

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

WILLIAM GOODALE,)	
<i>Plaintiff,</i>)	CASE NO. SCSC090279
)	SMALL CLAIMS
vs.)	
)	HEARING MEMORANDUM
TRINITY SYSTEMS LLC)	<i>Trial Monday, April 3, 2017</i>
<i>Defendant.</i>)	

Defendant Trinity Systems, LLC, through its counsel Christopher Warnock hereby files its Hearing Memorandum as follows:

I. Introduction

In this case Plaintiff, William Goodale ("Goodale") has filed suit against Defendant Trinity Systems, LLC ("Trinity") and Trinity has counterclaimed. As the evidence at trial will show, Goodale was a tenant of Trinity from March 15, 2012 to November 30, 2016 at 710 Holiday Road in Coralville, Iowa.¹ Goodale Leases, Defendant's Exhibit A. In addition, to being a tenant, Goodale did contracting and remodeling work for Trinity and received either rent reductions or payment.

Goodale asserts that: (1) Trinity improperly withheld amounts from his security deposit for cleaning and repair; (2) that he made improvements that he should be reimbursed for; and (3) that punitive damages should be awarded against Trinity for withholding of the security deposit. Plaintiff's Original Notice and Petition.

Trinity counterclaims² that: (1) if Trinity properly withheld the security deposits, Goodale owes \$701.21 for cleaning and repairs, if Trinity did not correctly withhold the security deposits, it makes an independent claim against Goodale for \$1001.21 in

¹Goodale did not complete the term of the 2016-17 lease as Goodale requested and Trinity agreed to terminate the lease at the end of November 2016.

²Trinity has moved to amend its original counterclaim.

cleaning and repairs and \$1195 for the final month's rent; (2) Goodale owes \$3500 because he improperly installed a wooden deck & stairs at one of Trinity's properties. Defendant's Amended Counterclaim.

Trinity believes that this case basically divides into: (1) issues regarding the deposit and the Iowa Uniform Residential Landlord Tenant Act ("IURLTA") codified at Iowa Code Chapter 562A, and (2) issues with regard to contracting and remodeling work done by Goodale for Trinity.

II. Deposit & IURLTA Issues

A. Cleaning & Repair

Goodale and Trinity disagree whether or not the unit required cleaning and repair at the termination of the tenancy. Defendant's Exhibit E, 12/8/16 Damages Letter & List is the statement of necessary cleaning and repair of the unit sent to Goodale at the termination of the tenancy. Defendant's Exhibits G-U are photographs of the unit indicating the need for cleaning and repair and receipts for costs associated with cleaning and repair.

Under Iowa Code §562A.12(b) a landlord is entitled to deduct from the security deposit, "to restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted." In an action concerning the security deposit the burden of proof is on the landlord to prove by a preponderance of the evidence that the security deposit deductions were appropriate. Iowa Code §562A.12(3)(c). As noted in §II.B, the landlord may also make an independent claim for damages, separate from amounts recoverable from the security deposit. See, *HL Apartments v. Al-Qawiyy*, 440 N.W.2d 371 (Iowa 1989).

B. Nonrefundable Pet Deposit & Independent Claim

Iowa Code §562A.6(12) defines a rental deposit as, "...a deposit of money to secure performance of a residential rental agreement, other than a deposit which is exclusively in advance payment of rent." Iowa Code §562A.12 requires that a landlord either return a rental or security deposit or provide a deposit withholding statement to the tenant within 30 days after the termination of the tenancy. Iowa Code §562A.12(3)(a). The deposit can be retained for unpaid rent or to pay for cleaning and repairs necessary to restore the premises to their state at the beginning of the tenancy, ordinary wear and tear excepted. Iowa Code §562A.12(3)(a)(1)&(2).

The parties made a security deposit agreement providing for an \$1195 general security deposit and a \$300 "non-refundable" pet deposit. Defendant's Exhibit B, Security Deposit Agreement; Defendant's Exhibit D, Transaction Listing, §I. In addition, the 2016-17 Goodale Lease provides,

Pet Security Deposit Quantity and type of pets must be pre-approved by the landlord for insurance purposes. Tenant shall pay to landlord a non-refundable cleaning deposit of \$300.00 Deposit will be used to shampoo carpets, remove pet yard waste and other pet related expenses. There may be additional fees in conjunction with this pet deposit.

Defendant's Exhibit A, page 17, 2016-17 Goodale Lease. As the evidence will show Goodale did not pay the last month's rent and told Trinity to use the \$1195 general security deposit to pay for the rent shortfall. Trinity retained the \$300 pet deposit. Defendant's Exhibit E, 12/8/16 Damages Letter & List.

The use of the term "non-refundable pet deposit" is unfortunately confusing and inherently ambiguous because under the IURLTA a deposit cannot be non-refundable. In *De Stefano v. Apts Downtown*, 879 N.W.2d 155 (Iowa 2016) while striking down

automatic carpet cleaning charges in residential leases under the IURLTA the Supreme Court held that, "[t]he rental deposit is not designed to serve as an advance payment of amounts that will always be due under the lease." *De Stefano*, at page 55.

We must, therefore, in interpreting this lease, choose between the term "deposit" or the term "non-refundable." While it would be advantageous to Trinity to insist on "non-refundable," the stronger arguments are clearly on the side of "deposit." First, any ambiguity created by contradictory clauses or terminology must be resolved against the drafter of the contract. *Estate of Pearson v. Interstate Power and Light Co*, 700 N.W.2d 333 at ¶ 54 (Iowa 2015) citing *Johnson Controls, Inc. v. City of Cedar Rapids*, 713 F.2d 370, 375 (8th Cir. 1983).

Secondly, §562A.2(1) states that, "[t]his chapter shall be liberally construed and applied to promote its underlying purposes and policies." Security and rental deposits are a key component of the IURLTA and as the Supreme Court unanimously held in *De Stefano*, deposits must be refundable. It would be easy for a tenant to be confused about the status of a "non-refundable deposit," to believe that it was a deposit and would be returned if not used for cleaning or repair. Therefore, this Court should examine the evidence presented at trial and determine whether or not Trinity properly charged \$300 for pet related damage and repair. If not, then Goodale is entitled to the amount of the remaining pet deposit. However, as the Supreme Court made clear in *HL Apartments v. Al-Qawiyy*, 440 N.W.2d 371 (Iowa 1989) whether or not the damages were properly withheld from the security deposit, the landlord is entitled to make an independent claim and receive judgment for the full amount of damages.³

³This also applies to the use of the general security deposit for unpaid rent. Additionally as the evidence will show this was done at the request of and with the express agreement of Goodale.

If both Goodale and Trinity are awarded amounts in judgments, Trinity either requests these amounts be offset under Iowa Code § 631.7(4) or under footnote 1 of the Supreme Court's ruling in *HL Apartments*, 440 N.W.2d at 371, requests tender and distribution under Iowa R. Civ. P. 1.957, on the grounds that a judgment against Goodale is likely to be uncollectible.

C. Bad Faith Withholding of a Security Deposit

Goodale also states, "I am asking for punitive damages due to [Trinity's] unwarranted withholding of the deposit." Original Notice and Petition. Iowa Code §562A.12(7) provides,

The bad-faith retention of a deposit by a landlord, or any portion of the rental deposit, in violation of this section shall subject the landlord to punitive damages not to exceed twice the monthly rental payment in addition to actual damages.

Iowa Code §562A.12(7).

In *De Stefano v. Apts Downtown*, 879 N.W.2d 155 (Iowa 2016) the Supreme Court examined the definition of good faith in §562A.6(4) and held,

It seems that if good faith amounts to " honesty in fact" under the statute, bad faith should be the opposite, or " dishonesty in fact." *Baldwin Cty. Hosp. Auth. v. Trawick*, 233 Ga.App. 539, 504 S.E.2d 708, 710 (Ga. Ct.App. 1998) (" '[B]ad faith' is the opposite of 'good faith.'"); accord *Nelson v. Lindaman*, 867 N.W.2d 1, 13 (Iowa 2015). If so, the *test of bad faith is a subjective test based upon dishonesty in fact by the landlord* in the landlord--tenant relationship. See *Minor v. Adams*, 694 S.W.2d 148, 151 (Tex.App. 1985) ("The test of bad faith is whether a person acted in dishonest disregard of the rights of the person concerned.").

De Stefano, 879 N.W.2nd at 188.

The *De Stefano* Court explained,

Under this approach, intentional or deliberate acts alone do not establish bad faith, but the landlord's intention must also be dishonest. *Leskinen v. Burford*, 892 S.W.2d 135, 136 (Tex.App. 1994). (A mere mistake does not establish

dishonesty in fact. See *H-L Apartments v. Al-Qawiyy*, 440 N.W.2d 371, 373 (Iowa 1989). Further, the presence of conflicting evidence on a disputed question of fact does not establish bad faith. *Alltex Constr., Inc. v. Alareksoussi*, 685 S.W.2d 93, 95-96 (1984).

De Stefano, 879 N.W.2nd at 188.

Finally, with regard to the burden of proof and appropriate evidence,

The burden of proving bad faith, or dishonesty in fact, rests with the tenant. *Lewis v. Jaeger*, 818 N.W.2d 165, 187 (Iowa 2012). Bad faith, being a state of mind, may be established by substantial circumstantial evidence as well as by substantial direct evidence. *Roeder v. Nolan*, 321 N.W.2d 1, 5 (Iowa 1982).

De Stefano, 879 N.W.2nd at 189.

As the evidence will show the IURLTA portion of this case simply involves a dispute over whether cleaning or repair was necessary for the unit, the appropriate cost and how to pay for it. Trinity did not act dishonestly and thus there was no bad faith.⁴

Goodale's request for punitive damages should be denied.

III. Contracting & Remodeling Issues

Goodale has made a claim that, "[w]hile living there we made improvements that the landlord asked us to leave and we should be reimbursed for them" Original Notice and Petition. Trinity has counterclaimed for \$3500 damages because Goodale improperly constructed a wooden deck and stairs. Defendant's Amended Counterclaim.

⁴ The issue of a "non-refundable deposit" is one of first impression. In *De Stefano* the Supreme Court found for the first time that automatic carpet cleaning clauses were prohibited, but declined to impose punitive damages for dishonesty,

We have held that the landlord improperly structured the automatic cleaning charge by linking payment of the mandatory fee to the rental deposit. But while the landlord has used a lease provision that we have found illegal, there is no evidence of subjective dishonesty in fact in this record. The landlord did not make any misrepresentations to the tenant, but simply used a structure that we have concluded is prohibited by the IURLTA.

De Stefano, 879 N.W.2nd at 189. See also *Caruso v. Apts Downtown*, No. 14-1783 (Iowa 2016) where the Supreme Court noted that now that it had found automatic carpet cleaning clauses to be prohibited that this precedent could be taken into consideration in determining punitive damages.

Goodale and Trinity mixed a landlord-tenant relationship with a contractor-client relationship. Goodale both paid rent and bartered repairs and remodeling for rent, while Trinity paid Goodale directly for additional repairs and remodeling. A complete breakdown of these financial transactions is provided in sections II & III of Defendant's Exhibit D, Goodale & Trinity Systems Transactions List. These barter and payment arrangement took place throughout the tenancy on an ad hoc basis mutually agreed upon by both Goodale and Trinity.

A. Fixtures

Goodale claims that he is entitled to be reimbursed for improvements he left behind in the rental premises, presumably repairs and remodeling. As noted, the evidence will show that Goodale and Trinity mutually agreed throughout the tenancy on the barter value or payments to be made to Goodale for any remodeling or repair work.

Goodale is not entitled to compensation for improvements to or fixtures in the rental premises without Trinity's express agreement. At common law, a "fixture" is an article that was originally a chattel but is by reason of annexation to land is regarded as part of the land itself, having the character of realty and, ordinarily, belonging to the landowner. Herbert Thorndike Tiffany, 2 *The Law of Real Property* 606 (3d ed. 1975).

The major exception to the rule that fixtures become the property of the landlord are trade fixtures. As the New Jersey Supreme Court held,

...it is the general rule, in the absence of an agreement to the contrary, that a tenant may remove whatever he has erected or installed for the purpose of carrying on trade, usually referred to as trade fixtures, provided they can be severed from the freehold without material injury thereto, and that such removal is effected *before he yields possession of the premises*. 36 C.J.S. (Fixtures), § 38, p. 973; 1 Thompson on Real Property (Per. ed.), § 208, p. 336.

Handler v. Horns, 65 A.2d 523, 2 N.J. 18 (N.J. 1949); see also *Walker v. Puck* 8 N.W.2d 701 (Iowa, 1943); *Pella Plastics, Inc. v. Engineered Plastic Components, Inc.*, 698 N.W.2d 337 (Iowa App. 2005) (doctrine of trade fixtures applies to landlord tenant relationship in Iowa). Even with regard to trade fixtures, as the Georgia Court of Appeals held, "[T]he tenant must remove his fixtures before he quits possession on the termination of his lease. And when a tenant quits possession without removing a fixture, he is understood as making dedication of it to the landlord. *S.S. Air, Inc. v. City of Vidalia*, 628 S.E.2d 117, (Ga.App. 2006).

As the evidence will show Goodale has already received all agreed compensation for improvements, repairs and remodeling. Any further improvements made by Goodale were not trade fixtures and were left affixed or part of the premises at the termination of the tenancy, thus becoming the property of Trinity.

B. The Wooden Deck & Stairs Constructed by Goodale were Defective

1. Contract & Payment for Deck & Stairs

As the evidence will show one project that Goodale completed for Trinity was to construct a wooden deck and stairs at Trinity's property at 1421 Eastview B in Coralville, Iowa ("Goodale Deck") at a mutually agreed cost of \$1965. Defendant Exhibit V, Deck Contract; Defendant's Exhibit W, Photo of Goodale Deck & Stairs. Trinity paid Goodale in full through a combination of barter, including rent for September of 2013 and payment of \$850.18 in August of 2013. Defendant's Exhibit D, Goodale & Trinity Systems Transactions List.

2. Legal & Regulatory Standards & Requirements

Coralville, the location of the house with the Goodale Deck, has adopted the International Residential Code ("IRC") to govern detached one and two-family dwellings. Coralville Code of Ordinances, §§158.01-02. IRC §105.1 states that,

Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

IRC §105.1. As the evidence will show, despite the insistence of Trinity, Goodale did not obtain a permit before building the Goodale Deck.

The American Wood Council has adopted a Prescriptive Residential Deck Construction Guide, ("Deck Guide"), Defendant's Exhibit X, which provides guidance on the use of the International Residential Code as it pertains to wooden decks as well as good practice recommendations.⁵ As the evidence will show the Deck Guide is used for guidance and code enforcement by the Coralville Building Department.

3. Specific Problems with Deck & Stairs

As the evidence will show Trinity's tenants at 1421 Eastview B complained about the deck and stairs. Trinity investigated and found the following problems with the deck and stairs.

a. Ledger Board Problems

The ledger board is a horizontal board that supports the ends of floor joists. Joists are horizontal timbers supporting the decking, the wooden flooring of the deck. The Deck Guide requires that any siding be removed prior to installation, that flashing, material

⁵ American Wood Council, Prescriptive Residential Deck Construction Guide, <http://www.awc.org/codes-standards/publications/dca6>

installed to prevent water leaking through a joint, be installed and that ½" diameter lag screws or bolts, both with washers be used for attaching the ledger board of the deck to the wall of the structure. Deck Guide, page 14, figure 14; page 16, figures 19 & 20. Defendant's Exhibit Y, Ledger Board photos, 1, 2, and 3 show the Goodale-installed ledger board. The Goodale deck was installed on top of the siding, with no required metal flashing to protect the siding and installed using five #9 screws without washers as opposed to the required minimum of three ½" lag screws with washers. The significant size difference between the required ½ screws and the #9 screws used can be seen in Defendant's Exhibit DD, Screw Comparison Photo. The use of inadequate screws resulted in an unsafe structure. Moreover, of the lack of installation of flashing, water became trapped and eventually rotted the siding.

b. Joist Hanger Problems

The Deck Guide sets forth requirements for joist hangers which must be used to attach joists, which are horizontal timbers supporting the deck flooring. Deck Guide, page 6, table 3A and page 9. The Goodale-built deck used no required joist hangers to attach the joists to the ledger board. Without joist hangers, the joists will not meet the minimum vertical load capacity requirements of the code.

c. Deck Post Problems

Deck posts are heavy vertical support beams or posts. The Deck Guide requires that all deck post sizes shall be 6x6 (nominal or larger). Deck Guide, page 10; see also Deck Guide, Minimum Requirements & Limitations, page 2, §3. Defendant's Exhibit Z, Support Post photos 1,2 & 3 show the Goodale installed support posts which are 4x4.

The joists were attached to the posts using #9 screws without washers rather than the required ½” through bolts with washers. Deck Guide, page 10, figure 8A.

d. Support Post Footings Problems

A footing is a thick concrete pad supporting a deck post. The Deck Guide states that,

All footings shall bear on undisturbed soil at least 12 inches below the undisturbed ground surface or frost line, whichever is deeper. Contact the authority having jurisdiction to determine the specified frost line.

Deck Guide, Footings, page 11.

The footings of the Goodale deck were inadequate as they were only 12” deep. In Coralville, IA., footings need to be a minimum of 48” deep in order to get below the frost line.

e. Baluster Problems

The Deck Guide sets forth requirements for balusters, which are closely spaced supports for a railing. Deck Guide, page 19, figure 24. Defendant's Exhibit AA, Baluster photo shows that the 4 1/2” gap between the balusters on the Goodale deck exceeded the 4” maximum requirement. In addition, the bottoms of the balusters were improperly attached to the top of the decking using 2x2” boards rather than with a code-compliant method.

f. Stair Stringer Problems

The Deck Guide sets forth requirements for stair stringers, which are inclined boards which support the end of the steps. Deck Guide, Stair Requirements, page 20; Figure 28, Stair Stringer Requirements, Figure 29, Tread Connection Requirements.

Defendant's Exhibit BB, Stair Stringer photo 1 shows that the Goodale-built stairs used 2x10s as opposed to the required 2x12s. Consequently, the required 5" distance in figure 28 was reduced to 2 ½". Also, per Deck Guide figure 29, the cut stringers on the Goodale stairs were 21" apart, exceeding the required 18" maximum spacing.

Defendant's Exhibit BB, Stair Stringer photo 2 illustrates a structure failure in the Goodale stringer. Defendant's Exhibit BB, Stair Stringer photos 3 & 4 show that the attachment of the stringers was dangerously inadequate.

g. Stair Handrail Problems

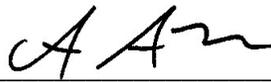
The Deck Guide sets forth requirements for stair handrails. Deck Guide, page 22, Stair Handrail Requirements & Figure 32A, Handrail Mounting Examples. Defendant's Exhibit CC, Stair Hand Rail photo, shows that there was no code-approved hand rail on the Goodale deck.

4. Damages

As a general rule damages in defective construction cases are measured by the cost of correcting the defects or completing the omissions. *Service Unlimited v. Elder*, 542 N.W.2d 855, 858 (Iowa App. 1995). Defendant's Exhibit EE, Deck replacement estimate, indicates the replacement cost of the deck and stairs was \$3500.

WHEREFORE, Defendant Trinity Systems, LLC asks that the claims of Plaintiff William Goodale for refund of his security deposit, improvements and punitive damages be denied and Trinity's counterclaims for repair, cleaning, unpaid rent and repair of its defective stairs, be granted.

If both Goodale and Trinity are awarded amounts in judgments, Trinity either requests these amounts be offset under Iowa Code § 631.7(4) or under footnote 1 of the Supreme Court's ruling in *HL Apartments*, 440 N.W.2d 371, requests tender and distribution under Iowa R. Civ. P. 1.957, on the grounds that a judgment against Goodale is likely to be uncollectible.



CHRISTOPHER WARNOCK AT0009679
532 Center Street
Iowa City, IA 52245
(319) 358-9213
chriswarnock@gmail.com

ATTORNEY FOR DEFENDANT