

**IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY**

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<b>LILLIE CHRISTOPHERSEN,</b>	)	
<b>Plaintiff/Appellee,</b>	)	<b>Case No. SCSC092479</b>
	)	
v.	)	
	)	<b>ORDER ON APPEAL</b>
<b>APARTMENTS DOWNTOWN and</b>	)	
<b>APARTMENTS NEAR CAMPUS,</b>	)	
<b>Defendants/Appellants.</b>	)	

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This matter comes before the Court on Defendants’ appeal from the judgment order entered on August 29, 2018 by Magistrate David Cox. The Notice of Appeal was filed on September 17, 2018 and, pursuant to a scheduling order establish by Judge Miller, the Defendant/Appellant filed their appeal argument on November 11, 2018 and the Plaintiff/Appellee filed their brief on November 22, 2018. The Court has reviewed the record, the arguments on appeal, and the relevant law and now enters the following order.

**STATEMENT OF FACTS AND PROCEDURE**

The magistrate found the following facts in the original judgment:

The Plaintiff, Lillie Christophersen, signed a lease with Apartments Downtown for a rental until [sic] at 108 S. Linn Street, Unit 27. When Ms. Christophersen proceeded to move into the apartment on August 4, 2017, she found live and dead cockroaches throughout the apartment. There were live cockroaches in plain sight as well as hiding behind appliances and in the cabinets. Mr. Christophersen, Lillie’s father, credibly testified that he saw live cockroaches scurry away before he was able to take a picture of them. The Plaintiff did provide pictures of the condition of the apartment with pictures of both alive and dead cockroaches. There was also evidence of cockroach fecal matter and moltings [sic] of cockroach exoskeletons. The fecal matter and exoskeletons were also found in the cabinetry, behind appliances, and otherwise on the floor.

The Court further finds that the Plaintiff immediately gave notice to the landlord of the problem as well as her intent to terminate the lease because the apartment was unfit and uninhabitable. The problem was not fixed within 5 days.

The Plaintiff alleged finding cockroaches of approximately 20 or 30 in broad daylight and in bait traps. The city inspector for Iowa City, Mr. Tage [sic], credibly testified that he found numerous dead and alive cockroaches in the apartment in November 2017. The Court does not believe the testimony from Mr. Mattson that there were no cockroaches present on his visit in October 2017. Mr. Mattson testified that he spent a short time reviewing the apartment. He also

indicated he reviewed the other areas with cockroaches in the building. The Court believes the infestation continued from August 2017 through January 2018 when the City Inspector approved the rental permit following a clean inspection.

*Judgment Order*, August 29, 2018. The Magistrate found that the apartment was unfit and uninhabitable when Plaintiff gave notice to the landlord and that the lease was appropriately terminated within five days, pursuant to Iowa Code section 562A.22. *Id.*

The Appellant states in its appeal brief that Ms. Christophersen paid \$2,010 upon signing her lease, to cover a \$300 security deposit and the first and last month's rent of \$855 per month. That \$2,010 is the only damages in dispute in this case. She stated on taking possession of the unit that she would not rent it because of a cockroach infestation, which created an uninhabitable and unhealthy environment, pursuant to Iowa Code section 562A.22. The Appellant in large part challenges the use of the term "infestation" by the city housing inspector, where Mr. Tatge, the inspector, never saw a live cockroach in that unit. According to the City code, an infestation requires a number of insects that creates unsanitary conditions. The Appellant's expert, the Branch Manager for Orkin Pest Control in Cedar Rapids, defined an infestation as requiring the presence of all states of an insect's life cycle at the same time. Additionally, large numbers can constitute an infestation, but the evidence of Ms. Christophersen's unit did not demonstrate the requisite number. Additionally, he states that Apts. Downtown was aware of the problem and was taking steps to manage it. Generally, the Appellant argues that the condition of the apartment unit was not so bad as to violate the implied warrant of habitability or violate the applicable building and housing courts for health and safety.

The Appellee states in her appeal brief that the evidence presented was sufficient to support the trial court's conclusion that the residence was uninhabitable and unhealthy due to cockroach infestation. The Appellee emphasizes that even Appellant's expert admitted based on his company's website that even 20-30 cockroaches could be a health problem. *Trial Transcript* at 43. The Appellee relies on the Iowa Uniform Residential Landlord Tenant Act ("IURLTA") and the Iowa City Municipal Code to establish the standards of habitability. Establishing the warrant of habitability, the Appellee goes on to cite the Municipal Code's definition of "infestation": "The presence, within or around a dwelling, of any insects, rodents or other pests in such quantities as would be considered unsanitary." Iowa City Municipal Code 17-5-3. Appellee then provides case law to support her argument that a pest infestation is sufficient to make the unity unsanitary and unfit in violation of the warrant of habitability. The Court found that the Plaintiff had met her burden by a preponderance of the evidence, but the Appellee notes that as to the security deposit, the burden was on the landlord to provide proof. Iowa Code § 562A.12(3)(b).

## 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) (2017). 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 Cynthia Finley, finds such record adequate for rendering a final judgment on appeal.

## DISCUSSION

The question on appeal is not whether there were cockroaches in Ms. Christophersen's apartment, but whether there were sufficient cockroaches so as to constitute an infestation that made the apartment unfit and uninhabitable, such that Ms. Christophersen was justified in terminating her tenancy under Iowa Code section 562A.22. Although the Appellant's expert has attempted to define infestation according to the insect stages present, for the purposes of this proceeding the Court will rely on the definition contained in the Iowa City Municipal Code on Housing. There "infestation" is defined as "the presence, within or around a dwelling, of any insects, rodents or other pests in such quantities as would be considered unsanitary." Iowa Municipal Code 17-5-3. Therefore, the question before the Court is whether the quantity present in Ms. Christophersen's apartment "would be considered unsanitary."

It is not enough to say that an infestation of insects is unsanitary, as many of the cases cited by the Appellee appear to do. That would be circular in that infestation is defined by the quantity that would be considered unsanitary. Without getting caught in the terminology, the question remains whether the quantity of cockroaches present was unsanitary, and thus in breach of the warrant of habitability.

On this issue, the Appellee presented the testimony of the city inspector at trial and the Appellant presented the testimony of a pest control manager from Orkin Pest Control Services in Cedar Rapids. The Appellant's own expert, however, admitted on cross-examination that roaches can be hazardous to health and that they can taint food with e-coli and salmonella if they walk across it. *Trial Transcript* at 40. Additionally, the evidence presented was that there were multiple live and dead roaches, fecal matter, exoskeletons and roach traps on the date of move in. This Court accepts the credibility assessments of the trial court as to the testimony of Mr. Tatge and Mr. Christophersen. The presence of cockroaches and their waste products to that degree is sufficient for the Court to conclude that the unit was unsanitary and therefore did not comply with the warranty of habitability according to the discussion of habitability set forth in *Meese v. Fox*. 200 N.W.2d 791, 796 (Iowa 1972). Therefore, the steps that the Appellee took to give notice and terminate her lease agreement were appropriate under Iowa Code section 562A.22.

**CONCLUSION**

The Court adopts the trial court's findings and affirms the trial court's reasoning. Judgment is affirmed in favor of the Appellee in the amount of \$2,010, plus interest at the rate of 4.4% per annum from the 22<sup>nd</sup> day of February, 2018, plus court costs. Attorney's fees were not requested and are therefore not granted.

Clerk to notify.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** SCSC092479  
**Case Title** LILLIE CHRISTOPHERSEN VS APARTMENTS DOWNTOWN ET AL

So Ordered

A handwritten signature in cursive script, appearing to read "A. B. Chappell". The signature is written in black ink and is positioned above a horizontal line.

Andrew Chappell, District Court Judge  
Sixth Judicial District of Iowa