IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

Elyse De Stefano,	)	
	)	
Plaintiff/Appellee,	)	
	)	**No. SCSC080575**
vs.	)	
	)	**RULING**
Apts. Downtown, Inc.,	)	
	)	
Defendant/Appellant.	)	

Hearing took place on January 27, 2014 on the Notice of Appeal filed by Defendant/Appellant Apts. Downtown, Inc. (hereinafter Defendant). Appearances were made by Attorney Christopher Warnock and Attorney Christine Boyer on behalf of Plaintiff/Appellee Elyse De Stefano (hereinafter Plaintiff), and by Attorney Jim Affeldt, Attorney Rob Hogg, and Attorney Joe Holland on behalf of Defendant. The parties waived a formal record of proceedings. Having considered the file, relevant case law, and written and oral 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 October 4, 2011, Plaintiff Elyse De Stefano filed a Petition for Money Judgment. From about July, 2010 to August, 2011, Plaintiff was a tenant in an single family home owned by Defendant Apts. Downtown, Inc. When it came time for Plaintiff to vacate the house at the end of the lease, Defendant withheld funds from the security deposit concerning the following areas: automatic carpet cleaning charge; charges for cleaning, replacing screens and blinds, and weeding; replacing an entry door damaged by a burglar; and for a refrigerator gasket and associated late fees. Plaintiff contends that as a result of the illegal charge for replacing the entry door, the landlord wrongly refused to grant Plaintiff permission to sublet the apartment. Plaintiff asserts that charging $40 an hour for cleaning, $70 an hour for weeding, and charging tenants for a door broken by a burglar is unconscionable. Plaintiff further asserts she is entitled to damages for wrongful withholding of a security deposit and is entitled to attorney fees and costs. Defendant filed a Counterclaim for unpaid rent and charges stemming from Plaintiff's tenancy in the apartment.

Trial was held before Magistrate Karen Egerton on July 18, 2012. Magistrate Egerton entered Findings of Fact, Conclusions of Law and Judgment on June 10, 2013. Magistrate Egerton included the following in her findings of fact:

> Pursuant to a written lease agreement, the Plaintiff and three other tenants, Hillary Block, Meghan Crotty, and Jennifer Connelly, rented a four bedroom apartment/residence from the Defendant located at 516 Bowery Street, in Iowa City, Johnson County, Iowa. The tenancy period ran from July 31, 2010 to July 26, 2011. Pursuant to the rental agreement, the Plaintiffs provided a $1,635.00 security deposit (one month's rent). The written lease agreement was four pages long but held 70 paragraphs of lease provisions in extremely small type. The lease was signed by Meghan Crotty and Hillary Block on December 10, 2009; by Jennifer Connelly on April 29, 2010; and by the Plaintiff on July 7, 2010. The lease was also signed by the landlord's representative Jessica Vesto (sp) on December 10, 2009. The Defendant and the other tenants moved into the property, paid the required security deposit, and paid monthly rent throughout the rental period. On July 26, 2011, the Plaintiff and other tenants vacated the property and provided the keys to the unit and a forwarding address to the Defendant.
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> In a letter dated August 25, 2011, the Defendant, Apartments Downtown, sent a letter to tenant Meghan Crotty, who had been designated with the lease as the "deposit holder," at her address in Addison, Illinois, a "Security Deposit Statement 2011," setting forth the deductions withheld from the security deposit provided by the tenants. The deductions were set forth as follows:

Carpet Cleaning:	$191.00
Cleaning Charges:	$280.00
Past Due Rent & Fees on Acct:	$1,308.45
Lawn Clean Up:	$60.00
Screens (Kitchen, BR 2):	$150.00
Blinds (BR 2, 4):	$99.00
Removal & disposal of Tenant items	
Bed mattress in front lawn:	$50.00
TOTAL DEDUCTIONS:	$2,135.45
TOTAL (Due)	$503.45
Pay Within 30 DAYS	

See Judgment, pp. 2-3. At the time of trial, Plaintiff provided testimony regarding the cleaning the tenants performed in the apartment prior to moving out, as well as the items they found to be deficient with respect to the check-in form they filled out when they moved into the apartment. Plaintiff agreed that the blinds were broken during the tenancy; that the lawn and weeds had not been maintained at the end of the tenancy; and that the screens had some holes poked in them in the family room, the kitchen, and the bedroom. Plaintiff argued, however, that the amounts charged by Defendant were unreasonable and excessive. Plaintiff's largest concern was the charge of $1,308.45 for past due rent and late fees on her account.

Plaintiff also testified regarding a burglary that took place while she was a tenant at the property, at which time the door frame and door lock to the apartment were damaged. Following the repair of the door, Defendant charged the tenants $598.46 for the damages. With respect to this series of events, Magistrate Egerton found:

> The Plaintiff consulted legal counsel and on December 2, 2010, sent an email to Apartments Downtown and advised them that they would be withholding payment on the door until the end of the year and further advising that if the Defendant were to withhold their deposit, they would seek legal recourse. Allen Warson responded in an email dated December 2, 2010, but apparently misunderstood and believed that the tenants were requesting that the entry door repair be withheld from their security deposit. Mr. Warson advised the Plaintiff that, if the tenants did not pay for the repair bill that by the end of the tenancy, there would be an additional charge of $320.00 in addition to the $598.46 for the damage caused to the property due to the late fees. The Plaintiff and other tenants did not pay the $598.46 and were eventually charged additional late fees of $40.00 per month for the "non-payment of rent."

See Judgment, p. 4.

Another point of contention was that in May, 2011, when the tenants were going home for the summer school break, they attempted to sublease the apartment. Defendant refused to approve the sublease, citing the tenants' failure to pay the repair/replacement costs of the entry door and late fees. There were problems with lawn growth at the apartment while the tenants were gone for the summer.

On June 22, 2011, Defendant entered into the apartment without proper notice to the tenants to complete an annual maintenance tour. This tour indicated that the apartment looked good, except for refrigerator door gaskets being torn that needed to be repaired, and two screens were bent/pulled and needed to be repaired. No other problems were noted in the condition of the unit. For repair of these items, the tenants were sent an invoice of $349.99. On July 22, 2011, the tenants were sent an email with "Important Check-Out Information." The tenants were advised, among other things, that they only needed to vacuum the carpet due to the mandatory carpet cleaning clause in the lease, which would include a charge of $95-$225 dollars to be deducted from the deposit. On July 26, 2011, Mike Plath, a team leader for Defendant, entered the apartment and filled out an Iowa City Maintenance Cleaning Form that included notations that several areas of the apartment needed maintenance.

After receiving the August 25, 2011 letter regarding the amounts to be deducted from their security deposit, the tenants disputed the charges. They received a letter from "Kiara—Apartments Downtown/College Town L.L.C.", dated September 8, 2011. This letter pointed out various aspects of the lease requiring payment for cleaning. On September 19, 2011, individual letters were sent to Plaintiff and the other tenants demanding payment of $503.45 for damages, and threatening to take the matter to small claims court and report the debt to credit agencies.

Based on this series of events, the Plaintiff requested the Court award her $1,635.00 for the return of her security deposit; $1,635.00 per month for two month's rent that she was unable

to avoid due to Defendant's refusal to allow her to sublease the apartment because of the unpaid balance on her account; $200.00 in punitive damages; and attorney fees, for a total of $5,105.00. No attorney fee affidavit was filed with the trial court.

On behalf of Defendant, Gregory "Joseph" Clark, Jeffrey Clark, and Brian Clark testified. Their testimony included descriptions of their cleaning charges and the work performed with respect to these charges, as well as the costs to Defendant that are incorporated into the hourly rate and passed on to the tenants. Their testimony included some description of the cleaning that took place in the apartment in question. This included carpet cleaning, care for the lawn and weeds, repair of the screens, blinds and refrigerator gasket, and removal and disposal of a mattress left by the tenants. There also was testimony regarding the past due rent and fees on the tenants' account.

Plaintiff made six claims for damages: (1) that the automatic carpet cleaning charges contained in the lease are illegal; (2) that the cleaning charges and charges for screens, blinds, and lawn service are excessive; (3) that the charges for replacing the entry door resulting from the burglary and the refrigerator gasket are illegal; (4) that the landlord refused permission to sublease the apartment due to the illegal charges for the broken door; (5) that the hourly charge for cleaning and weeding and for replacement of the broken door from the burglary are unconscionable; and (6) that the Plaintiff is entitled to punitive damages for the willful withholding of the security deposit.

Magistrate Egerton found that the provision in the lease for carpet cleaning was unenforceable; the costs assessed for lawn care and deducted from the security deposit were unreasonable and should be reduced; and that the following deductions regarding cleaning, lawn care and repairs to the property are reasonable and appropriate based on the evidence:

Carpet Cleaning:	$0.00 (provision in lease is unconscionable)
Cleaning Charges:	$0.00 (insufficient evidence)
Lawn care:	$135.00
Screens (kitchen and bedroom)	$80.00 ($40 each, includes labor)
Refrigerator gasket:	$0.00 (insufficient evidence)
Screens (living room—2)	$120.00 (frames bent, includes labor)
Removal of mattress:	$50.00
Total:	$385.00

With respect to late fees, Magistrate Egerton found that Defendant had not proven that there were late monthly rental payments from the Defendants. With respect to the damage to the door due to the burglary, Magistrate Egerton found that provisions in the lease designed to essentially make the tenants responsible for insuring Defendants' property for damages attributable to the fault of another are unconscionable provisions and are not enforceable. Magistrate Egerton found that the late fees for the non-payment of the repairs to the door, as well as the repairs to the door and door frame, were not properly withheld from the tenants' security deposit.

Magistrate Egerton concluded that $385.00 was the amount reasonably necessary to restore the dwelling to its condition at the commencement of the tenancy, and that amount should be withheld from Plaintiff's security deposit. Magistrate Egerton further concluded that Plaintiff was entitled to an award of $1,125.00, which was the balance of the security deposit wrongfully withheld by Defendant. Magistrate Egerton also awarded Plaintiff $200.00 for bad faith retention of the security deposit, and found Defendant willfully used the rental agreement that contained at least two provisions the landlord knew to be prohibited by Iowa Code § 562A.11, which caused damages to Plaintiff in the amount of $3,270.00. A total judgment of $4,720.00 was entered in favor of Plaintiff. No attorney fees were awarded because Plaintiff's counsel did not file an attorney fee affidavit.

Following entry of Magistrate Egerton's judgment and before Defendant's filed their notice of appeal, Plaintiff's attorneys filed fee affidavits in support of their claim for attorney fees on behalf of Plaintiff. Defendant resisted the efforts of Plaintiff's counsel to obtain attorney fees. Magistrate Egerton chose not to act on the request for attorney fees because the record was closed and an appeal had been filed by the time the request for fees was brought to her attention. She did, however, contemplate further action if ordered by the district court.

Defendant has appealed, first arguing that the Small Claims Court erred in finding the rental agreement unconscionable due to its provision making tenants financially responsible for repair of a door damaged by an alleged criminal act, when in fact such a provision is not prohibited by Iowa law and properly placed financial responsibility on the party residing at the single family residential property who was in the best position to safeguard the property. Defendant points out that the lease provided: "Tenants agree to pay for all damages to the apartment windows, screens, and doors, including exterior unit doors (including random acts of vandalism)." Defendant relies on common law concepts of unconscionability to argue that this provision is not unconscionable.

Defendant argues that Plaintiff had other options in the rental market; the terms of the agreement were not harsh, oppressive, or one-sided because they assigned the financial responsibility to the party in the better position to control the premises and to know what happened at the property; the financial responsibility provision was not hidden in fine print and did not use convoluted language; and the fact that Plaintiff did not read the lease does not excuse her from complying with its terms. Defendant further argues that the enforcement of the provision is especially appropriate in this case because Plaintiff was a tenant in a single family house. Defendant cites to Iowa Code § 562A.15(2), which permits the landlord and tenant to agree regarding performance of repairs and tasks in a single family house.

Defendant's next argument is that the Small Claims Court erred by holding Defendant liable for refusing to approve the sublease of Plaintiff's tenancy when Plaintiff and her roommates had not paid the bill for repair of the exterior door. Defendant contends that because the provision regarding payment for damages due to random acts of vandalism is not unconscionable, it was proper for Defendant to withhold approval of the proposed sublease due to the tenants' failure to pay what they owed to repair the door.

Defendant's next argument is that the Small Claims Court erred in holding that the carpet cleaning provision is unconscionable and in violation of Iowa Code § 562A.12, when in fact it was a lawful and proper allocation of responsibility and reflects tenants' obligations under Iowa Code § 562A.17(2). Defendant cites to the relevant lease provision: "The carpets throughout the building are professionally cleaned each time apartments turn over occupancy. 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." Defendant asserts this provision is not unconscionable because Plaintiff had other options in the rental market; she had the opportunity to read the lease, but did not do so; the provision was not hidden in fine print; the provision did not use convoluted language; and the provision established standard costs for carpet cleaning below market rate and saved tenants the time and expense of arranging to clean the carpets themselves. Defendant further asserts that no section of chapter 562A prohibits the inclusion of a standard carpet cleaning fee in the lease.

Defendant's next argument is that the Small Claims Court erred by eliminating the deductions from the deposit for cleaning charges, refrigerator gasket repair, and replacement of the blinds for alleged lack of evidence. Defendant contends Magistrate Egerton ignored evidence in the record, particularly from Joe Clark, regarding the reasonableness and necessity of the cleaning charges and the replacement of the refrigerator gasket.

Finally, Defendant argues that the Small Claims Court erred by assessing Defendant with statutory punitive damages because, for all the reasons previously argued, Defendant did not retain the security deposit in bad faith.

Plaintiff has filed a Brief in response to the appeal arguments made by Defendant. Plaintiff's first argument is that the landlord cannot charge tenants for the criminal acts of third parties. Plaintiff relies on Iowa Code § 562A.15, which provided, in relevant part, at the time of the incidents in question (this section since has been amended):

> 1. a. The landlord shall:
>
> (1) Comply with the requirements of applicable building and housing codes materially affecting health and safety.
>
> (2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.
>
> (3) Keep all common areas of the premises in a clean and safe condition. The landlord shall not be liable for any injury caused by any objects or materials which belong to or which have been placed by a tenant in the common areas of the premises used by the tenant.
>
> …

Iowa Code § 562A.15 (2013). Plaintiff contends § 562A.15(2) is inapplicable because the tenants did not perform the repairs, and the general rule is that the landlord, not the tenant, is responsible for the repairs.

Plaintiff next argues that the automatic carpet cleaning provision is illegal because Defendant does not provide tenants with a required specific damage itemization, but rather automatically imposes a carpet cleaning fee on tenants and deducts the fee from their security deposit at the conclusion of their tenancy.

Plaintiff's next argument is that the landlord may not charge tenants its ordinary business expenses by passing along high hourly rates to the client in order to pay for the costs of operation the landlord's business. Plaintiff also argues that there is insufficient evidence to charge the tenant for cleaning and repairs. Finally, Plaintiff argues that based on Defendant's conduct, it was appropriate for the Small Claims Court to assess punitive damages to Defendant.

Defendant has filed a reply brief, first arguing that Plaintiff failed to show that the lease provision making tenants financially responsible for repair of the door damaged by an alleged criminal act was unconscionable, let alone a known prohibited lease provision that could subject Defendant to punitive damages. Defendant next argues that Plaintiff failed to show that the alleged "automatic" carpet cleaning provision was improper in this case or known to be prohibited. Next, Defendant asserts that Plaintiff's argument about Defendant's alleged recovery of its ordinary business expenses is misleading and unpersuasive. Defendant further asserts that Plaintiff's claim for attorney fees is too late, is unsupported by the record, and would exceed the authority of the Small Claims Court's jurisdiction. Finally, Defendant contends that, in her response to Defendant's appeal arguments, Plaintiff has improperly relied on news accounts and other information not contained in the small claims record.

CONCLUSIONS OF LAW

The Court first considers Defendant's argument that the Small Claims Court erred by holding the rental agreement unconscionable due to its provision making tenants financially responsible for repair of a door damaged by an alleged criminal act, when, in fact, such a provision is not prohibited by Iowa law and properly placed financial responsibility on the party residing at the single family residential property who was in the best position to safeguard the property. With respect to unconscionability, the Iowa Supreme Court has held:

> "A contract is unconscionable where no person in his or her right senses would make it on the one hand, and no honest and fair person would accept it on the other hand." *C & J Vantage,* 795 N.W.2d at 80. In determining whether a contract is unconscionable, we examine factors of "assent, unfair surprise, notice, disparity of bargaining power, and substantive unfairness." *Id.* (quoting *C & J Fertilizer, Inc. v. Allied Mut. Ins. Co.,* 227 N.W.2d 169, 181 (Iowa 1975)). "However, the doctrine of unconscionability does not exist to rescue parties from bad bargains." *Id.; see also Home Fed. Sav. & Loan Ass'n of Algona v. Campney,* 357 N.W.2d 613, 619 (1984) (quoting comment 1 to this section of the UCC, which provides that "[t]he principle is one of the prevention of oppression and unfair surprise ... and not ... disturbance of allocation of risks because of superior bargaining power").
>
> There are two generally recognized components of unconscionability: procedural and substantive. The former includes the existence of factors such as "sharp practices[,] the

use of fine print and convoluted language, as well as a lack of understanding and an inequality of bargaining power." *In re Marriage of Shanks*, 758 N.W.2d 506, 515 (Iowa 2008) (citation and internal quotation marks omitted). The latter includes "harsh, oppressive, and one-sided terms." *Id.* (internal quotation marks and citation omitted). Whether an agreement is unconscionable must be determined at the time it was made. *See* Iowa Code § 554.2302(1); *see also C & J Vantage*, 795 N.W.2d at 81.

Bartlett Grain Co., LP v. Sheeder, 829 N.W.2d 18, 27 (Iowa 2013).

Iowa Code § 562A.15(2) permits landlords and tenants of single family residences to agree in writing that the tenant perform the landlord's duties, and specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith. See Iowa Code § 562A.15(2) (2013). Iowa Code § 562A.6 defines "good faith" as "honesty in fact in the conduct of the transaction concerned." Iowa Code § 562A.6 (2013).

It is undisputed that the property at issue in this matter is a single family residence. Pursuant to the plain language of § 562A.15(2), the parties were allowed to make an agreement for Plaintiff (as well as her roommates) to perform certain of Defendant's duties, as well as make repairs, and take care of maintenance tasks, alterations and remodeling on behalf of Defendant. The Court finds no evidence in the record that there was a lack of honesty in fact in the conduct of the transaction concerned. Thus, the parties were free to reach an agreement holding the tenants financially responsible for repair of a door damaged by an alleged criminal act, and it was error for Magistrate Egerton to find this lease provision unconscionable. This portion of Magistrate Egerton's judgment should be reversed.

The Court next addresses Defendant's argument that the Small Claims Court erred by holding Defendant liable for refusing to approve the sublease of Plaintiff's tenancy when Plaintiff and her roommates had not paid the bill for repair of the exterior door. The Court concludes that because the lease provision regarding the tenant's financial responsibility for damage to exterior doors, including random acts of vandalism, was not prohibited, illegal or unconscionable, Defendant properly withheld approval of the proposed sublease due to the tenants' failure to pay what they owed to repair the exterior door. Plaintiff argued that Defendant's consent to the sublease was unreasonably withheld based on the tenant's failure to pay the repair bill for the door. In her brief attached to her Petition, Plaintiff argued that *Van Sloun v Agan Bros., Inc*, 778 N.W. 2d 774 (Iowa 2010), stands for the proposition that if consent to sublease is wrongfully withheld, it is a breach of the lease agreement for which the tenant is entitled to damages. Plaintiff misreads *Van Sloun*. In that case, the lease provided that consent to sublease could not be *unreasonably* withheld. The Supreme Court affirmed the trial court's finding that the landlord reasonably withheld consent to the sublease. The lease herein contains no such provision. It provides that the landlord reserves the right to accept or reject any sublease, with no qualification that the rejection be reasonable. Plaintiff cites no Iowa authority for the proposition that in the absence of such a provision, a landlord may not unreasonably refuse consent to sublease. Magistrate Egerton's judgment on this issue should be reversed.

Next, the Court considers whether the Small Claims Court erred by holding the rental agreement's carpet cleaning provision is unconscionable and in violation of Iowa Code §

562A.12. Defendant has argued that this was a lawful and proper allocation of responsibility and reflects the tenants' obligations under Iowa Code § 562A.17(2). 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.
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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) (2013).

The carpet-cleaning clause at issue in this matter 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. When the Court gives weight to the credibility determinations made by Magistrate Egerton as to the testimony presented at trial regarding the carpet-cleaning, the Court concludes this charge goes beyond the type of agreement the parties may make pursuant to Iowa Code § 562A.15(2), and is an illegal provision because it does not require the landlord to prove any specific damage to the carpet as a result of the tenants' use of the rental unit. The landlord simply is permitted to collect fees for carpet-cleaning regardless of actual damage. 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). Therefore, Magistrate Egerton's judgment should be affirmed on this issue.

The Court next considers whether the Small Claims Court erred by eliminating the deductions from the deposit for cleaning charges, refrigerator gasket repair, replacement of the

blinds, and deductions for late payment of rent due to lack of/or insufficient evidence. The Court concludes that resolution of this issue was largely dependent on Magistrate Egerton's consideration of the testimony offered by the parties at the time of trial, and the Court gives weight to the credibility determinations made by Magistrate Egerton. The Court finds that Defendant failed to show that the deductions made from the deposit for cleaning charges, refrigerator gasket repair, replacement of the blinds, and deductions for late payment of rent were properly supported by actual evidence, particularly when compared to Plaintiff's testimony regarding these matters.

Finally, the Court considers whether the Small Claims Court erred in assessing Defendant with statutory punitive damages under Iowa Code § 562A.17(7), which 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 carpet-cleaning fee in the lease. The Court also concludes there was a bad faith retention of the security deposit based on late fees assessed for non-payment of the cost to repair the vandalized door. At the time the subject lease was in effect, late fees were only permitted for non-payment of rent.

> Iowa Code § 535.2(7), (which was amended in 2013 after trial) previously provided:
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> 7. This section does not apply to a charge imposed for late payment of rent. However, in the case of a residential lease, a late payment fee shall not exceed ten dollars a day or forty dollars per month.

The appropriate remedy available to a landlord for a tenant's non-payment of fees due under the lease agreement is found at Iowa Code § 562A.27(1). It provides:

> Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with section 562A.17 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days, and the rental agreement shall terminate as provided in the notice subject to the provisions of this section. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least seven days' written notice specifying the breach and the date of termination of the rental agreement.

Iowa Code § 562A.27(1) (2013).

Iowa Code § 535.2(7) (2011).

Under Section 562A.27(2)(a), a landlord may only terminate a rental agreement after a three-day notice for non-payment of rent. A single, three-day notice of non-payment of rental collection, administrative, or other fees is not sufficient to terminate the rental agreement. Failure to pay fees assessed under the rental agreement could constitute a breach of the lease agreement. However, breaches of the lease agreement require a seven-day notice, followed by a three-day notice to quit. In this case, Defendant attempted to add to the overall fees owed by the tenants by adding late fees based on Plaintiff's refusal to pay for damages for which she and her roommates felt they were not responsible. That is clearly erroneous, and the retention of the deposit by the landlord is in violation of Iowa Code § 562A.17(7). Thus, the Court finds that Magistrate Egerton's judgment regarding the punitive damages award should be upheld on appeal.

The Court finds that the following amounts were properly withheld by Defendant from the security deposit, for the reasons cited above: $385.00 to restore the dwelling unit to its condition at the commencement of the tenancy; $598.46 to repair the door; for a total of $983.46.

Thus, the Court affirms Magistrate Egerton's judgment entry with the following modifications: $651.54 for balance of security deposit wrongfully withheld and $200.00 (punitive damages for bad faith retention of security deposit), for a total of $851.54.

Finally, the Court considers Plaintiff's request for attorney fees. 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. Plaintiff has prevailed on several of her claims. Further, the Court concludes that the attorney fee affidavit filed by Attorney Christine Boyer on June 21, 2013 includes an sufficient breakdown of the attorney fees sought by Plaintiff's counsel such that the Court can, and does, determine that the fees sought are reasonable. The attorney fee affidavit was filed promptly after Magistrate Egerton entered her ruling, but not brought to her attenetion until after Defendant filed its appeal. The Court finds that Plaintiff is entitled to an attorney fee award totaling $1,160.00.

RULING

IT IS THEREFORE ORDERED that judgment is entered in favor of Plaintiff and against Defendant in the amount of $851.54, plus attorney fees in the amount of $1,160.00. Costs on appeal are assessed one-half to Plaintiff and one-half to Defendant. If an appeal bond was posted, it shall be returned to Defendant.

Dated this 4th day of May, 2014.

Clerk to notify.

NANCY A. BAUMGARTNER, JUDGE
Sixth Judicial District of Iowa

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