IN THE SUPREME COURT OF IOWA
No. 14-0820
(Johnson County Small Claims No. SCSC080575)

ELYSE DE STEFANO,

Plaintiff-Appellant/Cross-Appellee,

vs.

APTS. DOWNTOWN, INC.,

Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court in and for Johnson County
The Honorable Nancy A. Baumgartner, Judge

Defendant-Appellee/Cross-Appellant's Initial Brief in Final Form

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James W. Affeldt (AT0000444)
Robert M. Hogg (AT0003623)
ELDERKIN & PIRNIE, P.L.C.
316 2nd Str. SE Ste. 124, P.O. Box 1968
Cedar Rapids, IA 52406-1968
Telephone: (319) 362-2137
Facsimile: (319) 362-1640
Email: jaffeldt@elderkinpirnie.com

C. Joseph Holland
Holland & Anderson LLP
123 N. Linn St., Suite 300
P.O. Box 2820
Iowa City, IA 52244-2820

ATTORNEYS FOR DEFENDANT-APPELLEE/CROSS-APPELLANT

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STATEMENT OF THE CASE

This case is a landlord-tenant case, one of a series of cases filed by counsel for Plaintiff/Appellant/Cross-Appellee, Elyse De Stefano, against landlords in Johnson County. The landlord in this case is Defendant/Appellee/Cross-Appellant, Apts. Downtown, Inc.

De Stefano filed her small claims action on October 4, 2011. This case was tried before the small claims court, Magistrate Karen D. Egerton, on July 18, 2012. (Transcript). The magistrate did not issue a decision until June 10, 2013. (Magistrate Judgment, 6/10/13, App. 81-97).

In the ruling, the magistrate found: (1) a carpet cleaning provision in the lease violated Iowa Code § 562A.12 and was unconscionable; (2) certain deductions from the security deposit were too high and should be reduced; (3) other deductions were proper in the amount of $385 requiring a security deposit refund of $1,250; (4) charges for damages to an exterior door were unconscionable; (5) punitive damages for $200 for "bad faith" retention of a security deposit should be awarded; and (6) damages for

$3,270 for the denial of a sublease for two months in 2011 should be awarded. (Id. at 13-16, App. 93-96). The total award by the magistrate was $4,720. (Id. at 17, App. 97).

On June 21, 2013, after the magistrate's ruling, De Stefano's counsel filed attorney fees affidavits. Christopher Warnock filed an attorney fee affidavit seeking $5,466. (Warnock Attorney Fee Affidavit, 6/21/13, App. 18-20). Christine Boyer filed an attorney fee affidavit seeking $1,160. (Boyer Attorney Fee Affidavit, 6/21/13, App. 21-22). On June 28, 2013, Apts. Downtown resisted the attorney fee requests on the basis that De Stefano presented no evidence in support of the claim for attorney's fees. (Resistance, 6/28/13, App. 23-24). Further, Apts. Downtown argued that the requested fees "would result in damages which would exceed the monetary jurisdiction [sic] limits of the Small Claims court." (Id.).

On June 25, 2013, Apts. Downtown filed a notice of appeal to the district court. (Notice of Appeal, 6/25/13). On July 8, 2013, the magistrate declined to address the attorney fees requests because of the pending appeal. (Order, 7/8/13).

The district court, the Honorable Nancy A. Baumgartner, held oral argument on the appeal on January 27, 2014, and issued a ruling on May 6, 2014. (Dist. Ct. Ruling, 5/6/14, App. 98-108). The district court reduced

the award to De Stefano from $4,720 to $851.54 in damages and reached the issue of attorney's fees, awarding $1,160 in attorney's fees for Boyer. (Id. at 11, App. 108). The district court disagreed with the magistrate on the issue of financial responsibility for the damaged door, finding that the parties were free to assign financial responsibility to the tenant because the property was a single-family residence. (Id. at 8, App. 105). Based on this finding, the district court reversed the award for refusing to consent to the proposed sublease, and also found that the lease provided full discretion to Apts. Downtown to reject subleasing. (Id.). The district court agreed with the magistrate that the carpet cleaning provision was "illegal" because the lease did not "require the landlord to prove any specific damage to the carpet as a result of the tenants' use of the rental unit." (Id. at 9, App. 106). The district court upheld the assessment of $200 in punitive damages for "bad faith" retention of security deposit. (Id. at 9-11, App. 106-108). Finally, the court awarded Boyer $1,160 in attorney's fees based on her attorney fee affidavit. (Id. at 11, App. 108).

On May 26, 2014, De Stefano served her application for discretionary review. (Application, 5/26/14). On June 5, 2014, Apts. Downtown responded that it did not believe this matter warranted discretionary review, but asked that if discretionary review were granted, it sought to cross-appeal

(1) the illegality of the carpet cleaning provision and the award of damages therefor; (2) the award of "bad faith" damages of $200; and (3) the award of attorney's fees. (Response, 6/5/14). On October 1, 2014, the Supreme Court granted the application for discretionary review and granted Apts. Downtown permission to cross-appeal. (Order, 10/1/14).

STATEMENT OF FACTS

Plaintiff, Elyse De Stefano, rented a single family residence at 516 Bowery Street in Iowa City from July 31, 2010 to July 26, 2011. (Tr. 8-9, App. 42-43). De Stefano was one of four tenants. (Tr. 9-10, App. 43). Rent was $1,635 per month. (Tr. 10, App. 43). The security deposit was $1,635. (Tr. 10, App. 43). De Stefano signed the rental agreement on July 7, 2010, after the other tenants had already signed the agreement, paid the security deposit, and been living there for months. (Tr. 8-9, App. 42-43; Tr. 69, App. 58; Lease, Def. Ex. A, App. 13-15; Security Deposit Notice, Def. Ex. P, App. 79). Defendant's business manager, Joe Clark, testified that Apts. Downtown goes over lease terms with tenants, (Tr. 55-56, App. 54), but De Stefano admitted she did not read the lease before signing it. (Tr. 72 (De Stefano), App. 58).

After the tenants moved out, Defendant withheld the security deposit and assessed a charge of an additional $503.45. (Tr. 11-12, App. 43;

Security Deposit Notice, Def. Ex. P, App. 79). The Security Deposit Statement was provided in a timely fashion to the tenant (Meghan Crotty) named on the lease. (Tr. 11, App. 43; Security Deposit Notice, Def. Ex. P, App. 79). That statement showed that deductions from the security deposit included carpet cleaning ($191), cleaning charges ($280), lawn clean-up ($60), screens ($150), blinds ($99), and removal of a bed mattress from the lawn ($50), along with $1,308.45 for past due rent and fees on the account. (Security Deposit Notice, Def. Ex. P, App. 79). The past due rent amount included $210 for lawn care in June when tenants failed to do that, the cost of an exterior door replacement that tenants did not pay ($598.46) and late fees ($150), and the cost to repair a refrigerator gasket and two additional screens found on an inspection ($349.99). (Tr. 39-41, App. 50-51, Tr. 56-57, App. 55; Def. Ex. S, App. 80).

De Stefano testified she disagreed with the charge for past due rent and fees on the account because it stemmed from an incident where someone broke into the house and damaged the exterior door. (Tr. 15, App. 44). She admitted that Apts. Downtown charged them for the door, but the tenants did not think it was fair and refused to pay. (Tr. 15, App. 44). She admitted that each month the tenants failed to pay that amount, they were charged additional late fees. (Tr. 15-16, App. 44). On cross-examination,

De Stefano admitted that after the house was broken into, the only property her roommates reported missing were two or three cans of Coors Light and possibly a bottle of Smirnoff flavored vodka. (Tr. 71, App. 58).

Joe Clark testified that Apts. Downtown was called to repair the door on October 11, 2010. (Tr. 53, App. 54). The door repair cost $598.46 including $280 for four hours of labor. (Iowa City Maintenance Bill, Def. Ex. E, App. 77; Letter to Hillary Block, Def. Ex. G, App. 78). The charge of $70 per hour for labor is provided by the lease. (Lease, Def. Ex. A, at ¶ 33(c), App. 14). As Clark testified, the lease provides that all charges on the rental account for maintenance, service charges, fees, etc., shall be paid immediately or will be added to the rent balance due. (Tr. 50, App. 53; Lease, Def. Ex. A at ¶ 10(e), App. 13). In response to hypothetical questions by the small claims court about a fire due to bad wiring or damage from a drunk driver, Joe Clark testified these situations "never happened." (Tr. 54-56, App. 54). In this case, the lease specifically addressed damage to exterior doors. (Lease, Def. Ex. A at ¶ 30, App. 14).

De Stefano also testified that because the tenants did not pay the door replacement fee and late charges, Apts. Downtown denied them "the right to sublease during the summer months." (Tr. 20, App. 45). According to De Stefano, Apts. Downtown said "they would not allow us to sublease because

we had outstanding charges." (Tr. 21, App. 46). De Stefano asked for damages for the two months' rent the tenants had to pay because they were unable to sublease. (Id.). De Stefano admitted, however, that nothing in the lease required Defendant to approve of the tenants' proffered sublease. (Tr. 73, App. 59). The lease required the landlord's "written consent" before any sublease and provided that landlord "reserves the right to accept or reject any sublease." (Lease, Def. Ex. A at ¶ 57, App. 15). The lease further provided: "Only apartments whose rental accounts are in good standing may sublease. All rent/fees on the account must be paid before Landlord consents to a sublease." (Id. at ¶ 57(c), App. 15).

De Stefano also disagreed with the carpet cleaning fees ($191) because she testified it was "extremely clean." (Tr. 12, App. 43). Joe Clark testified Defendant hired a professional carpet cleaning company to clean the carpets "for the benefit of the new tenants moving in" because they looked stained and dirty. (Tr. 32-33, App. 48-49). Jeff Clark testified there was a "darker pattern on the steps" and "dust balls in corners." (Tr. 89, App. 63). Joe Clark explained that Defendant is able to clean carpets at below market rate for the benefit of tenants. (Tr. 35-36, App. 49). Apts. Downtown notifies tenants in advance about carpet cleaning so they know

they do not need to incur the expense of having the carpets professionally cleaned. (Tr. 78, App. 60).

On other charges, De Stefano admitted the tenants did not mow the lawn during the summer after they physically moved out, but testified she thought the charges were "excessive." (Tr. 16, App. 44; Tr. 74, App. 59). De Stefano admitted screens were damaged, but she disagreed with the fees for screens because the tenants intended to replace them but Apts. Downtown replaced them first. (Tr. 18, App. 45; Tr. 74, App. 59). De Stefano admitted the blinds were broken during her tenancy, but she thought the charge ($99) was "excessive." (Tr. 19, App. 45; Tr. 74, App. 59). De Stefano admitted that the charge for removing the mattress from the front lawn ($50) was proper. (Tr. 19-20, App. 45).

ROUTING STATEMENT

This case should be retained by the Supreme Court because it presents issues of first impression that have not been resolved by appellate courts in Iowa and because the issues are of broad importance to the rental housing industry as a whole.

ARGUMENT

I. The District Court Properly Held That De Stefano And Apts. Downtown Were Allowed To Agree To Make The Tenants Financially Responsible For Repairing The Door Because Such A Provision Is Not Prohibited By The IURLTA And, In Fact, Is Expressly Authorized By Iowa Code § 562A.15(2).

A. Preservation Of Error. De Stefano did not raise her argument that Iowa Code § 562A.15(2) is limited to trash collection, water supply, and non-essential repairs, (De Stefano Br. at 6), in the district court, (De Stefano Dist. Ct. Appeal Br. at 6-7, App. 33-34), and thus did not preserve error on that argument.

B. Standard Of Review. This small claims action is reviewed for correction of errors at law. Midwest Check Cashing, Inc. v. Richey, 728 N.W.2d 396, 399 (Iowa 2007); Meier v. Sac & Fox Indian Tribe, 476 N.W.2d 61, 62 (Iowa 1991). This court is bound by the district court's factual findings if supported by substantial evidence. GE Money Bank v. Morales, 773 N.W.2d 533, 536 (Iowa 2009). The district court's statutory construction is reviewed at law on assigned errors. Id.; Midwest Cash Checking, 728 N.W.2d at 399.

C. Argument. The district court did not err by holding that the parties' lease agreement on paying for repairs to the exterior door was not prohibited by the Iowa Uniform Residential Landlord Tenant Act

(IURLTA). (Dist. Ct. Ruling, 5/6/14, at 7-8, App. 104-105). In this case, the rental agreement expressly provided: "Tenants agree to pay for all damages to the apartment windows, screens, and doors, including exterior unit doors (including random acts of vandalism)." (Lease, Def. Ex. A at ¶ 30, App. 14). The district court properly found that this provision was not only not prohibited, but was expressly allowed by the "plain language" of Iowa Code § 562A.15(2). (Dist. Ct. Ruling, 5/6/14, at 8, App. 105).

(1) The IURLTA Does Not Prohibit Agreements To Assign Financial Responsibility For Repairs To Tenants.

The IURLTA expressly provides that a "landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, terms of the agreement, and other provisions governing the rights and obligations of the parties." Iowa Code § 562A.9(1). "Prohibited" provisions include only agreements "to waive or to forego rights and remedies under this chapter" (with an exception for single family residential property on agricultural land in unincorporated areas that is not involved in this case), "to confess judgment on a claim arising out of the rental agreement," "to pay the other party's attorney fees," and "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." Iowa Code § 562A.11(1)(a)-(d).

In this case, it is undisputed the parties agreed to the lease provision assigning financial responsibility for the door repair to De Stefano and the other tenants. (Def. Ex. A at ¶ 30, App. 14). Further, the record is clear that Apts. Downtown goes over the lease provisions with its tenants, (Tr. 55-56, App. 54), even if De Stefano admitted she did not read the lease agreement. (Tr. 72 (De Stefano), App. 58). Iowa law is clear that the failure to read an agreement does not release a party from its terms. Gouge v. McNamara, 586 N.W.2d 710, 713 (Iowa Ct. App. 1998); Cronbaugh v. Farmland Mut. Ins. Co., 475 N.W.2d 652, 654 (Iowa Ct. App. 1991). Because an agreement to assign financial responsibility for repairs to a tenant is not prohibited by the IURLTA, the district court's decision on this issue should be affirmed.

(2) Apts. Downtown Actually Performed The Repairs, Fulfilling Any Duty To Maintain The Premises.

In her brief, De Stefano suggests that the district court's ruling threatens the landlord's "duty to maintain the premises." (De Stefano Br. at 7-12, quoting Iowa Code § 562A.2(2)(c)). This argument overlooks the undisputed fact in this case that Apts. Downtown fulfilled its statutory

obligation for repairs by actually repairing the damaged exterior door. (Tr. 53, App. 54). The IURLTA requires the landlord to "[m]ake all repairs" to "keep the premises in a fit and habitable condition," but it does not prohibit an agreement between the landlord and tenant for the tenant to pay for repairs after they have been made. Iowa Code § 562A.15(1)(b).

The only issue in this case is whether the parties are allowed to agree to assign financial responsibility for the repair to the tenant. Contrary to De Stefano's argument, (De Stefano Br. at 3), nowhere does the IURLTA require a landlord "to pay" for repairs and maintenance. As De Stefano argues, "There is no provision for the landlord to perform repairs and then charge the tenant for them." (De Stefano Br. at 7). This argument flips the statute on its head. Unless the IURLTA prohibits a lease term, the parties are free to include it in their lease agreement. Iowa Code § 562A.9(1). Thus, even if the IURLTA is silent on the issue of financial responsibility for repairs, the lease provision which De Stefano agreed to is not prohibited and is allowed under § 562A.9(1).

(3) The IURLTA Expressly Allows Lease Agreements To Assign Repair Responsibilities To Tenants Of Single-Family Residential Properties Under § 562A.15(2).

The district court ruled that the IURLTA not only does not prohibit the tenant financial responsibility provision, but it expressly allows it for

single family residential property under the "plain language" of Iowa Code § 562A.15(2). (Dist. Ct. Ruling, 5/6/14, at 8, App. 105). Section 562A.15(2) provides in relevant part: "The landlord and tenant of a single family residence may agree in writing that the tenant perform . . . specified repairs, maintenance tasks, alterations, and remodeling . . . if the transaction is entered into in good faith." Iowa Code § 562A.15(2). Good faith under the IURTLA is defined as "honesty in fact in the conduct of the transaction concerned." Iowa Code § 562A.6(4). In this case, the district court expressly found the parties made their agreement in good faith. (Dist. Ct. Ruling, 5/6/14, at 8, App. 105). If the parties can agree that the tenant perform the repairs, then a fortiori the parties can agree that the tenant will pay for the landlord to perform the repairs.

Nonetheless, De Stefano argues that the district court omitted key language from § 562A.15(2) that, she suggests, limits that section to the assumption of duties for garbage collection and water supply. (De Stefano Br. at 5-7). As an initial matter, this argument was not presented to the district court. (De Stefano Dist. Ct. Appeal Br. at 6-7, App. 33-34). Because this argument was never presented to the district court, the district court never ruled on it, including the issue of whether the exterior door repair was part of the landlord's duties under Iowa Code § 562A.15(1)(a)-

(d). De Stefano's argument that it "clearly" was, (De Stefano Br. at 6), does not allow her to preserve error on the argument or show that the district court ruled on the issue. Even the magistrate below did not rule on this issue, instead finding that the provision was "unconscionable." (Magistrate Judgment, 7/10/13, at 15-16, App. 95-96). In her brief, De Stefano does not even raise an argument that the lease provision was "unconscionable," instead focusing on her challenge to the legality of the lease provision.

Even assuming De Stefano preserved error on her argument, however, it fails because it overlooks the plain language of the clause "specified repairs, maintenance tasks, alterations, and remodeling." Iowa Code § 562A.15(2). Although De Stefano argues this must mean only repairs, tasks, alterations, and remodeling "other than those necessary to comply with the landlord's responsibilities under § 562A.15(a)(1)-(4) [sic]," (De Stefano Br. at 6), there is no language that limits the "specified repairs" under the statute or states that they cannot be related to other "duties." Cf. State Water Resources Bd. v. Howard, 729 A.2d 712, 714-15 (R.I. 1999) (Rhode Island statute expressly provides that "specified repairs" may not be "necessary to cure noncompliance with subsection (a)(1) of this section," but such language is missing from Iowa Code § 562A.15(2)). A better reading of § 562A.15(2) is that the parties can agree to turn over to tenants

in a single family residence the landlord's entire "duties" for garbage (§ 562A.15(1)(e)) and water (§ 562A.15(1)(f)), as well as any other "specified repairs, maintenance tasks, alterations, and remodeling," as long as they are "specified," regardless of whether they are related to the landlord's other "duties" or not. If the Legislature wants to limit the repairs that the parties can specifically agree a tenant will perform, it is up to the Legislature to say that in the statute, not for this court to read in such a limitation.

Instead of legislative action, De Stefano argues this court should act by construing the statute in light of the "express purpose" of the IURLTA to "insure that the right to the receipt of rent is inseparable from the duty to maintain the premises." (De Stefano Br. at 8, quoting Iowa Code § 562A.2(2)(c)). De Stefano further suggests that § 562A.15 should be "strictly construed" against tenant financial responsibility. (De Stefano Br. at 8). Under Iowa law, however, "[s]trict statutory construction is not to be used to inject doubt when legislative intent is evident through a reasonable construction of the statute." Area Education Agency 7 v. Bauch, 646 N.W.2d 398, 400 (Iowa 2002) (quoting State v. Bonstetter, 637 N.W.2d 161, 167 (Iowa 2001)). The case cited by De Stefano, Peoples' Gas & Elec. Co. v. State Tax Commission, 238 Iowa 1369, 1374-75, 28 N.W.2d 799, 803-04 (1947), construed a statute strictly against a taxpayer under tax laws,

not a landlord under the IURLTA, and thus does not support her position. Moreover, in this case, there is no question that Apts. Downtown actually repaired the door, thereby fulfilling its "duty to maintain the premises." Iowa Code § 562A.2(2)(c). De Stefano also overlooks another "express purpose" of the IURLTA, i.e., to "encourage landlord and tenant to maintain and improve the quality of housing." Iowa Code § 562A.2(2)(b) (emphasis added). An agreement by the tenant of a single-family residence to pay for "specified repairs" helps fulfill this express statutory purpose.

De Stefano next argues that even if § 562A.15(2) authorizes tenant repairs, it does not authorize landlord repairs paid for by tenants. (De Stefano Br. at 7-12). As explained above, however, statutory silence about landlord repairs paid for by tenants means that the parties are free to agree to them. Iowa Code § 562A.9(1). It would be wrong for the court to go beyond the statutory language to prohibit landlord repairs paid for by tenants because an agreement making the tenant financially responsible makes good sense. Tenants who live at a property, especially those living in a single family residence, will often be in a better position than a landlord to know what happened to the property and even to help safeguard property from random acts of vandalism. In addition, landlord repairs paid for by tenants make sense because a landlord may be in a position to obtain repairs

in volume and thus on more favorable terms than an individual tenant. While De Stefano suggests there is something nefarious in a lease provision that requires the landlord to make repairs, (De Stefano Br. at 8 n.1), it is not unreasonable to believe that a landlord's repairs may be more cost effective and of higher quality than an individual tenant hiring a third-party contractor for an individual project. In any event, there is simply nothing in the IURLTA which prohibits such agreements.

De Stefano also suggests that § 562A.15(2) is really a "handyman" provision, and thus only tenant repairs are allowed under the section. (De Stefano Br. at 9). Again, this argument is unsupported by any statutory language. Moreover, § 562A.15(2) could be better understood as a "quasi homeowner" or even a "future homeowner" provision that allows the parties to agree on garbage, water, and specified repairs and maintenance so that single family residential tenants are able to act like homeowners, even if that would involve paying someone else to do the repairs. Contrary to De Stefano's argument about "young undergraduate[s]," (De Stefano Br. at 9), college students are bright enough and mature enough to handle the responsibility when they agree to pay for repairs at their rental house. Nor are they necessarily as compliant as De Stefano suggests in her brief, (De Stefano Br. at 11-12), especially in a competitive rental property market.

(4) De Stefano's Authorities Do Not Support Her Position.

Finally, De Stefano cites two cases – Mease v. Fox, 200 N.W.2d 791 (Iowa 1972), and Mastland v. Evans Furniture, 498 N.W.2d 682 (Iowa 1993) – which do not support her position. In Mease, decided before the enactment of the IURLTA, the court held that tenants could assert counterclaims for breach of an implied warranty of habitability that ensures "freedom from latent defects and material violations of housing code requirements." Mease, 200 N.W.2d at 796. On the facts in Mease, the tenants alleged that the leased home was "unsafe, unsanitary or otherwise untenable" and was "declared to be a public nuisance," that the landlord was notified of housing code violations, that a tenant was injured by a falling bathroom ceiling, and that the tenants were ordered to vacate the leased home. Id. at 792. In this case, by contrast, there is no allegation let alone evidence of any housing code violation or lack of maintenance. It is undisputed that Apts. Downtown performed the door repair. The only issue is whether the terms of the lease allocating financial responsibility to De Stefano and the other tenants are "prohibited" by the IURLTA. Nothing in Mease says that the answer to that question is yes. Moreover, the generalizations in Mease about "[t]oday's urban tenants" were derived from a District of Columbia case which is now over 40 years old. Mease, 200

N.W.2d at 795 (quoting Javins v. First National Realty Corp., 428 F.2d 1071, 1078-79 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970)). Likewise, there was no evidence in this case that the "short supply" of housing that existed in 1972, Mease, 200 N.W.2d at 794-95, still exists today. Today's tenants have options. Bartlett Grain Co., LP v. Sheeder, 829 N.W.2d 18, 27 (Iowa 2013) (options in market weigh against finding unconscionability).

As for Mastland, while more recent, the case is readily distinguishable because it involved a claim for damages against a tenant resulting from a fire, not from the withholding of the security deposit for failure to pay for agreed-upon repairs. 498 N.W.2d at 683-84. Further, in Mastland, the lease was "silent on who bears the loss" under the circumstances. Id. at 686. All the lease did in Mastland was "trac[k] verbatim" the statutory language of Iowa Code § 562A.17(6). Id. In this case, by contrast, the lease specifically provided that the tenant was financially responsible for damage to exterior doors including instances where the damage results from "random acts of vandalism." (Lease, Def. Ex. A at ¶ 30, App. 14). Mastland does not suggest that such a lease agreement is prohibited. A further distinction is that Mastland did not consider – and had no reason to consider – the provisions of Iowa Code § 562A.15(2), because that case did not involve a single family residence.

Because of these critical legal differences, Mastland does not support De Stefano's position.

For these reasons, this court should affirm the district court's decision finding that the lease agreement making De Stefano and the other tenants financially responsible for damage to the door was not prohibited.

II. The District Court Properly Held That Apts. Downtown Was Not Liable For Denying Approval Of The Sublease Where The Lease Agreement Gave The Landlord Complete Discretion To Deny The Sublease And Where De Stefano And The Other Tenants Had Not Paid For The Door Repair.

A. Preservation Of Error. Apts. Downtown agrees with De Stefano that she has preserved error on this issue.

B. Standard Of Review. Again, this issue is reviewed for correction of errors at law. Midwest Check Cashing, 728 N.W.2d at 399. This court is bound by the district court's factual findings if supported by substantial evidence. GE Money Bank, 773 N.W.2d at 536.

C. Argument. The district court properly denied De Stefano's claim for damages for Apts. Downtown's refusal to approve the sublease. De Stefano concedes in her brief that this issue fails if she fails on the first issue. (De Stefano Br. at 13). Thus, if the court affirms on the first issue, De Stefano's appeal on this issue is moot.

Even if the court were to reverse on the first issue, however, the district court's denial of damages for the sublease should be affirmed for two additional reasons. First, as the district court found, Apts. Downtown did not have any duty to allow the sublease. (Dist. Ct. Ruling, 5/6/14, at 8, App. 105). The lease provided that Apts. Downtown "reserves the right to accept or reject any sublease." (Lease, Def. Ex. A., at ¶ 57, App. 15). As the district court explained:

> Plaintiff [De Stefano] 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. . . . Plaintiff argued that Van Sloun v. Agan Bros., Inc., 778 N.W.2d [174] (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.

(Dist. Ct. Ruling, 5/6/14, at 8, App. 105) (emphasis in original). In her brief, De Stefano did not address this independent reason for the district court's ruling. (De Stefano Br. at 13).

Second, even if the court were to find that the financial responsibility provision was invalid, Apts. Downtown did not willfully use that provision knowing it was prohibited, and thus De Stefano is not entitled to damages under Iowa Code § 562A.11(2). There was no evidence of any prior ruling that would have told Apts. Downtown it was illegal or prohibited. Because Apts. Downtown did not know it was prohibited, Plaintiff's claim to $3,270 in damages for the purported refusal to sublease must fail.

For each of these reasons, the district court's rejection of De Stefano's claim related to the sublease should be affirmed.

III. The District Court Did Not Err By Awarding Apts. Downtown $586.46 For Door Repair.

A. Preservation Of Error. Apts. Downtown agrees De Stefano preserved error on this issue to the extent she is challenging the charge of $70 per hour for four hours of work to repair the exterior door. (De Stefano Dist. Ct. Appeal Br. at 18, App. 35). To the extent De Stefano is raising a larger challenge, however, she did not preserve error because either she did not brief it to the district court or the district court did not rule against her.

B. Standard Of Review. Again, this issue is reviewed for correction of errors at law. Midwest Check Cashing, 728 N.W.2d at 399.

This court is bound by the district court's factual findings if supported by substantial evidence. GE Money Bank, 773 N.W.2d at 536.

C. Argument. The district court did not err by awarding $586.46 for door repair. (Dist. Ct. Ruling, 5/6/14, at 11, App. 108). That determination was supported by substantial evidence, including Joe Clark's testimony that the work was performed, (Tr. 53, App. 54), the bill from Iowa City Maintenance, (Def. Ex. E, App. 77), and the letter informing De Stefano and the other tenants they owed that amount. (Def. Ex. G, App. 78). Further, the charge of $70 per hour for labor is provided by the lease. (Lease, Def. Ex. A, at ¶ 33(c), App. 14). There was no evidence presented to show that the charge was unreasonable in the Iowa City market. Because the district court is supported by substantial evidence, this court should affirm the district court's award of $586.46 for door repair.

De Stefano complains that the $70 per hour for labor includes "ordinary business expenses" and "overhead," (De Stefano Br. at 15), but that argument lacks merit. These business expenses are legitimate expenses that must be paid somehow – either through charges to tenants based on the conduct for which the tenants are financially responsible, or through higher rent for all tenants. As stated, the parties agreed to $70 per hour for labor. (Lease, Def. Ex. A, at ¶ 33(c), App. 14). It would be nice to run a landlord

business without such expenses, but that is not realistic, and they must be paid somehow. Contrary to De Stefano's argument, that is true for landlords with many tenants or few tenants.

The only Iowa authority that De Stefano cites to support her criticism of the recovery of "ordinary business expenses" does not support her position. In D.R. Mobile Home Rentals v. Frost, 545 N.W.2d 302, 305-06 (Iowa 1996), the court held that a statutory provision that required a landlord to "arrange for removal" of debris did not require the landlord to actually remove the debris or to pay for the debris removal. Nonetheless, in Frost, the court reversed an award of $25 for debris removal because the landlord did not present any evidence that it removed the debris or what it would have cost to remove the debris. Id. Indeed, the landlord did not even file a brief to contest the tenant's appeal. Id. In this case, by contrast, Apts. Downtown presented evidence of the work performed and the cost of that work. (Tr. 53, App. 54; Def. Ex. E, App. 77; Def. Ex. G, App. 78). That evidence is more than adequate to show its damages under Frost.

IV. The District Court Did Not Abuse Its Discretion By Denying Attorney Fees For De Stefano's "Lead Counsel."

A. Preservation Of Error. Apts. Downtown agrees that De Stefano preserved error on this issue.

B. Standard Of Review. This court reviews decisions concerning attorney's fees for an abuse of discretion. Fennelly v. A-1 Machine & Tool Co., 728 N.W.2d 181, 185 (Iowa 2007).

C. Argument. The district court did not abuse its discretion by denying De Stefano attorney's fees for her "lead counsel." As an initial matter, De Stefano should not prevail on her appeal, and Apts. Downtown should prevail on its cross-appeal, rendering moot De Stefano's claim for attorney's fees. Only the "prevailing party" is eligible for attorney's fees. Iowa Code § 562A.12(8). Moreover, the district court did not abuse its discretion in this case where it was in the best position to evaluate the work by the counsel involved and the claim for attorney's fees by De Stefano's "lead counsel" ($5,466) was excessive. As discussed in more detail in section V, below, the claim for attorney's fees for "lead counsel" by itself exceeded the jurisdictional limit of small claims court. Iowa Code § 631.1. Under those circumstances, the district court did not abuse its discretion by denying the claim for attorney's fees by De Stefano's "lead counsel."

CROSS-APPEAL ARGUMENT

V. This Court Should Vacate The Award In Favor Of De Stefano Because The Small Claims Court Lost Jurisdiction When De Stefano's Counsel Claimed Legal Fees That, By Themselves And When Combined With The Damage Award, Exceeded The Small Claims Court's Monetary Jurisdictional Limits.

A. Preservation Of Error. Because this issue is jurisdictional, Apts. Downtown did not need to preserve error on this issue. Klinge v. Bentien, 725 N.W.2d 13, 16 (Iowa 2006). Nonetheless, Apts. Downtown raised this issue in its resistance to De Stefano's attorney fee affidavits, (Resistance, 6/28/13, App. 23-24), and in its reply brief in support of its district court appeal after De Stefano requested attorney's fees in her appeal brief, (Dist. Ct. Appeal Reply Br. at 6-7, App. 38-39).

B. Standard Of Review. Subject matter jurisdiction is reviewed for corrections of error at law. Tigges v. City of Ames, 356 N.W.2d 503, 512 (Iowa 1984). It is the duty of the court to determine whether the courts have jurisdiction, and such a determination should be made "before the court looks at other matters involved in the case." Id. at 511.

C. Argument. The maximum "amount in controversy" for a claim in small claims court is $5,000 "exclusive of interest and costs." Iowa Code § 631.1(1). Case law holds that when an element of damages is not excluded from the maximum amount, it is included. Garza v. Chavarria,

155 S.W.3d 252, 256 (Tex. Ct. App. 2004). Under Iowa law, it is settled that the word "costs" does not include "attorney's fees." Turner v. Zip Motors, 245 Iowa 1091, 65 N.W.2d 427, 432 (1954). In Roeder v. Nolan, 321 N.W.2d 1, 4 (Iowa 1982), the court held that "costs" awarded as a condition of a continuance in small claims court under the IURLTA could not include "attorney fees" or "travel expenses." Claims for attorney's fees in small claims are thus limited by the maximum jurisdictional amount.

The Iowa Supreme Court has held that even a liberal construction of the statutory word "costs" does not include "attorney's fees." Weaver Constr. Co. v. Heitland, 348 N.W.2d 230, 233 (Iowa 1984) (construing Iowa Code § 677.10). As the court explained in Weaver Construction:

> We do not agree, however, that the word "costs" should be so liberally stretched as to include attorney fees. As the trial court correctly noted, our legislature has explicitly provided in some statutes that a prevailing party may recover attorney fees as well as costs. We believe the legislative intent of chapter 677 is clear; attorney fees are not included in the cost-shifting which the statute allows because attorney fees are not mentioned in the statute.

Id. If the Legislature intended to exclude attorney's fees from the maximum jurisdictional limit of small claims court, as it did for "interest and costs," the Legislature would have said so.

The Iowa Legislature has repeatedly treated "attorney's fees" and "costs" as separate and distinct statutory concepts. See, e.g., Iowa Code § 6A.24 (in condemnation proceedings, expressly including "reasonable attorney's fees" within definition of "costs" that may be recovered); Iowa Code § 6B.33 (same); Iowa Code § 9A.116 (for violations of uniform athlete agent act, expressly allowing "costs and reasonable attorney's fees"); Iowa Code § 12C.23(3)(d) (for credit union violation, expressly allowing "costs" and "attorney's fees"); Iowa Code § 22.10 (for open records enforcement, expressly providing for award of "all costs and reasonable attorney fees"); Iowa Code § 504.703 (for court ordered meetings of nonprofit boards, expressly providing for recovery of "costs, including reasonable attorney fees"); Iowa Code § 523H.13 (for violations of insurance franchise, expressly allowing recovery of "costs and reasonable attorneys' and experts' fees"); Iowa Code § 537A.10(13) (for violations of franchise agreements, expressly allowing recovery of "costs and reasonable attorneys' and experts' fees"); Iowa Code § 552A.5 (for buyer's club member violations, expressly allowing "costs, including reasonable attorney's fees"); Iowa Code § 553.12(4) (in antitrust proceeding, expressly providing that plaintiff may recover "necessary costs of bringing suit, including a reasonable attorney fee"); Iowa Code § 573.21 (in mechanic's

lien action, expressly providing that court may tax "costs" including "reasonable attorney fee"); Iowa Code § 598.24 (in contempt proceedings, expressly providing that court may award "costs of the proceeding, including reasonable attorney's fees"); Iowa Code § 625.22 (in written contract actions, expressly providing that award may include "court costs incurred, including a reasonable attorney fee"); Iowa Code § 633.3 (in probate proceedings, costs of administration expressly includes "court costs" and "attorney fees"); Iowa Code § 633A.4507 (in trust proceedings, expressly providing that court may award "costs and expenses, including reasonable attorney fees"); Iowa Code § 729.6(8) (civil remedy for genetic testing violation expressly includes both "court costs" and "attorney's fees"); Iowa Code § 730.4(5) (civil remedy for polygraph violation expressly includes both "court costs" and "attorney's fees"); Iowa Code § 730.5(15) (civil remedy for drug testing violation expressly includes both "court costs" and "attorney's fees"). There is no indication the Legislature intend to exclude attorney's fees from the maximum jurisdictional amount by using only the word "costs" under Iowa Code § 631.1(1).

Because the damages and attorney's fees sought in this case as of June 21, 2013 exceeded $5,000, the small claims court lost jurisdiction. See Iowa Code § 631.1(1). "No jurisdiction can be conferred by abandoning a

part of the claim in the appellate court by a remittitur or an amendment reducing the amount claimed." 51 C.J.S., Justices of the Peace, §306 (2013). The fact that the district court on appeal from the small claims court reduced the damage award and did not award the full amount of attorney's fees claimed by De Stefano could not create jurisdiction once it had been lost through counsel's claim for $6,626 in attorney's fees, (Warnock Attorney Fee Affidavit, 6/21/13, App. 18-20; Boyer Attorney Fee Affidavit, 6/21/13, App. 21-22), on top of the $4,720 in damages already awarded. De Stefano's counsel could have limited their claim for attorney's fees to $280, but did not. Vacating the district court's ruling is necessary to protect the rights of Apts. Downtown, which was entitled to the procedural protections of a case tried in district court under the rules of civil procedure once the claim for damages and attorney's fees exceeded $5,000.

Counsel for De Stefano has argued in other cases that the $5,000 limit does not apply to attorney's fees under Maday v. Elview-Stewart Sys., Co., 324 N.W.2d 467 (Iowa 1982). Although Maday stated that courts, not juries, have the power to award attorney's fees when they are in "the nature of costs," id. at 469, it did not hold that attorney's fees are themselves "costs" that fall within the statutory exclusion from the small claims court maximum jurisdictional amount. In Maday, the court interpreted a statute

which treated "costs" and "attorney's fees" as separate items of damage. Id. at 470. Because the Legislature treated them separately in Maday, it does not make sense that the Legislature would have included "attorney's fees" within the word "costs" in Iowa Code § 631.1.

VI. The District Court Erred By Holding The Carpet Cleaning Provision In The Lease Was Unconscionable And Violated Iowa Code § 562A.12 Where That Provision Was Agreed Upon By The Parties And Benefits Tenants.

A. Preservation Of Error. Apts. Downtown preserved error by raising this argument in its district court appeal brief. (Apts. Downtown Dist. Ct. Appeal Br. at 12-15, App. 26-29).

B. Standard Of Review. Again, this issue is reviewed for correction of errors at law. Midwest Check Cashing, 728 N.W.2d at 399. This court is bound by the district court's factual findings if supported by substantial evidence. GE Money Bank, 773 N.W.2d at 536.

C. Argument. The district court erred by reducing the deductions from the rental deposit by $191 for carpet cleaning. The lease provided: "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." (Lease,

Def. Ex. A at ¶ 37(e), App. 14). The district court upheld the magistrate's determination that this provision was an automatic carpet cleaning provision that was unconscionable and violated the terms of Iowa Code § 562A.12. This determination was wrong because this provision does not contradict § 562A.12, is not prohibited by the IURLTA, and is actually beneficial for tenants by providing below market cost carpet cleaning, saving expense for outgoing tenants and providing clean carpets for incoming tenants. As Joe Clark explained, each carpet is actually assessed on a case-by-case basis, but Apts. Downtown's standard cleaning charges are less than market rate and benefit the tenants. (Tr. 35-36, 78, App. 49, 60).

Although the IURLTA has a specific provision addressing the effect of unconscionable provisions, Iowa Code § 562A.7, it does not provide a separate definition of "unconscionability." Thus, common law concepts of unconscionability apply. Clackamas Gastroenterology Assocs., P.C. v. Wells, 528 U.S. 440, 447 (2003) ("courts will look to the common law to fill gaps in statutory text, particularly when an undefined term has a settled meaning at common law"); State v. Dullard, 668 N.W.2d 585, 595 (Iowa 2003) ("we interpret legislative enactments consistent with common law principles when the language used by the legislature does not specifically negate the common law").

Under Iowa law, "[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." Bartlett Grain Co., LP v. Sheeder, 829 N.W.2d 18, 27 (Iowa 2013) (quoting C&J Vantage Leasing Co. v. Wolfe, 795 N.W.2d 65, 80 (Iowa 2011)). In deciding unconscionability, courts should consider "assent, unfair surprise, notice, disparity of bargaining power, and substantive unfairness." Id. (quotations omitted). In Bartlett Grain, the court emphasized that "the doctrine of unconscionability does not exist to rescue parties from bad bargains." Id. Indications of unconscionable agreements include "sharp practices," "use of fine print," "convoluted language," "lack of understanding," "inequality of bargaining power," and "harsh, oppressive, and one-sided terms." Id. (quoting In re Marriage of Shanks, 758 N.W.2d 506, 515 (Iowa 2008)). The determination must be made based on the circumstances that existed at the time the agreement was made. Id. The fact that a buyer has other options in the market weighs against a finding of unconscionability. Id.

In this case, the carpet cleaning provision was not "unconscionable" because De Stefano had other options in the rental market. Although she did not read the lease, (Tr. 72 (De Stefano), App. 58), she had the opportunity to do so. Although the multi-page lease did not use the largest

type, (Def. Ex. A, App. 13-15), the carpet cleaning provision was not hidden in fine print. It did not use convoluted language. 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.

Nor did the lease provision contradict the terms of Iowa Code § 562A.12. That section, which governs security deposits, allows security deposits of two months' rent. Iowa Code § 562A.12(1). In this case, the deposit is only one month's rent. (Tr. 10, App. 43). Section 562A.12 further allows landlords to withhold the security deposit for a "specific reason" if they provide a written statement that specifies "the nature of the damages." Whitehorn v. Lovik, 398 N.W.2d 851, 855 (Iowa 1987) (all law requires is "written justification"). A landlord may withhold amounts "reasonably necessary" to "restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted." Iowa Code § 562A.12(3)(b). In this case, it is undisputed that Defendant timely provided the required written notice. (Tr. 11, App. 43; Def. Ex. P, App. 79). Further, Iowa Code § 562A.17(2) requires a tenant to keep the premises "as clean . . . as the condition of the premises permits." If tenants are to keep their residence clean, it would be absurd not to allow the parties to agree in

writing to terms governing financial responsibility for professional carpet cleaning, especially when those terms are below market rate.

Courts in other jurisdictions have held that nonrefundable cleaning fees are not considered "security deposits" within the meaning of the landlord-tenant laws. Stutelberg v. Practical Mgmt. Co., 245 N.W.2d 737, 739 (Mich. Ct. App. 1976). Moreover, the "ordinary wear and tear" excepted in the statute means "the gradual deterioration of the condition of an object which results from its appropriate use over time," not the "accumulation of dirt." Miller v. Geels, 643 N.E.2d 922, 927-28 (Ind. Ct. App. 1994). As the Indiana Court of Appeals has explained:

> Although the rental agreement in the present case always requires the tenant to steam-clean the carpets upon termination of the lease, it nevertheless distinguishes between normal wear and tear and other damages. Under the lease, the purpose of the steam-cleaning provision is not to repair the nap or the fibers within a carpet, which naturally deteriorate due to normal use and are, therefore, the proper responsibility of the landlord. Instead, steam-cleaning is designed to ensure that dirt which accumulates in the carpet during a tenant's occupancy is removed. By placing the responsibility on the tenant to steam-clean the carpet in order to remove dirt, the rental agreement essentially defines dirt as damage exceeding normal wear and tear.

Castillo-Cullather v. Pollack, 685 N.E.2d 478, 483 n. 4 (Ind. Ct. App. 1997), abrogated on other grounds, Mitchell v. Mitchell, 695 N.E.2d 920 (Ind. 1998). Thus, the parties are free to agree on the meaning of "ordinary wear

and tear" within their lease. "Ordinary wear and tear" would include deterioration of the quality of the carpet over time, but not the "dust balls" and "darker pattern" that appeared on the carpet in De Stefano's residence. (Tr. 89, App. 63). The lease provision provides standard carpet cleaning fees, not carpet replacement fees. Section 562A.12(3)(b) does not make it unlawful for a landlord and tenant to agree to cleaning that will leave the apartment in the same state of cleanliness as when the tenancy began. An agreement for standard carpet cleaning fees is not prohibited by Iowa Code § 562A.11. Parties are free to agree to provisions "not prohibited." Iowa Code § 562A.9(1). For these reasons, Apts. Downtown did not violate Iowa Code § 562A.12 by charging the tenants $191 to clean the carpet.

VII. The District Court Erred By Upholding The "Bad Faith" Penalty Based On Deductions From The Security Deposit For The Carpet Cleaning Charges And The Late Fees Assessed Against De Stefano And The Other Tenants Where The Carpet Cleaning And Late Fees Were Expressly Provided For In The Lease.

A. Preservation Of Error. Apts. Downtown preserved error by raising this argument in its district court appeal brief. (Apts. Downtown Dist. Ct. Appeal Br. at 16-17, App. 30-31).

B. Standard Of Review. Again, this issue is reviewed for correction of errors at law. Midwest Check Cashing, 728 N.W.2d at 399.

This court is bound by the district court's factual findings if supported by substantial evidence. GE Money Bank, 773 N.W.2d at 536.

C. Argument. The district court erred by assessing a statutory penalty of $200 for "bad faith retention" of portions of the security deposit. (Dist. Ct. Ruling, 5/6/145, at 10-11, App. 107-108). The district court cited two reasons for its holding: (1) the inclusion of the carpet cleaning provision and (2) the retention of late fees for non-payment of the door repair. Neither of these grounds supports the "bad faith" penalty.

Under Iowa law, it is the tenant's burden to prove "bad faith." Lewis v. Jaeger, 818 N.W.2d 165, 187 (Iowa 2012). However, no statutory punitive damages should be awarded where there is a "good-faith dispute." H-L Apartments v. Al-Qawiyy, 440 N.W.2d 371, 373 (Iowa 1989). In this case, the carpet cleaning provision does not violate Iowa Code § 562A.12 for the reasons given in section VI, above. Even if the court concludes the carpet cleaning provision does violate § 562A.12, however, there was a "good faith dispute" about the issue, and no bad faith can be found.

As for the charges for "late fees" for non-payment of the door repair costs, those late fees were expressly agreed upon in the lease, and the lease also converts unpaid "maintenance charges" into "rent." (Tr. 50, App. 53; Lease, Def. Ex. A, ¶ 10, App. 13). In this cross appeal, Apts. Downtown is

not challenging the district court's decision holding that "late fees" should not have been assessed on the unpaid "maintenance charges" for the door repair. However, that does not mean that following the terms of the lease was "bad faith." Because Apts. Downtown followed the agreed-upon terms of the lease, there was at least a "good faith dispute" and the "bad faith" penalty should be reversed. This is especially true where De Stefano admitted that there were multiple charges – the mattress, lawn care, blinds, and screens – which were proper in some amount, so the only issue was the amount of the deposit withheld, not the fact that withholding was proper.

VIII. The District Court's Award Of Attorney's Fees ($1,160) To De Stefano Should Be Reversed.

A. Preservation Of Error. Apts. Downtown preserved error on this issue by resisting De Stefano's attorney fee affidavits, (Resistance, 6/28/13, App. 23-24), and by challenging the attorney's fees after De Stefano raised it in the district court appeal. (Apts. Downtown Dist. Ct. Appeal Reply Br. at 6-7, App. 37-39).

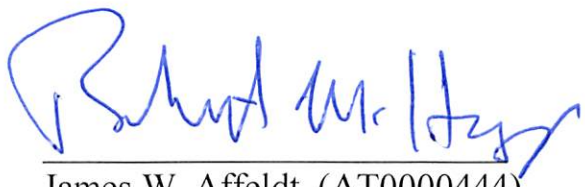
B. Standard Of Review. This court reviews decisions concerning attorney's fees for an abuse of discretion. Fennelly v. A-1 Machine & Tool Co., 728 N.W.2d 181, 185 (Iowa 2007). However, when the issue is the proper legal basis for attorney's fees, this court reviews for

corrections of error at law. FNBC Iowa, Inc. v. Jennessey Group, LLC, 759 N.W.2d 808, 810 (Iowa Ct. App. 2008).

C. Argument. This court should reverse the award of attorney's fees for De Stefano ($1,160) because the small claims court lost jurisdiction when De Stefano's attorney fee claim exceeded the maximum jurisdictional level for small claims court (Section V, above) and because the awards to De Stefano should be reversed (Sections VI and VII, above). If the court vacates or reverses based on Sections V, VI, and VII, above, De Stefano would no longer be the "prevailing party" as required by Iowa Code § 562A.12(8). Thus, this court should reverse the award of attorney's fees to De Stefano. (If the court does not vacate or reverse on its cross-appeal, Apts. Downtown is not challenging the award of attorney's fees.)

CONCLUSION

For these reasons, on cross appeal, the district court's ruling should be vacated because it lost jurisdiction when De Stefano's counsel claimed attorney's fees in excess of the maximum jurisdictional amount. In the alternative, this court should reverse the reduction for carpet cleaning ($191), the statutory penalty for "bad faith" retention of the security deposit ($200), and the award of attorney's fees ($1,160), on cross appeal, and on all other issues affirm the district court's ruling.



James W. Affeldt (AT0000444)
Robert M. Hogg (AT0003623)
ELDERKIN & PIRNIE, P.L.C.
316 2nd Str. SE Ste. 124
P.O. Box 1968
Cedar Rapids, IA 52406-1968
Telephone: (319) 362-2137
Facsimile: (319) 362-1640
jaffeldt@elderkinpirnie.com

C. Joseph Holland
Holland & Anderson LLP
123 N. Linn St., Suite 300
P.O. Box 2820
Iowa City, IA 52244-2820

ATTORNEYS FOR DEFENDANT

REQUEST FOR ORAL ARGUMENT

Defendant/Appellee/Cross-Appellant, Apts. Downtown, Inc., hereby respectfully requests to be heard in oral argument.

James W. Affeldt (AT0000444)
Robert M. Hogg (AT0003623)
ELDERKIN & PIRNIE, P.L.C.
316 2nd Str. SE Ste. 124
P.O. Box 1968
Cedar Rapids, IA 52406-1968
Telephone: (319) 362-2137
Facsimile: (319) 362-1640
jaffeldt@elderkinpirnie.com

C. Joseph Holland
Holland & Anderson LLP
123 N. Linn St., Suite 300
P.O. Box 2820
Iowa City, IA 52244-2820

ATTORNEYS FOR DEFENDANT

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