IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

Nabihah Ahmed and Fawwaz Ahmed,	)	
Plaintiffs/Appellees,	)	**No. SCSC082744**
vs.	)	
Tracy Barkalow, Big Ten Property Management LLC, and TSB Holdings LLC,	)	**RULING ON APPEAL**
Defendants/Appellants.	)	

On June 3, 2014, the Court presides over a hearing on the Notice of Appeal filed by Defendants/Appellants Tracy Barkalow, Big Ten Property Management, LLC, and TSB Holdings, LLC (hereinafter Defendants). Appearances were made by Attorney Christopher Warnock and Christine Boyer on behalf of Plaintiffs/Appellees Nabihah Ahmed and Fawwaz Ahmed (hereinafter Plaintiffs) and by Attorney James Affeldt and Attorney Nicholas Kilburg on behalf of Defendants. No formal record of proceedings is made. Having considered the file, relevant case law, and written and oral arguments of counsel, the Court hereby enters the following ruling.

STANDARD OF REVIEW

A judgment in a small claims case is to be "based upon applicable law and upon a preponderance of the evidence." Iowa Code § 631.11(4). This district court considers an appeal from a small claims decision upon the record filed without further evidence if the record is adequate. The duty of the district court, in the appeal, is to decide the case without regard to technicalities or defects that have not prejudiced the substantial rights of the parties. Iowa Code § 631.13(4)(a). The appeal is a *de novo* review of the record. *Sunset Mobile Home Park v. Parsons*, 324 N.W.2d 452, 454 (Iowa 1982). The Court gives weight to the factual findings of the trial court, especially when considering the credibility of witnesses but is not bound by them. *Jack Moritz Co. Mgmt. v. Walker*, 429 N.W.2d 127, 128 (Iowa 1988). "[A] party appealing a small claims ruling is not entitled to another trial." *Wilson v. Vanden Berg*, 687 N.W.2d 575, 581 (Iowa 2004).

This Court has now reviewed the following items: all the filings shown in court file; the hand-written hearing notes of Magistrate Lynn Rose; Plaintiffs' Exhibits 1 – 7; Defendants' Exhibits A – U; and the digital recording of the hearing. The Court has considered these items as well as the oral arguments of counsel at the June 3, 2014, hearing. The Court finds the record adequate for rending a final judgment on appeal. The briefs were thorough, and the parties' respective positions were well-argued by counsel at the hearing on June 3, 2014..

FACTUAL AND PROCEDURAL BACKGROUND

On October 2, 2012, Plaintiff Nabihah Ahmed filed a Petition for Money Judgment, seeking $5,000.00 from Defendants "individually and/or as a manager participating in tortious conduct and/or under the doctrine of *respondeat superior*, for violating Iowa Code Chapter 562A, including failing to promptly return security deposit, bad faith retention of a security deposit, improper deduction from a security deposit, willfully using a rental agreement with known prohibited provisions, plus punitive damages and attorney fees." Defendants have denied the allegations stated against them by Nabihah Ahmed. Defendants later amended their Answer to argue that Nabihah Ahmed's claim is barred by the doctrine of accord and satisfaction. Defendants assert Nabihah Ahmed endorsed a check from Defendant TSB Holdings, LLC in the amount of $358.75 that contained a memo marked "paid in full." Defendants amended their Answer a second time to argue that Plaintiff Nabihah Ahmed is not the real party in interest. In response to Defendants' second amendment to their Answer, Fawwaz Ahmed was joined as an additional Plaintiff.

Trial was held before Magistrate Rose on February 18, 2013. Magistrate Rose entered a Judgment Order on May 15, 2013 (file-stamped May 16, 2013). Magistrate Rose set forth the following Findings of Fact:

- Nabihah Ahmed and Fawwaz Ahmed executed a lease with Tracy Barkalow for property described as 906 North Dodge Street, Apt. #5, Iowa City, Iowa on August 20, 2011. The lease is dated August 18, 2011. Defendants' Exhibit A.
- Both Nabihah Ahmed and Fawwaz Ahmed were tenants of the property. Both Nabihah Ahmed and Fawwaz Ahmed initialed each page of the lease and both of them signed the lease on the last page. Defendants' Exhibit A.
- The term of the lease executed was from August 19, 2011, through July 26, 2012. Defendants' Exhibit A, page 1.
- Fawwaz Ahmed paid $850 to TSB Holdings, L.L.C. as a security deposit on August 20, 2011. Defendants' Exhibit C.
- The lease indicates that the tenants are responsible for the security deposit. Defendants' Exhibit A, page 1.
- The lease designates Fawwaz Ahmed as the security deposit holder only for purposes of returning the security deposit. Defendants' Exhibit A, page 1.
- The monthly rent for the property was $750. Defendants' Exhibit A, page 1.
- The monthly utility cost for the property was $100. Defendants' Exhibit A, page 1.
- Utility costs include water, sewer, electricity, natural gas, recycling and garbage removal. Defendants' Exhibit A, page 3.
- The Defendant classifies the $150 charge for the open window as a fee on August 18, 2011 (Defendants' Exhibit A, page 3); as a fine on a date after June 1, 2012 (Defendants' Exhibit E); and as rent on July 26, 2012 (Defendants' Exhibit B).
- The Plaintiffs vacated the rental property, cleaned it and had it ready for inspection on July 26, 2012. Defendants' Exhibit S. Plaintiffs' Exhibits 1-6.

- The Defendant issued a check for a partial refund of the Plaintiffs' security deposit on August 20, 2012. Defendants' Exhibit T, page 3.
- The Plaintiffs never received the check issued by the Defendant on August 20, 2012. The check issued by the Defendant on August 20, 2012 was never cashed.
- The Defendant returned $358.75 of the original $850 deposit on October 11, 2012. Defendants' Exhibits O, P, G and H.
- The only written explanation of the deductions from the security deposit provided by the Defendant to the Plaintiffs was the statement with single line entries dated 07/26/2012 (Defendants' Exhibit B) and the amounts listed as deducted on the print-out of the check sent to the Plaintiffs (Defendants' Exhibit O).

Magistrate Rose first considered the real party in interest issue. Magistrate Rose found that Nabihah Ahmed is a real party in interest and that she is a proper plaintiff in this case. Further, Magistrate Rose finds that Fawwaz Ahmed was properly added as a named second plaintiff in this case.

Magistrate Rose next considered Defendants' request to dismiss Tracy Barkalow, individually, as a Defendant. Defendants had requested dismissal of Mr. Barkalow as an individual, because, Defendants argue, he was not the landlord. He did not prepare the lease. He did not personally receive rent, and he did not personally withhold money from the security deposit. Magistrate Rose found:

> Mr. Barkalow signed the lease as a representative of Big Ten Property Management, L.L.C. and TSB Holdings, L.L.C. Defendants' Exhibit A. Mr. Barkalow signed the check returning a portion of the deposit to the Plaintiffs. Defendants' Exhibit O. Mr. Barkalow performed the check-out inspection of the rental unit. Defendants' Exhibit S.
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> Mr. Barkalow is not an employee of Big Ten Property Management, L.L.C. or TSB Holdings, L.L.C. Rather, Mr. Barkalow has an ownership interest in each of the named entities. Mr. Barkalow has the authority to determine the contents of the leases used by these entities, the authority to determine whether or not a refund of the security deposit is issued, and the authority to determine if amounts are withheld from a security deposit.

Magistrate's Judgment Order, at 3. Magistrate Rose denied the request to dismiss Tracy Barkalow, individually, as a Defendant.

Magistrate Rose turned to consideration of Defendants' argument regarding accord and satisfaction. Magistrate Rose noted that at the time of trial, Fawwaz Ahmed testified that he did not understand that the check returning a portion of the security deposit to him constituted settlement of a dispute over the security deposit. Magistrate Rose found that Fawwaz Ahmed had no idea what the amount of the check would be prior to October 12, 2012, since he did not know what deductions, if any, were made by Defendants. Magistrate Rose further found that although Fawwaz Ahmed had communications with Defendants prior to receiving the check, there was no indication from the communications that there had been any settlement negotiations or discussion. Magistrate Rose also found that Mr. Barkalow's testimony established that he did not know of any legal reason for writing "paid in full" at the bottom of the checks he issued refunding security deposits to tenants. Magistrate Rose concluded that, because neither party

understood that the check issued by Mr. Barkalow to Fawwaz Ahmed constituted a legal settlement, the issuance of the check does not constitute accord and satisfaction. Magistrate Rose further concluded that Fawwaz Ahmed's acceptance and endorsement of the check issued by Mr. Barkalow did not waive either Plaintiff's rights under the lease executed by the parties.

Next, Magistrate Rose considered whether Defendants returned the security deposit to Plaintiffs within thirty days of the end of the tenancy. Magistrate Rose entered the following fact findings on this issue:

> Mr. Barkalow mailed a partial refund of the security deposit along with written notice regarding what amounts he withheld from the security deposit to the plaintiffs on or about August 20, 2012. Defendants' Exhibits B and M. This date was approximately 25 days after the July 26, 2012 lease termination.
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> Fawwaz Ahmed testified that he never received the check and written explanation mailed out by the Defendants on August 20, 2012. Tracy Barkalow testified that the check issued to Mr. Ahmed on August 20, 2012 had never been cashed.
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> Fawwaz Ahmed initiated an e-mail conversation with the Defendants in an effort to obtain the security deposit due to the Plaintiffs. The conversation was taking place during September and October of 2012. Plaintiffs' Exhibit 7.
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> The Defendants refused to issue another check to Mr. Ahmed unless he would agree to pay a fee of $75. Plaintiffs' Exhibit 7, pages 1-5. The Defendants refused to let Mr. Ahmed know what deductions they had made from the Plaintiffs' security deposit. Plaintiffs' Exhibit 7, page 1. The Defendants required Mr. Ahmed to physically pick up the check during business hours and refused to mail the check to Mr. Ahmed. Plaintiffs' Exhibit 7, page 1. Mr. Ahmed refused to pay the $75 charge and the Defendants did not issue a replacement check.
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> The Plaintiffs filed suit on October 2, 2012. The Defendants issued a replacement check refunding a portion of the security deposit to Plaintiffs on October 10, 2012. Defendants' Exhibit O. The Defendants sent the check to the Plaintiffs by certified mail on October 11, 2012. Defendants' Exhibits G and H. This date was approximately 77 days after the lease termination (July 26, 2012) and 52 days after the first check was issued (August 20, 2012).
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> Tracy Barkalow testified that the $75 was to cover the costs of a stop payment charge at the bank and the staff at Big Ten Property Management required to prepare a replacement check.
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> The Defendants are sophisticated landlords in the Iowa City community, running a high-volume rental business. Stop payments fees and staff time are regular costs of doing business for the Defendants. The Defendants are aware of the law requiring landlords to return security deposits within thirty days of termination of a lease.
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> Initially, the Defendants acted within the 30 day deadline when they sent a check out on August 20, 2012. However, when the Defendants were informed by Mr. Ahmed that the check had not been received, the Defendants refused to issue the refund of the security deposit. The Defendants did not investigate what may have happened to the check. When Mr. Ahmed persisted in his attempts to have the security deposit returned to him, the Defendants demanded a fee, shifting the Defendants' costs of doing business to the Plaintiffs, before the Defendants would carry out their statutory duty.

Magistrate's Judgment Order, at 4-5. Magistrate Rose concluded that Defendants withheld Plaintiffs' security deposit in bad faith, and Plaintiffs were entitled to the return of the entire security deposit in this matter.

Magistrate Rose next considered the legality of the open window provision found at paragraph 42(a) of the lease. Magistrate Rose entered the following fact findings as to this issue:

> The Defendants included a written statement (pursuant to Iowa Code Section 562A.12(3)) with the check refunding a portion of the security deposit to the tenants. Defendants' Exhibit B. The statement lists four deductions. The first deduction, characterized as "rent past due," was in the amount of $150 and arose out of a penalty imposed for an open window. The Defendants characterize the $150 charge as a fee in the lease. Defendants' Exhibit A, page 3. The Defendants characterize the $150 charge as a fine on a date after June 1, 2012. Defendants' Exhibit E. When the Defendants prepared the statement of deductions from the security deposit, the charge was characterized as rent. Defendants' Exhibit B.
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> The Defendants urge that the Plaintiffs agreed to the charge for the open window when they executed the lease. The Defendants cite paragraph 42(a) of the lease, stating that a fee of $150 will be imposed for any windows found to be open when the heat is on. Defendants' Exhibit A, page 3.
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> Fawwaz Ahmed testified that he thought the window was left open one time in October of 2011 for approximately twenty (20) minutes. Mr. Ahmed testified that he received one phone call from his sister to shut the window because Mr. Barkalow had called Nabihah Ahmed.
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> The Court notes that the lease contemplates a monthly utility cost for the rental unit to be approximately $100. Defendants' Exhibit A, page 1. The $100 utility cost is inclusive of water, sewer, gas electric, recycling and garbage collection. Defendants' Exhibit A, page 3. The lease indicates at paragraph 43 that tenants are liable for excessive utility costs. The Defendants did not provide any evidence that the Plaintiffs incurred excessive utility costs at any time they occupied the unit.

Magistrate's Judgment Order, at. 5. Magistrate Rose concluded that Defendants did not provide any proof of actual damages as a result of the open window; and, without proof of actual damages, Defendants are not entitled to collect the $150.00 penalty from Plaintiffs. Magistrate Rose found that the $150.00 fee listed at paragraph 42(a) of the lease is a penalty and is excessive. Magistrate Rose further found that paragraph 42(a) of the lease is illegal and unenforceable.

With regard to Plaintiffs' invitation to the trial court to rule on other provisions of the lease as to legality and enforceability, Magistrate Rose found these other provisions were not at issue and declined to rule on them. Magistrate Rose concluded:

> Because the Court has determined that the entire security deposit must be returned to the Plaintiffs on the basis of bad faith retention by the Defendants, the Court need not address issues concerning charges for cleaning the rental unit, charges for refrigerator maintenance, or the sufficiency of the written statement of reasons for deductions from the security deposit produced by the Defendants.

Magistrate's Judgment Order, at 6. With regard to damages, Magistrate Rose found that Defendants retained Plaintiffs' security deposit for more than 30 days, demanded a fee from Plaintiffs to return the security deposit, withheld excessive amounts from the security deposit, and only returned the security deposit after Plaintiffs filed suit. Magistrate Rose concluded that Defendants retained the deposit in bad faith, and that Plaintiffs were entitled to $200.00 in damages.

As to the judgment entry, Magistrate Rose summarized her findings:

1. The Plaintiffs are entitled to a full refund of their security deposit. The Plaintiffs have already received $358.75 of their security deposit. The Plaintiffs are entitled to the balance of their security deposit in the amount of $491.25.
2. The Plaintiffs are entitled to damages in the amount of $200 for the Defendants' bad faith retention of their security deposit.
3. The Plaintiffs are entitled to $2,000 in damages for the Defendants' improper deduction from a security deposit and willful use of a rental agreement with prohibited provisions.

Magistrate's Judgment Order, at 6. Thus, judgment was entered in favor of Plaintiffs and against Defendants in the amount of $2,691.25 with interest at 2.12% per annum from October 2, 2012. Magistrate Rose ruled that the parties were responsible for their own attorney fees. Court costs were assessed to Defendants, and appeal bond was set in the amount of $5,000.00.

Defendants filed their Notice of Appeal on May 24, 2013. Defendants filed a transcript of the trial proceedings, which the Court has reviewed.

In support of their appeal, Defendants first argue that the trial court's award for "prohibited provisions" should be vacated, as the Iowa Code provides a limited subset of prohibited provisions, and the Court awarded more than the statutory maximum. Defendants' second argument is that the trial court's award based on "prohibited provisions" should be vacated, because there was no evidence presented at trial that Defendants willfully included provisions they knew to be prohibited. Defendants' third argument is that the trial court erred in declining to dismiss the claims against Tracy Barkalow, individually. Finally, Defendants argue that the security deposit was promptly returned, and the withholding of part of the deposit for actual damages was proper. In support of this argument, Defendants contend: they should not be penalized for returning the security deposit according to a tenant's instructions; Defendants did not retain the security deposit, but returned it as directed; and Defendants properly withheld portions of the security deposit for actual damages, including for rent past due, a cleaning charge, a defrosted refrigerator service call, and late fees that were past due.

In response to Defendants' arguments on appeal, Plaintiffs first argue that the Iowa Uniform Residential Landlord Tenant Act (hereinafter the Landlord Tenant Act) requires actual damages and prohibits fines, penalties, or liquidated damages. Plaintiffs' next argument is that all three Defendants in this case are liable for violating the Landlord Tenant Act. Third, Plaintiffs argue the landlord willfully used a lease with known prohibited provisions. Plaintiffs' fourth argument is that the security deposit was withheld in bad faith and was forfeited by the landlord. Finally, Plaintiffs argue that the landlord failed to prove its cleaning and repair deductions were justified. In support of their arguments, Plaintiffs have filed a summary of charges claimed to be in excess of actual damages as well as a copy of a Johnson County District Court ruling in case number LACV073821, which Plaintiffs state involves the same lease and Defendants as this case.

Defendants reply that Plaintiffs have failed to show that liquidated damages are prohibited by the Landlord Tenant Act. Defendants also argue that Plaintiffs have failed to show that Tracy Barkalow can be held personally liable for the damages awarded in this matter.

Defendants further argue that Plaintiffs have failed to show that Defendants willfully used lease provisions known by the landlord to be prohibited. Finally, Defendants argue that Plaintiffs failed to show that Defendants retained the security deposit in bad faith.

COMBINED FINDINGS OF FACT & CONCLUSIONS OF LAW

At the outset, the Court finds that the "Findings of Fact" section of Magistrate Rose's Judgment Order is supported by the evidence presented at the small claims hearing, and the Court adopts the "Findings of Fact" as set forth by Magistrate Rose at pages 1 and 2 of the Judgment Order. It is upon these "Findings of Fact" that the Court will base its Ruling in this matter.

Iowa Code section 631.11(4) provides that judgments in small claims cases shall be rendered based upon the applicable law and upon a preponderance of the evidence. Therefore, in order to be successful on their claims, Plaintiffs need to prove by a preponderance of the evidence that they are entitled to a damages award from Defendants.

The Court first finds that Nabihah Ahmed is a real party in interest to prosecute this action. The lease at issue in this matter provides that all tenants are responsible for providing the security deposit, and Nabihah Ahmed is listed as a tenant on the lease. Nabihah Ahmed has the same rights as Fawwaz Ahmed to seek relief with respect to the security deposit, just as she has the same responsibilities as Fawwaz Ahmed under the terms of the lease. It was proper for Magistrate Rose to conclude that Nabihah Ahmed is a real party in interest and that Nabihah Ahmed is properly named as a plaintiff in this case.

The Court next considers whether Tracy Barkalow, individually, should have been dismissed as a defendant to this action. Magistrate Rose points to evidence to support her finding that Tracy Barkalow should not be dismissed as a defendant, noting that evidence shows Mr. Barkalow signed the lease as a representative of Big Ten Property Management, LLC and TSB Holdings, LLC, and that evidence also shows that Mr. Barkalow signed the check returning a portion of the deposit to Plaintiffs and that Mr. Barkalow performed the check-out inspection of the rental unit. Of more significance, this Court notes that the parties' lease (Exhibit A) states, in bold and at the bottom of each page (four times): "OWNER IS AN IOWA LICENSED REAL ESTATE BROKER." The lease does *not* state that the owner is an Iowa real estate *brokerage*. Iowa Code § 543B.3 provides, in relevant part, that a "real estate broker," for the purposes of chapter 543B, is a "person." The Court finds that the references in the lease to the "owner" being an "Iowa licensed real estate broker" must be referring to Tracy Barkalow as the owner. Iowa Code section 562A.6(5) defines "landlord" as the "owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by section 562A.13." Thus, the Court concludes that Tracy Barkalow, individually, was properly named as a defendant; and Magistrate Rose did not err on this issue.

The Court turns to the accord and satisfaction issue. "An accord is an agreement in which the parties agree to discharge a preexisting contract or obligation by giving and accepting a substituted consideration in settlement of the claim." *Estate of Buss*, 577 N.W.2d 860, 862 (Iowa App. 1998). "The satisfaction is the performance or execution of the agreement." *Buss*, 577 N.W.2d at 862. The evidence in this case does not show that there was any agreement between Plaintiffs and Defendants to discharge a preexisting contract or obligation by giving and accepting a substituted consideration in settlement of the claim. Fawwaz Ahmed's testimony was that he did not understand that the check returning a portion of the security deposit to him constituted settlement of a dispute over the security deposit. Tracy Barkalow's testimony was that he did not know of any legal reason for writing "paid in full" at the bottom of the checks he issued refunding security deposits to tenants. Because there was no agreement to support a finding of accord and satisfaction under these facts, Magistrate Rose did not err with regard to her conclusions on accord and satisfaction.

The Court next considers the issue of whether the security deposit was properly returned within thirty days of the end of the tenancy. Iowa Code section 562A.12(3) provides:

> 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:
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> (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.
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> (2) To restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted.
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> (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.
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> 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).

It is undisputed that the lease terminated on July 26, 2012. While Mr. Barkalow mailed a partial refund of the security deposit along with written notice regarding what amounts he withheld from the security deposit to Plaintiffs on or about August 20, 2012, Fawwaz Ahmed's testimony was that he never received the check and written explanation mailed on August 20, 2012. Further, Mr. Barkalow testified that the check issued on August 20, 2012, was never cashed. The email exchange between Fawwaz Ahmed and Defendants regarding obtaining the security deposit took place during September and October of 2012, as evidenced by Exhibit 7. Exhibit 7 also shows that Defendants refused to issue another check to Fawwaz Ahmed unless he agreed to pay a $75.00 fee. Defendants did not let Fawwaz Ahmed know what deductions they made from the security deposit. Further, Defendants required that Fawwaz Ahmed pick up the check during business hours and refused to mail the check to Fawwaz Ahmed. Fawwaz Ahmed

refused these conditions, and Defendants did not issue a replacement check until after Plaintiffs filed suit. At the time Defendants sent the replacement check to Plaintiffs, approximately 77 days had passed since the lease termination. The Court concludes that by engaging in these actions, Defendants did not comply with the requirement of Iowa Code section 562A.12(3) regarding return of the rental deposit within thirty days of the end of the lease agreement. Therefore, Magistrate Rose's determination that Defendants did not comply with Iowa Code section 562A.12(3) should be upheld on appeal.

The Court next considers the legality of the open window provision in the lease. Iowa Code section 562A.11 governs prohibited provisions in rental agreements:

> 1. A rental agreement shall not provide that the tenant or landlord:
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> 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;
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> b. Authorizes a person to confess judgment on a claim arising out of the rental agreement;
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> c. Agrees to pay the other party's attorney fees; or
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> 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.
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> 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.

As previously stated in this Ruling, Plaintiffs must prove their claim by a preponderance of the evidence. The Court has considered all of the evidence and concludes that there simply is not sufficient evidence in the record to support a finding that the landlord has *willfully* used a rental agreement containing provisions *known* by the landlord to be prohibited. Even if the Court were to find that there is a sufficient record to support a finding that willful and knowing use occurred, Plaintiffs have failed to meet their burden of proving their actual damages. "Small claims cases are governed by special statutes and rules." *Bagley v. Hughes A. Bagley, Inc.*, 465 N.W.2d 551, 553 (Iowa App. 1990) (citing Iowa Code § 631.2). "They are to be simple and informal without the technicalities of procedure." *Bagley*, 465 N.W.2d at 553. "They are to provide a simple, swift, and inexpensive procedure for hearing cases under its jurisdictional amounts." *Bagley*, 465 N.W.2d at 553. The Court finds the purpose of a small claims action is, generally, to determine actual damages. The purpose of a small claims action is not to make declaratory judgment rulings or to provide advisory opinions. Plaintiffs have not proven a violation of Iowa Code section 562A.11 under these facts, and there is not an adequate record to support a finding of a punitive damages award in favor of Plaintiffs. Magistrate Rose's conclusion regarding the legality of the open window provision should be reversed on appeal.

With respect to Magistrate Rose's conclusion that other lease provisions, and the issue of their legality, were not at issue, the Court finds that Plaintiff did adequately raised the issue of the legality of other lease provisions in their Original Notice, in which Plaintiffs stated that the landlord was "willfully using a rental agreement with known prohibited provisions." Thus, Magistrate Rose should have considered whether other lease provisions are legal. The record, however, does not support any award of damages. As with the open window provision, Plaintiffs did not prove a *willful* and *knowing* use of the provisions by Defendants, and Plaintiffs have not proven damages beyond the amount of the damage deposit that was withheld.

The ruling regarding the damage deposit makes Plaintiffs whole from their losses proved by the evidence. The Court finds that the reason the entire security deposit must be returned is that the 30-day requirement of Iowa Code section 562A.12(3) was not followed. Such a finding, however, does not automatically support a subsequent finding that the landlord acted in bad faith. The bad faith question is a separate inquiry. In this particular case, Plaintiffs have proven bad faith with respect to the retention of the security deposit and failure to comply with section 562A.12(3). Iowa Code section 562A.12(7) provides that the "bad-faith retention of a deposit by a landlord, or any portion of the rental deposit, in violation of this section shall subject the landlord to punitive damages not to exceed twice the monthly rental payment in addition to actual damages." The Court agrees with Magistrate Rose's conclusion that a $200.00 punitive damages award is appropriate under these facts. There is not support in the record, however, for a finding of actual damages beyond the $200.00 punitive damages award.

To summarize, after considering all of the parties' arguments on appeal, the Court finds that Magistrate Rose's judgment should be affirmed in the amount of $491.25 based on the forfeiture of the rental deposit and in the amount of $200.00 for bad faith retention of the deposit. Magistrate Rose's judgment in the amount of $2,000.00 in damages for Defendants' improper deduction from a security deposit and willful use of a rental agreement with prohibited provisions should be reversed. No attorney fees are awarded, because there is not a sufficient record to provide a basis for entry of an attorney fee award.

RULING

IT IS THEREFORE ORDERED that judgment is entered in favor of Plaintiffs and against Defendants in the amount of $491.25 based on the forfeiture of the rental deposit, and in the amount of $200.00 for bad faith retention of the security deposit, for a total of $691.25, plus interest at the rate of 2.12% per annum from October 2, 2012. The parties are responsible for their own attorney fees. Courts costs are assessed to Defendants. Defendants shall pay court costs directly to the Clerk of Court. Upon application of Plaintiffs, the judgment entered in

Plaintiffs' favor may be deducted from the appeal bond posted by Defendants. If no such application is filed within ten (10) days of the date of this Ruling, the appeal bond shall be returned to Defendants.

DATED: September 30, 2014.

Marsha Bergan

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MARSHA A. BERGAN, JUDGE
Sixth Judicial District of Iowa