IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

Lenora Caruso,	)	
	)	
Plaintiff/Appellee,	)	
	)	**No. SCSC081696**
vs.	)	
	)	**RULING**
Joseph Clark, et al.,	)	
	)	
Defendants/Appellant.	)	

On this 26th day of September, 2014, the Notice of Appeal filed by Defendant/Appellant Apartments Downtown, Inc. came before the undersigned for review. The Court finds a hearing on the appeal is unnecessary. Having considered the file, relevant case law, and written arguments of counsel, the Court hereby enters the following ruling:

STANDARD OF REVIEW

This Court hears an appeal from a small claims decision upon the record filed without further evidence. Iowa Code § 631.13(4) (2013). 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 fact findings of the trial court, especially when considering the credibility of witnesses, but is not bound by them. Jack Moritz Co. Management v. Walker, 429 N.W.2d 127, 128 (Iowa 1988). This Court, after examining the court file and the record made by Magistrate Karen Egerton, finds such record adequate for rendering a final judgment on appeal.

FINDINGS OF FACT

On March 27, 2012, Plaintiff/Appellee Lenora Caruso filed an Original Notice—Action for Money Judgment, naming Joseph Clark, James Clark, R-1 LLC, and Gilbert Manor, LLC as Defendants. Plaintiff stated the following claim against Defendants: "[P]laintiff demands from you the sum of $5,000 individually and/or as a manager participating in tortious conduct and/or under the doctrine of *respondeat superior*, for overcharging for repairs, for violating Iowa Code Chapter 562A, for abuse of process and for violations of the Iowa consumer credit and debt collection statutes, Iowa Code §§ 537.5201(1)(y) & 537.7103(4)(e), willfully using a rental agreement with known prohibited provisions, plus punitive damages and attorney fees." Plaintiff later amended her claim to allege that Defendants wrongfully withheld her security deposit. Defendants have denied the allegations set forth in Plaintiff's claim.

Trial took place before Magistrate Egerton on October 12, 2012 and November 9, 2012. Magistrate Egerton entered Findings of Fact, Conclusions of Law and Judgment on December 9, 2013. Magistrate Egerton set forth the following Findings of Fact:

> Pursuant to a written lease agreement, the Plaintiff Lenora Caruso and two other tenants, Victoria Isenhour and Claire Caruso, rented a three bedroom apartment/residence from Defendant Apartments Downtown, Inc., said apartment located at 427 S. Johnson Street,

in Iowa City, Johnson County, Iowa. The initial tenancy period ran from August 5, 2010 to July 31, 2011. Pursuant to the rental agreement, the tenants provided a $1,270.00 security deposit (one month's rent—$1,370.00—minus a $100.00 coupon). Claire Caruso, the Plaintiff's sister and co-tenant, was designated as the deposit holder. The written lease agreement was four pages long but held 70 paragraphs of lease provisions in extremely small type. The initial lease agreement was signed by the Plaintiff, the other two tenants, and a representative of the landlord in March of 2010. The Plaintiff and her roommates moved into the property in August 2010 and then subsequently executed another written lease for the same property the next year—to run from August 6, 2011 to July 30, 2012. The rent amount for the second lease period was slightly higher at $1,385.00 per month, which was paid in equal shares each month by the three tenants. At the end of the lease period, the Plaintiff and her two roommates, Victoria Isenhour and Claire Caruso, moved out of the property, providing a forwarding address and leaving the keys with the landlord.

On August 25, 2012, Defendant, Apartments Downtown, Inc., sent a letter to tenant Claire Caruso, who had been designated in the lease as the "deposit holder," at her address in Bettendorf, Iowa. The letter, entitled "Security Deposit Statement 2012," set forth the deductions withheld from the security deposit that had been provided by the tenants. The deductions were set forth as follows:

Carpet Cleaning:	$134.00
Cleaning Charges:	$105.00
Drip pans:	$40.00
Past Due Rent & Fees on Acct:	$625.33
TOTAL DEDUCTIONS:	$904.33
TOTAL (refunded)	$365.67

Plaintiff Lenora Caruso testified that a check was sent to the deposit holder, her sister Claire, and that each tenant was refunded approximately $120.00 or one-third share of the refunded amount of their security deposit. The Plaintiff also testified that, prior to moving out of the apartment, her m other brought their own personal carpet shampooer to the apartment and that the carpets were vacuumed and shampooed on July 22, 2012. She testified that, at the time they initially moved into the apartment, the carpet was in fair condition but was old and had some burn marks in various places. She testified that they did a thorough cleaning of the apartment, which included the collective efforts of Victoria Isenhour, Victoria's mother, that Plaintiff and her sister Claire and their parents. She testified that they all cleaned the apartment from top to bottom on July 22, 2012. The Plaintiff provided photographs of the apartment, which appeared to be in pristine condition. The Plaintiff additionally testified that she believed that the drip pans were clean and did not need to be replaced. Regarding the "past due rent and fees on account," the Plaintiff testified that the Defendant Apartments Downtown had replaced a door to one of the bathrooms and charged them approximately $200.00, which they refused to pay. When they did not pay the cost for the door replacement, the Defendant, Apartments Downtown, Inc., began to add monthly late fees to their account.

The Plaintiff testified that the door at issue was a bathroom door. She testified that she and her roommates were unaware that there was any problem with the door until someone from Apartments Downtown or their maintenance crew entered the apartment and replaced the door sometime before July 7, 2011. The Plaintiff testified that they were not provided any notice that the landlord was coming into the property and that suddenly the door was replaced and they received a bill. She testified that the only issue with the door that she thought could possibly have warranted replacement was that the door appeared to be slighting coming or pulling apart.

On or about August 12, 2011, the Plaintiff and her roommates received an "Annual Maintenance Bill" which indicated a charge for the bathroom door replacement at a cost of $199.33. In response, the Plaintiff and her roommates, through Claire Caruso, sent a written objection to the bill and also complained that the door that had been replaced was not functioning properly. The Defendant had also sent a photograph to the Plaintiff. Upon viewing the photograph, the Plaintiff testified that she and the other tenants did not believe that it was, in fact, the same door. They questioned that, if the photograph was actually their door, the door appeared to have been additionally damaged or the wood pulled away to justify the replacement. The Plaintiff was also concerned because she had not been notified of the entry into their apartment and that they were not present when the door was removed.

On February 16, 2012, Defendant Apartments Downtown, Inc., sent a letter in response to the tenants' letter sent in August objecting to the door repair costs. Apartments Downtown concluded that, since no issue with the door had ever been noted in their move-in check sheet, they were therefore responsible for the payment to replace the door. The February 16th letter indicated that, if they paid the bill in full by February 24, 2012, the Defendant would consider dropping three of the past six months of late fees assessed to their account due to the non-payment of the door replacement cost. The tenants requested an invoice from the Defendant to verify the cost of the replacement door; however, the landlord asserted that the "invoice" had already been submitted to them. Victoria Isenhour, although still contesting the charge, submitted $20.00 as a payment toward the door replacement.

The Plaintiff testified that they were unable and unwilling to pay the cost of the replaced door and incurred ten $40.00 monthly late fee charges, a total of $400.00, as well as charges in the amount of $46.00 for a broken outdoor patio light and some broken refrigerator clips. The Plaintiff reviewed the photographs provided by the Defendant at trial purporting to be her apartment and testified that she did not believe that they accurately represent the appearance and condition of her apartment on the date she moved out.

Plaintiff's witness George Perry testified that he is a retired attorney residing in Iowa City and that he was asked to photograph 427 S. Johnson Street on July 25, 2012. Mr. Perry testified that he walked through the apartment and viewed the condition of the property. Mr. Perry testified that his impression was that the apartment was meticulously clean, that great effort had been taken to ensure that the apartment was thoroughly cleaned, and

that the photographs he had taken and submitted to the court at trial accurately reflect the condition of the property on July 25, 201[2]. Mr. Perry further testified that he did not note anything about the overall condition of the carpeting that could be described as other than ordinary wear and tear, with the exception of a burn mark in one of the bedrooms. In addition, Mr. Perry testified that he viewed the replaced bathroom door and personally would not have accepted the poor quality of the installation. He noted that there were gaps between the door and the door frame, that there had been no attempt to match the door with the hinges, and that it appeared to be a very quick and poor quality job. Mr. Perry testified that he went to a Menard's store upon the request of the Plaintiff to view doors of similar style and quality. He noted that the door that had been replaced on the bathroom in the Plaintiff's apartment generally sold for between $25.00 per door with no hinges and $45.00 with hinges cut out. Mr. Perry, upon cross examination, reviewed the photographs submitted by the Defendant and testified that he did not recall seeing many of the issues depicted in the Defendant's photographs, such as mold in the shower or discoloration on the carpeting.

Victoria Isenhour testified that she was a co-tenant with the Plaintiff at 427 S. Johnson Street during the two lease periods. She testified that they had received an eviction notice posted to their door for not paying for the replaced bathroom door. Upon receiving the eviction notice, Ms. Isenhour contacted her attorney. Because of the issues with the bathroom door and anticipating that there might be a lawsuit, Ms. Isenhour testified that they were especially careful in making sure that the unit was very clean when they moved out. She testified that they cleaned all day, over eight hours, and that she personally cleaned the oven twice. Because her grandmother does cleaning for a living, Ms. Isenhour's grandmother, who also was assisting with the cleaning, took out the drip pans and scrubbed them with brillo pads until they were clean. They then made sure to clean out all the cupboards, cleaned the laminate, swept the hallway, and mopped all of the floors. Ms. Isenhour testified that the "V" shaped marks in the carpeting were present at the time they moved in and that the move-in check sheet that she completed notes in many places where the condition of the flooring and carpeting was an issue. Regarding the bathroom door, Ms. Isenhour testified that she is a very detail oriented person and that she would have noticed if the bathroom door was in the condition that was depicted in the Defendant's photograph. She testified that the damage depicted in the photograph did not happen to the door that was in their apartment. She further testified that the photographs the Defendant provided of oven drip pans were not photographs of the drip pans from their apartment after they cleaned.

Defendant Joseph Clark testified that he is associated with Apartments Downtown, Inc. and that he receives monthly rent from tenants and also provides the tenants with notices and information about maintenance and repairs. Joseph Clark testified that he provided the check-out information to the Plaintiff and the tenants of Unit R8, 427 S. Johnson Street, notifying them that their Final Inspection was set for July 30, 2012 at 11:45 A.M. Joseph Clark testified that he was familiar with Plaintiff's Exhibit #20, which is a written information sheet regarding the tenant's check out, including the notice to the tenants that "TENANTS ONLY NEED TO VACUUM CARPET!" and that the tenants are advised that they do not have to set up carpet cleaning. He further testified that, if an apartment is

not clean according to their "Clean, Clean, Clean" standards then tenants are charged $40.00 per hour for 6-8 people to come in and clean the apartment. In this case, the Plaintiff was charged $105.00 for cleaning charges, which included a $35.00 administrative fee for setting up the cleaning crew and then two hours of cleaning for four people to come into the unit to clean at $40/hour. Regarding the bathroom door, Mr. Joseph Clark testified that the damage to the door was not normal wear and tear and that the charges incurred by Iowa City Maintenance to repair the door were $59.33 in materials and two hours of labor at $70.00 per hour. Joseph Clark testified that he is not the landlord in this case and that he did not have any actual correspondence with the Plaintiff or Claire Caruso.

Bryan Clark testified that he is the operations manager for Defendant Apartments Downtown, Inc. and that the Defendant is his employer. He testified that his job entails the responsibility of organizing the maintenance for the buildings, including painting, dry wall, regular maintenance, remodeling, visual inspections, and any needed maintenance. He testified as to the normal procedure of how he would go about replacing a door. In this case, Bryan Clark testified that he was familiar with the door after the work was performed but that a worker named "Tyler" actually saw the damage beforehand and replaced the door. Bryan Clark testified that there was damage to the outside of the bathroom door as if someone had hit the bottom of the door causing it to cave inward. He testified that, based on his experience, someone would have had to push on the outside bottom of the door to cause the damage, however, he did not see the actual door but only saw photographs of the door.

Tyler Burketta testified that he had been employed by Iowa City Maintenance for the past two and a half years and that he replaced the door to the bathroom in the Plaintiff's apartment. He testified that he always makes a habit of posting a 24 hour notice on the tenant's door and putting on the notice what work needs to be done. In this case, Mr. Burketta could not recall if anyone was at the apartment on the date he went in to make repairs. Mr. Burketta testified that in his opinion, the damage did not appear to be from moisture but that it appeared to be damage on the outside of the door below the knob and then mid-way up the door, what might be called de-lamination or a separation or splitting of the door. In this particular repair, Mr. Burketta believed that he worked with another person, went to the apartment, took a picture, and replaced the door. He believed that it took about two hours but testified that he did not remember the apartment. Mr. Burketta testified that he believed that it was an old, laminate, hollow core, door but that he did not recall ever seeing a door come apart in that way before.

Melissa Goatley testified that she is a leasing agent for Defendant Apartments Downtown and that her job is to rent and show apartments. She testified that she conducted the final inspection of apartment 427 S. Johnson Street, that she authored the report dated July 30, 2012, and that she took the photographs on the date of the inspection. She testified that she recalled that there were no tenants present the date of the inspection. Ms. Goatley testified as to her grading system and her observations on the date of her inspection and the cleaning performed.

The Plaintiff requests that the Court award her $5,000.00, which includes the balance of her security deposit, $904.33; punitive damages; and attorney fees. The Court notes that no attorney fee affidavit was filed with the Court at the time of trial but accepts the attorney fee affidavits filed by Plaintiff's counsel on June 25, 2013 and June 27, 2013. The Defendant argues that the parties are free to contract on essentially any terms and conditions within a lease and that, once the tenant has accepted the terms and conditions of the contract, the tenant should be liable for any breach and the payment of any damages owed the landlord from the breach.

See Judgment, pp. 3-6.

Magistrate Egerton noted that Plaintiff had made the following claims for damages:

1. That Defendants James Clark, R-1, LLC, and Gilbert Manor, LLC individually and/or as manager participated in tortious conduct and/or under the doctrine of respondeat superior for overcharging for repairs.
2. That the automatic carpet cleaning charges contained in the lease are illegal.
3. That the cleaning charges and charges for the repair of a bathroom door are excessive.
4. That the Defendant engaged in abuse of process and violations of the Iowa consumer credit and debt collection statutes.
5. That the Plaintiff is entitled to punitive damages for the willful withholding of the security deposit.

Magistrate Egerton concluded:

Paragraph 37(e) of the written lease entered into between the parties, relating to carpet cleaning, states that *"The carpets throughout the building are professionally cleaned each time apartments turn over occupancy. Tenants agree to a charge starting at $95.00 (efficiency) not to exceed $225.00 (6+ bedrooms) being deducted from the deposit for professional cleaning at the expiration of the Lease*." While the provisions of the IURLTA allow the parties to contract for carpet cleaning, including the costs and specific conditions for cleaning, the terms of this lease requiring the tenant to agree that the amount of cleaning shall be deducted from the deposit is in violation of §562A.12 and is unconscionable. Amounts to be deducted from a tenant's security deposit can only be retained by the landlord if § 562A.12 is adhered to by the landlord. The tenant is then provided the opportunity to challenge those amounts and hold the landlord to his/her burden of showing that the amounts withheld were reasonable to restore the property to its condition prior to the commencement of the tenancy. The requirement that costs for carpet cleaning shall be withheld from the tenant's deposit requires the tenant to forego their claim or rights as defined in § 562A.7(2) and therefore the Court FINDS this provision in the lease unenforceable. The Court ALSO FINDS that the evidence presented by the Defendants in this case regarding the condition of the carpeting at the termination of the tenancy was insufficient to show that the carpet was damaged by the Plaintiff or other tenants such that it was beyond the level of ordinary wear and tear and

therefore the charges assessed by the Defendant Apartments Downtown, Inc. should not have been withheld from the Plaintiff's security deposit.

In addition, Paragraph 33(a) of the written lease agreement sets forth the following: "*Unless the Landlord is negligent, Tenants are responsible for the cost of all damages/repairs to windows, screens, doors, carpet, and walls, regardless of whether such damage is caused by residents, guests, or others*." At trial, Defendant Apartments Downtown provided a written explanation (Defendant's Exhibit M) entitled "*Provisions in the lease that show the Tenants have agreed to pay for damages to their doors*" and identified seven locations in the lease that places such responsibility on the tenant and not the landlord for such repairs:

1. *Section 16—Tenants use the highest degree of care in maintaining rented premises. Necessary repairs will be charged to the Tenants.*
2. *Section 30—Tenants agree to pay for all damages to the apartment doors.*
3. *Section 33a—Tenants are responsible for the cost of all damages/repairs to doors.*
4. *Section 33d—A preventative maintenance crew will be entering the apartment during Summer months to repair any damages. All charges must be paid immediately or subtracted from deposit.*
5. *Section 33e—List estimated door costs at $386.00.*
6. *Section 33f—All charges must be paid immediately or they are added to the account's rent due balance and accumulate late fees. $70 per hour plus materials.*
7. *Section 10e—All charges on rental account shall be paid immediately or they will be added to the rent due balance and collected as late rent with late fees.*

The evidence presented by Defendant Apartments Downtown, Inc., regarding the damage to the bathroom door, was insufficient to prove that the problems with the door, if any, were caused by the Plaintiff, another tenant, or a guest or visitor of the Plaintiff or other tenants. However, the lease provisions promulgated by the Defendant require the Plaintiff and other tenants to be responsible for both damages and repairs, which may be necessary when any door or other aspect of the property for that matter, due to age or poor quality construction, begins to deteriorate and thus requires repair. The Defendant's various paragraphs within the lease require the tenant to make all repairs to all doors, no matter what the cause.

Again, pursuant to the general provision of IURLTA, parties are free to contract regarding terms and conditions and respective responsibilities within the rental agreement, so long as the terms and conditions contained in the lease are not prohibited by Chapter 562A or other rule of law, including rent, terms of the agreement, and other provisions governing the rights and obligations of the parties. The rental agreement cannot provide that the tenant or the landlord will agree to waive or to forego rights or remedies under the chapter, authorize a person to confess judgment on a claim arising out of the rental agreement, agree to pay the other party's attorney fees or 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.

The specific provisions within this lease requiring the tenants to be responsible for all repairs to doors, removes the landlords' obligations under Chapter 562A and places them with the tenant, including the requirement that cost of the repair be paid immediately or it will be withheld from the tenant's security deposit. Section 562A.15 requires the landlord, not the tenant to maintain fit premises, including making all repairs and doing whatever is necessary to put and keep the premises in a fit and habitable condition. The written provision that the tenant is liable for "repairs" removes the obligation of the landlord to maintain fit premises and assesses the cost of upkeep of the premises on the tenant. By automatically assessing the repair cost and withholding it from the tenant's security deposit, this prevents the tenant from exercising the tenant's legal right to challenge the assessed cost. The Court FINDS these provisions abdicating the landlord's responsibilities and evading the landlord's obligations to be unconscionable and not enforceable. Based upon the Court's finding that the amount assessed to the Plaintiff and other tenants for the bathroom door repair to be improper, the late fees assessed for the non-payment of the repairs to the door are also unreasonable and should not have been withheld from the tenant's security deposit.

The Plaintiff also claims that the charges assessed by the Defendant Apartments Downtown, Inc., for the cleaning charges and drip pans to be unreasonable and unnecessary. The Court agrees. While the Defendant has provided photographs of the apartment purported to have been taken on July 30, 2012, the contrast between the Defendants' photographs and the Plaintiff's photographs are quite notable. Most specifically, the comparison between the rims of the drip pans in Plaintiff's photograph in Exhibit 4 and Defendant's photograph in Defendant's Exhibit AA are concerning. The Court FINDS the Plaintiff's testimony, the testimony of George Perry, and co-tenant Victoria Isenhour's testimony to be credible regarding the condition of the property at the termination of the tenancy.

Upon the evidence submitted, the Court THEREFORE FINDS that the costs assessed for general cleaning, and the replacement of the drip pans deducted from the security deposit were unreasonable and unwarranted. THEREFORE, the Plaintiff is entitled to an award of $904.33, the balance of the security deposit wrongfully withheld by the Defendant Apartments Downtown, Inc.

The Plaintiff requests that the Court award her damages for the bad faith retention of the security deposit and for damages due to Defendant Apartment Downtown's willful use of unconscionable provisions in the rental agreement (carpet and repairs to doors). The Court finds these requests to be appropriate based upon the evidence presented in this matter and awards the Plaintiff $200.00 in punitive damages for the bad faith retention of the security deposit. In addition, the Court FURTHER FINDS that the Defendant willfully used this rental agreement containing at least two provisions known by the landlord to be prohibited under 562A.11 (paragraphs 37(e) and 33(a)), and the Plaintiff is therefore awarded two month's rent in the amount of $2,770.00.

> Upon the evidence submitted, the Court is unable to find that the Plaintiff has sustained her burden that James Clark should be held personally liable for any illegal conduct in this matter. The Court is unable to find that the Defendant(s) James Clark, R-1, or Gilbert Manor, LLC, or Defendant Apartments Downtown, Inc., engaged in a violation of the Debt Collection Act or that the Defendant(s) engaged in an abuse of process for the reasons substantially set forth in Defendant Joseph Clark and Apartment Downtown's Trial Memorandum.

See Judgment, pp. 9-11.

Magistrate Egerton entered judgment in favor of Plaintiff and against Apartments Downtown, Inc. in the amounts of $904.33 (balance of security deposit wrongfully withheld); $200.00 (punitive damages for bad faith retention of security deposit); $2,770.00 damages calculated as two month's rent for the Defendant's willful use of a rental agreement containing provisions that Magistrate Egerton found Defendant knew to be prohibited, for a total judgment amount of $3,874.33. Magistrate Egerton also awarded attorney fees in the amount of $1,200.00 to Attorney Christine Boyer and in the amount of $2,400.00 to Attorney Christopher Warnock.

Apartments Downtown, Inc. has appealed Magistrate Egerton's Judgment. Defendant has made four arguments on appeal. First, Defendant argues that the Judgment must be vacated or modified because it awarded $3,600.00 in attorney fees, which is in excess of the small claims jurisdictional limit, and which were not supported by the record. Second, Defendant argues that the Judgment must be reversed or modified because there was no evidence that Defendants had actual knowledge that any provision on which they relied was prohibited by the Iowa Uniform Residential Landlord Tenant Act (IURLTA). Third, Defendant argues that Magistrate Egerton erred by finding that Defendant wrongly withheld $904.33 from the security deposit. Fourth, Defendant argues that Magistrate Egerton erred in finding that Defendant made a "bad faith retention" of the security deposit.

Plaintiff resists the arguments made on appeal. Plaintiff contends that automatic carpet cleaning clauses are illegal; the tenants properly cleaned the apartment at the end of the tenancy; a landlord cannot charge a tenant for damage the tenant did not cause; Defendant withheld the security deposit in bad faith; Defendant willfully used a rental agreement with known prohibited provisions; and attorney fees were properly awarded.

Defendant replies that the attorney fee award is in excess of the jurisdictional limit and is not supported by the record; and there is no evidence in the record that Defendants had actual knowledge that any provision on which they relied was prohibited by the IURLTA.

CONCLUSIONS OF LAW

The Court first addresses Defendant's argument that the Judgment must be vacated or modified because it awarded $3,600.00 in attorney fees. Iowa Code § 631.1(1) provides:

1. The following actions or claims are small claims and shall be commenced, heard and determined as provided in this chapter:

a. A civil action for a money judgment where the amount in controversy is four thousand dollars or less for actions commenced before July 1, 2002, exclusive of interest and costs.

b. A civil action for a money judgment where the amount in controversy is five thousand dollars or less for actions commenced on or after July 1, 2002, exclusive of interest and costs.

Iowa Code § 631.1(1) (2013). Iowa Code § 562A.12(8) provides that the Court may, "in any action on a rental agreement, award reasonable attorney fees to the prevailing party." Iowa Code § 562A.12(8) (2013). The Court notes that the "legislature intended small claims suits to be simpler, easier, and less expensive than a district court action." GE Money Bank v. Morales, 773 N.W.2d 533, 537 (Iowa 2009).

As Plaintiff points out, Iowa Code § 562A.12(8) provides an independent statutory basis for an award of attorney fees in an action on a rental agreement. This action in the small claims division, not in the district court. Thus, keeping in mind that small claims suits are to be simpler, easier and less expensive than district court actions, the Court concludes that, when a lawsuit proceeds in the small claims division and an attorney fee request is based on Iowa Code § 562A.12(8), a request for an award of attorney fees must fall within the jurisdictional limits for the filing of small claims actions. Therefore, the attorney fee award must be reduced by an amount that brings the judgment within the jurisdiction of the small claims court. The Court will apply this reduction in the judgment section of this Ruling.

The Court next addresses Defendant's argument that Magistrate Egerton's decision must be reversed or modified because there was no evidence that Defendants had actual knowledge that any provision on which they relied was prohibited by the IURLTA.

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).

In conjunction with this argument, the Court first considers whether the automatic carpet cleaning clauses are illegal.

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 section 37(e) of the standard lease, which the Court incorporates by reference as if set forth in full herein. 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. Section 37(e) of the standard lease may not be included in the landlord's standard lease because inclusion of section 37(e) permits the landlord to avoid his obligations as defined by the Iowa Legislature in § 562A.12(3). 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). Thus, the automatic carpet cleaning clause utilized by Defendant in the subject lease is illegal.

Magistrate Egerton was in the best position to consider the credibility of witnesses at the time of trial, and the Court gives deference to the credibility determinations and corresponding conclusions reached by Magistrate Egerton. Magistrate Egerton clearly found credible the testimony offered by Plaintiff and her witnesses regarding the efforts they made to clean the apartment at the end of their lease. Magistrate Egerton also clearly did not find credible the testimony offered by Defendants regarding the requirement that Defendants show the fees they assessed for cleaning were based on actual damage to the apartment. This includes Defendants' claim that there was damage to the bathroom door, and the Court concludes that the clause in the lease requiring the tenants in this case to pay for the allegedly damaged door is illegal. Under the terms of the lease, Defendant is not required to show actual damage before seeking payment from the tenant for repair of items such as doors. There is not sufficient evidence in the record to show that actual damage was sustained by Defendant based on the claimed damage to the door.

Further, Magistrate Egerton was in the best position to determine the credibility of Joseph Clark's testimony regarding whether Defendant willfully used a rental agreement containing provisions known by the landlord to be prohibited. There was testimony that Joseph Clark was familiar with the IURLTA and what a landlord can and cannot do thereunder, and that he was familiar with Iowa Code § 562A.11. Thus, the Court concludes that Magistrate Egerton's judgment awarding two months' rent due to willful use in the rental agreement of prohibited provisions should be upheld on appeal.

The Court next addresses Defendant's argument that Magistrate Egerton erred in finding that Defendant wrongly withheld $904.33 from the security deposit. The Court concludes this argument fails because the Court already has found that the provisions Defendant relied on to withhold portions of the security deposit are prohibited provisions, in that they do not require Defendant to prove actual damage has been sustained. Further, the credibility determinations made by Magistrate Egerton support a finding that the apartment was in very clean condition when it was vacated by Plaintiff and her roommates, as well as a finding that the door was not damaged in such a manner as to warrant the amount of the security deposit reduction claimed by Defendant.

Finally, the Court considers whether Magistrate Egerton erred in finding that Defendant made a bad faith retention of the security deposit. Iowa Code § 562A.17(7) provides: "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." Iowa Code § 562A.17(7) (2013). The Court concludes there was bad faith retention of the security deposit based on, at a minimum, Defendant's inclusion of the automatic cleaning fee provisions in the lease. The Court also concludes there was a bad faith retention of the security deposit based on Defendant's assertion that the apartment was not sufficiently cleaned when it was vacated. The testimony of Plaintiff and her witnesses at trial provides a basis for the Court to conclude that the apartment was, in fact, clean (even pristine) when vacated, and Defendant did not have an adequate basis for reducing the

security deposit based on the tenants' alleged failure to meet Defendant's standards for refunding the security deposit.

RULING

IT IS THEREFORE ORDERED that Magistrate Egerton's Judgment is affirmed as to all issues except the attorney fee issue. The Court affirms the judgment in the following amounts: $904.33 (balance of security deposit wrongfully withheld); $200.00 (punitive damages for bad faith retention of security deposit); $2,770.00 damages calculated as two month's rent for the Defendant's willful use of a rental agreement containing provisions that Defendant knew to be prohibited, for a total judgment amount (exclusive of attorney fees) of $3,874.33. Because the maximum jurisdictional amount for small claims actions is $5,000, the Court awards Plaintiff's counsel total attorney fees in the amount of $1,125.67. Costs are assessed to Defendants.

Clerk to notify.
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DOUGLAS S. RUSSELL, JUDGE
Sixth Judicial District of Iowa