

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

MICHAEL CONROY,

PLAINTIFF,

VS.

APTS. DOWNTOWN, INC.

D/B/A

APARTMENTS DOWNTOWN IOWA CITY,

D/B/A

APTS. NEAR CAMPUS,

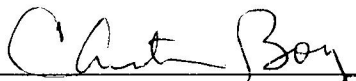
DEFENDANT.


CASE NO. LACV072840

MOTION FOR
PARTIAL
SUMMARY JUDGMENT

The Plaintiff, pending Representative Party, Michael Conroy and pending Class Members, by and through their attorneys, Christine Boyer and Christopher Warnock move for partial summary judgment on the issue of liability with regard to Defendant's cleaning and common area damage policies on the grounds that there is no genuine issue as to any material fact with regard to liability and that Plaintiffs are entitled to judgment as a matter of law.

Respectfully submitted,


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IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

MICHAEL CONROY,)	
)	CASE NO. LACV072840
PLAINTIFF,)	
)	
VS.)	
)	
APTS. DOWNTOWN, INC.)	STATEMENT OF
)	MATERIAL FACTS
D/B/A)	
APARTMENTS DOWNTOWN IOWA CITY,)	
D/B/A)	
APTS. NEAR CAMPUS,)	
)	
DEFENDANT.)	

**STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE DISPUTE**

1. Defendant, an Iowa Corporation, Apts. Downtown, Inc., (hereinafter referred to as “Landlord”), under the fictitious names, Apartments Downtown and Apartments Near Campus, manages over a hundred separate residential rental units, many containing multiple tenants, in Iowa City, Johnson County, Iowa. See Exhibit 1, Location Map, Apartment Downtown; see also <http://www.press-citizen-media.com/150/clarkja.html>, *Iowa City Press Citizen*, Fabulous 150, indicating that James A Clark, President of Landlord, provides “housing to more than 1,000 university students...”

2. Plaintiff’s Motion for Summary Judgment asserts that Landlord’s general policy is to push its own statutory responsibilities, with regard to cleaning and common areas, on to its tenants.

3. Evidence that this is Landlord’s policy can be found in various documents issued and used by Landlord in managing residential tenancies. For example, Landlord uses standard leases. See Exhibit 2, Apartments Downtown Standard Lease 2010, Exhibit

3, Apartments Downtown Standard Lease 2011 and Exhibit 4, Apartments Near Campus Standard Lease 2010-2011.

4. Landlord has an automatic cleaning policy for both carpets and hardwood flooring requiring “professional cleaning” for every rental unit each time a tenancy is terminated. See §37(e) of Exhibit 2, Apartments Downtown Standard Lease 2010, Exhibit 3, Apartments Downtown Standard Lease 2011 and Exhibit 4, Apartments Near Campus Standard Lease 2010-2011.

5. In addition to its automatic cleaning charges for carpet and hardwood floors, Landlord has additional standard cleaning requirements for tenants terminating their tenancies. See Exhibit 5, “Clean, Clean, Clean” Apartments Downtown Checkout and Inspection (hereinafter referred to as “Cleaning Checklist”); note Apartments Near Downtown has an almost identical cleaning checklist, see Exhibit 6.

6. Landlord makes tenants pay for common area damages including “random acts of vandalism” and any other situation when the Landlord is unable to determine who caused the damage. See §30 of Exhibit 2, Apartments Downtown Standard Lease 2010, Exhibit 3, Apartments Downtown Standard Lease 2011 Exhibit 7, Apartments Downtown “FAQs” and almost identical “FAQs” for Apartments Near Campus, Exhibit 8.

LANDLORD’S STANDARD POLICIES VIOLATE IOWA LANDLORD TENANT STATUTES

7. Plaintiffs assert that Landlord’s general policy is to force tenants to assume Landlord’s statutory responsibilities with regard to cleaning and the maintenance of common areas in violation of Iowa Code §562A.

LANDLORD'S CLEANING POLICIES VIOLATE IOWA LANDLORD TENANT STATUTES

8. Through its leases Landlord charges an automatic cleaning fees on all tenants at the termination of their tenancies,

Tenants agree to a charge starting at \$95 (efficiency) not to exceed \$225 (6+ bedrooms) being deducted from the deposit for professional cleaning at the expiration of the Lease. Hardwoods and decorative concrete floors are polished or cleaned upon turn over of occupancy each year. Tenants agree to a charge not to exceed \$195 being deducted from the deposit for polishing or cleaning the floors.

§37(e) of Exhibit 2, Apartments Downtown Standard Lease 2010, Exhibit 3, Apartments Downtown Standard Lease 2011 and Exhibit 4, Apartments Near Campus Standard Lease 2010-2011.

9. Landlord's imposition of an automatic cleaning fee on all tenants violates Iowa Code §562A.12 which states that the landlord shall provide,

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*.

emphasis supplied, Iowa Code §562A.12(3). Rather than providing the required specific reason or itemization Landlord automatically imposes this fee on all tenants and routinely deducts it from their security deposit upon termination of their tenancy.

13. In *Chaney v. Breton Builder Co., Ltd.*, 130 Ohio App.3d 602, (Ohio App. 1998) the Ohio Court of Appeals, in construing Ohio's security deposit statute¹,

¹ Ohio Revised Code §5321.16 (B) Upon termination of the rental agreement any property or money held by the landlord as a security deposit may be applied to the payment of past due rent and to the payment of the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with section 5321.05 of the Revised Code or the rental agreement. Any deduction from the security deposit shall be itemized and identified by the landlord in a written notice delivered to the tenant together with the amount due, within thirty days after termination of the rental agreement and delivery of possession.

substantially similar to Iowa's, held that landlords could not automatically deduct carpet cleaning fees from a security deposit, either using a lease or checkout provisions,

It is well settled that a provision in a lease agreement as to payment for carpet cleaning that is inconsistent with R.C. 5321.16(B) is unenforceable. *Albrecht v. Chen* (1983), 17 Ohio App.3d 79, 80, 17 OBR 140, 140-141, 477 N.E.2d 1150, 1152-1153. Accordingly, a landlord may not unilaterally deduct the cost of carpet cleaning from a tenant's security deposit without an itemization setting forth the specific need for the deduction. *Id.* at 81, 17 OBR at 142, 477 N.E.2d at 1153-1155.

Chaney v. Breton Builder Co., Ltd., 130 Ohio App.3d 602 at ¶18.

14. In fact, the statutory requirements in Iowa are even higher as the Iowa Code requires that, "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).

15. We can see further evidence of Landlord's cleaning policies in a letter to pending Representative Plaintiff Michael Conroy where Landlord insists that tenants must "'restore the dwelling unit to its condition at the commencement of the tenancy" [citing] (Uniform Residential Landlord and Tenant Law, Chapter 562A.3b)'. See October 12, 2010 Apartments Downtown Letter to Michael Conroy at 1, Exhibit 9.

16. Not only is Landlord citing the Iowa Code incorrectly, since the proper citation is to §562A.12(3)(b), but more importantly the actual statutory language is, "The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons...b. To restore the dwelling unit to its condition at the commencement of the tenancy, *ordinary wear and tear excepted*. Emphasis added, Iowa Code §562A.12(3)(b).

17. Landlord does not differentiate between cleaning that is required due to ordinary wear and tear and cleaning required due to the negligence, misuse or extraordinary acts of the tenant, instead Landlord makes its tenants responsible for all cleaning.

18. The first means Landlord uses to force tenants to pay for cleaning due to ordinary wear and tear is its automatic cleaning fee, as discussed above. Since this fee is imposed unilaterally on all tenants clearly no judgment has been made as to whether cleaning is required due to ordinary wear and tear.

19. Beyond the automatic cleaning fee, Landlord imposes additional cleaning requirements. According to Landlord's Cleaning Checklist, "At the final inspection, tenants must clean the entire apartment to the Landlord's "A" standard to avoid a minimum charge of \$150.00. **Grading Scale: A** = Very clean. No work required." Cleaning Checklist at 6.

20. First, this "Grade A" cleaning requirement shows that tenants are required to do all cleaning, whether due to ordinary wear and tear or not.

21. Secondly, even if they do clean to the "Grade A" standard, which is clean enough to require no work from the Landlord's own cleaning crews, tenants are still required to pay the automatic cleaning fee.

22. Thus the automatic cleaning fee is for extraordinary cleaning, clearly beyond the ability of either tenants or the Landlord's own cleaning crews to achieve.

23. Landlord's Cleaning Checklist also sets an almost impossibly high standard. For example, Landlord requires that,

All windows must be completely cleaned (this includes the exterior of the windows)... Be sure to clean window sills....Remove the light fixtures and

clean them either by scrubbing in sudsy water or running them through the dishwasher...Pull the range away from the wall being careful not to tear the linoleum floor. The Inspectors will check to see if the sides and front of the range have been cleaned as well as the floor beneath the range...The stove top sub floor is the area beneath the drip pans (underneath the burners). Some stovetops completely lift up for easy access. This sub floor must be cleaned. If it is missed, the stove is considered NOT CLEAN. The broiler pan/drawer and the knobs are removable and must be cleaned. Scrub them clean with SOS pads and shine with 409... The range hood has a vent filter...Run through dishwasher, or soak it in warm sudsy water and rinse clean before re-installing...Pull the refrigerator out away from the wall being careful not to rip the linoleum floor. (Inspectors will check the floor beneath the refrigerator as well as the sides of it!)... Hard water stains come off the sinks in both the kitchen and bathroom.

Exhibit 5&6, Cleaning Checklists, page 3-4.

24. Landlord goes above and beyond what is reasonable to expect of tenants and includes numerous requirements that make tenants responsible for cleaning due to ordinary wear and tear.

25. For example, pending Representative Plaintiff Michael Conroy was charged for cleaning what appear to be hard water stains. See October 12, 2010 Apartments Downtown Letter to Michael Conroy at 1, Exhibit 9; and cleaning picture, Exhibit 10.

26. Hard water is, “water that has high mineral content (in contrast with soft water)... hard water also leaves deposits” Wikipedia, “Hard Water” January 11, 2011, http://en.wikipedia.org/wiki/Hard_water

27. Therefore as a general policy embodied in its Cleaning Checklists and in the specific case of Mr. Conroy, tenants are charged for cleaning due to a naturally occurring deterioration that occurs not from their negligence or bad acts, but as a ordinary consequence of running hard water, which they have no control over.

28. Under Iowa law, at the beginning of a tenancy a landlord is required to deliver the premises to the tenant, “in a fit and habitable condition.” Iowa Code §§562A.14 and

562A.15(1)(b), whereas the tenants' responsibility is to, "Keep that part of the premises that the tenant occupies and uses as clean and safe *as the condition of the premises permit*" and to, "Keep all plumbing fixtures in the dwelling unit or used by the tenant as *clean as their condition permits.*" emphasis supplied, Iowa Code §§562A.17(2)&(4). The overall condition of the premises, therefore, is the responsibility of the landlord and the natural deterioration of the premises due to ordinary wear and tear, as Iowa Code §562A.12(3)(b) makes clear, is the landlord's, not the tenants', statutory responsibility.

29. Thus Landlord violates Chapter 562A by deducting from tenants' rental deposits an automatic cleaning fee which by its very nature is not a specific itemization of damages and by making tenants pay for cleaning due to ordinary wear and tear.

**LANDLORD'S COMMON AREA POLICIES VIOLATE
IOWA LANDLORD TENANT STATUTES
AND ARE UNCONSCIONABLE**

30. Landlord has standard policies regarding common area damages. See Exhibit 7, Apartments Downtown "FAQs" and almost identical "FAQs" for Apartments Near Campus, Exhibit 8.

31. With regard to common area damages Landlord's Apartments Downtown 2011 standard lease states,

Tenants agree to pay for all damages to the apartment windows, screens, and doors, including exterior unit doors (including random acts of vandalism). Tenants further agree to be responsible for a 15 foot area around the apartment entry door."

See §30 of Exhibit 2, Apartments Downtown Standard Lease 2010, and Exhibit 3, Apartments Downtown Standard Lease 2011.

32. Landlord's Apartments Downtown 2010 and Apartments Near Campus 2010-2011 standard leases go even further, stating,

Tenants agree to be responsible for damage in the common areas, as the tenants are the only lawful occupants of the building. The lease includes reasonable use of the common areas and Tenants share responsibility for its care. If Landlord and tenants are unable to determine who caused damage in common areas within 7 days after the damage comes to the attention of Landlord, then each apartment in the building shall pay an equal pro-rata share of costs to repair the damage. Damages can include but are not limited to doors, windows, drywall, carpet, lights, smoke detectors, etc. Such charges are due immediately.

See §30(a) of Exhibit 2, Apartments Downtown Standard Lease 2010 and Exhibit 4, Apartments Near Campus Standard Lease 2010-2011.

33. These lease provisions and rules directly contravene Iowa law which states, "The landlord shall...Keep all common areas of the premises in a clean and safe condition." Iowa Code §562A.15(1)(c). While tenants certainly have a responsibility not to cause damage in common areas, ultimately the responsibility for common area damages and their repair lies with the landlord.

34. These lease provisions and rules are unconscionable because tenants are made responsible for damages that Landlord either knows positively that they did not cause or specifically has no evidence that they were responsible. In addition, the common area damage lease provisions are unconscionable because they are in tiny print in a boilerplate contract of adhesion. *Gentile v. Allied Energy Prods., Inc.*, 479 N.W.2d 607, 609 (Iowa Ct. App. 1991).

35. Therefore, Landlord's common area damage policies violate Chapter 562A and are unconscionable.

LANDLORD INCLUDED PROHIBITED PROVISIONS IN ITS RENTAL AGREEMENTS

36. Iowa Code §562A.11 provides that, "A rental agreement shall not provide that the tenant or landlord...Agrees to waive or to forego rights or remedies under this chapter..." Iowa Code §562A.11(1)(a).

37. Iowa Code §562A.11 further provides that prohibited provisions are unenforceable and that if a landlord willfully uses a rental agreement containing provisions known by the landlord to be prohibited, damages and attorney fees may be recovered. Iowa Code §562A.11(2).

38. Landlord's tenants have a statutory right not to have their security deposits withheld without a specific itemization, not be charged for cleaning due to ordinary wear and tear and not to be charged for common area damage they did not commit.

39. Landlord has included provisions that violate these statutory rights of its tenants in its leases.

40. Landlord is aware of the existence of Chapter 562A. See October 12, 2010 Apartments Downtown Letter to Michael Conroy at 1, Exhibit 9.

41. Landlord is not a "mom and pop" operation, renting the upstairs room to a single tenant, but a corporation with two separate management offices, one of the largest landlords in Iowa City and in the entire state, with over 1,000 tenants and its own standard leases. If this large corporate management company, despite quoting chapter and verse of the statute, is somehow simultaneously unaware of the prohibitions of Chapter 562A, then it is almost inconceivable that any landlord could ever be found to have knowingly and willfully included prohibited lease provisions.

WHEREFORE, Plaintiff moves the Court for entry of Summary Judgment with regard to Defendant's liability for violating Chapter 562A, the Uniform Residential Landlord and Tenant Law.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this document was served on January ___, 2011, via first class mail, postage pre-paid, upon all attorneys of record and/or pro se parties at their respective addresses as shown herein:

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