxed to defendant.

**IT IS FURTHER ORDERED** that each party shall be responsible for their respective attorney fees.

Dated this 19th day of April, 2000.

Michael D. Huppert
Judge, Fifth Judicial District of Iowa

Copies to:
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