

Iowa's Highest Court Enters First Decision on Certain Landlord-Tenant Issues Raised in 2013 *Staley* Case: Landlords Must Take Note of *De Stefano v. Apts. Downtown*

Jodie McDougal, Construction & Real Estate Attorney, Davis Brown Law Firm (May 13, 2016)

As most landlords are aware, in 2013, the Iowa Court of Appeals entered a decision in the *Staley v Barkalow* case, which involved a group of tenants who sued their landlord over the content of their lease agreements. Ultimately, the Court of Appeals entered a ruling in favor of the tenants and, among other things, concluded that under the Uniform Residential Landlord and Tenant Law set forth in Iowa Code Chapter 562A, “a landlord is liable for the inclusion of prohibited provisions in a rental agreement, *even without enforcement*, if the landlord's inclusion was willful and knowing” and, in such event, the tenant may recover from landlord the “actual damages sustained by the tenant and not more than three months' periodic rent and reasonable attorney fees.” Thereafter, in 2014 and 2015, the Iowa Court of Appeals (in *Amor v. Houser*), as well as several district courts, rendered similar decisions. Such courts ruled that certain landlords had violated Iowa law by their mere inclusion of various unenforceable provisions within their leases, and, in those cases, the district courts ruled that various commonly used lease provisions were unlawful for various reasons.



Prior to this month, the Iowa Supreme Court had not rendered any decisions on the landlord-tenant issues raised in the aforementioned Court of Appeals and district court decisions. Then, on May 6, 2016, the Iowa Supreme Court entered two decisions that addressed some of those landlord-tenant issues. Importantly, it should be noted that while the aforementioned cases are ones in which the courts were interpreting Iowa Code Chapter 562A, the prevailing opinion is that the courts' various holdings are equally applicable to Iowa Code Chapter 562B and manufactured housing communities, as the relevant statutory provisions in Chapter 562B regarding lease agreements and landlord responsibilities are essentially the same as in Chapter 562A. Notably, the statutory provisions regarding a tenant's recoverable damages in 562B are more favorable to landlords than the provisions in Chapter 562A.

On May 6, 2016, the Iowa Supreme Court issued its decision in the case of *Elyse De Stefano v. Apts. Downtown, Inc.*, and similar case of *Lenora Caruso v. Apts. Downtown, Inc.* This article contains a summary of the Court's conclusions in these cases, but landlords should review these two decisions in their entirety. In the *De Stefano* case, a tenant sued her landlord in small claims court over the content of her lease agreement and based upon her claim that the landlord had improperly withheld certain portions of her rental deposit, thereby entitling her to money damages, plus attorney's fees. After the case was heard, first, by the small claims court and, second, by the district court, it was heard by the Iowa Supreme Court.

Importantly, the Iowa Supreme Court concluded that multiple lease provisions and actions by the landlord were unlawful based upon various points, including the following legal principles and conclusions set forth within the decisions:

- (1) Generally speaking, a landlord owes tenants the duty to keep the leased premises in a fit and habitable condition and to otherwise maintain in good and safe working order all electrical, plumbing, HVAC, and other facilities/appliances therein, including through all necessary repairs being made at the landlord's expense.
- (2) A lease provision cannot extinguish or limit, in any way, the landlord's legal duties noted above or any other statutory landlord duties (except under a very limited statutory exception for single-family residences in which the parties may agree that the tenant shall perform certain repairs/work, *but* a landlord still cannot charge the tenant for such repairs/work).
- (3) Based upon principles (1) and (2) above, a landlord generally cannot include any provision in its lease agreement that extinguishes or limits those landlord duties or otherwise forces a tenant to pay for repairs or maintenance for which the landlord is legally responsible.
- (4) A landlord can only charge a tenant for damages to the premises if the landlord proves such damages are “beyond normal wear and tear” resulting from a deliberate or negligent act of a tenant, or tenant knowingly permitting it.

(5) Even when a landlord may have a legal right to pass along certain costs/fees to a tenant, a landlord cannot simply withhold from the tenant's rental deposit an automatically-imposed charge, even if pursuant to an explicit lease provision.

It should also be noted that the Court's conclusions in this case were otherwise consistent with, or at a minimum were not inconsistent with, the legal principle from the previous cases that, even when a landlord may have a legal right to charge a tenant certain amounts/fees, a landlord cannot simply charge a flat fee or other fee set without any consideration as to the landlord's actual damages (even if pursuant to an explicit lease provision); instead, a landlord may only charge the tenant amounts supported by evidence from the landlord as to its actual damages sustained, i.e., actual out-of-pocket costs incurred. (See also Iowa Supreme Court decision in D.R. Mobile Home Rentals v. Frost.) This principle is clearly relevant when considering a landlord's attempt to charge flat fees/fines to tenants under its lease agreement or other rules.

Specifically, in De Stefano, the Court struck down a lease provision that stated as follows and under which the landlord had charged the tenant for repair of a damaged door (due to third-party vandalism): "Unless the Landlord is negligent, Tenants are responsible for the costs of all damages/repairs to windows, doors, carpet, and walls, regardless of whether such damages is caused by residents, guests, or others." (De Stefano at p. 4). The Court concluded that such provision was unlawful because it was inconsistent with the landlord's unwaivable duty to "make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition." (Id. at p. 41).

Further, the Court ruled that the landlord had unlawfully charged to the tenant, and deducted from the rental deposit, certain fees pursuant to an automatic carpet cleaning fee provision within the lease, which provided as follows: "The carpets throughout the building are professionally cleaned each time apartments turn over occupancy. Tenants agree to a charge starting at \$95, not to exceed \$225, being deducted from the deposit for professional cleaning at the expiration of the lease agreement." (Id. at p. 5). Specifically, the Court reasoned that the landlord had unlawfully charged fees pursuant to such provision because a cleaning charge is lawful if, and only if, the landlord proves that such cleaning was necessary to restore the premises to the condition at the outset of the tenancy *beyond ordinary wear and tear*, and, further, the Court expressly noted that the "rental deposit is not designed to serve as an advance payment of amounts that will always be due under the lease," such as amounts due under an automatic carpet cleaning fee provision.

The Iowa Supreme Court set forth similar conclusions in the accompanying decision of Lenora Caruso v. Apts. Downtown, Inc. Therein, the Court confirmed, among other things, that "a landlord cannot shift the financial costs of repairs necessary to comply with its duty of fitness and habitability to the tenant." (Caruso, at p. 12).

In addition, in the De Stefano case, the tenant raised arguments surrounding her request to sublease the premises. In this regard, the Court held that, even when a landlord reserves in its lease agreement the right to pre-approve subleases, the landlord can only refuse a requested subleasing when such refusal is reasonable. Moreover, the Court concluded that in this specific situation, the landlord's refusal to allow the requested subleasing was unreasonable and, thus, unlawful because the basis for such refusal was the tenant's failure to abide by an otherwise unlawful lease provision.

Lastly, there were a few upsides to these two decisions for Iowa landlords. First, the Iowa Supreme Court, in Caruso, reversed the lower court's finding that the tenant was entitled to certain additional damages and attorney's fees for the landlord's "knowing" inclusion of unlawful provisions in its lease agreement, concluding that the tenant had not submitted sufficient proof of the landlord's actual knowledge and noting that "actual knowledge is a very high standard." (Caruso, at p. 15). Though, the Court went on to note that actual knowledge may be established through circumstantial evidence and made the following statements, which appear to be a word of warning to landlords:

We have now unambiguously held in De Stefano and in this case that such [unlawful repair and carpet cleaning] lease provisions violated Iowa Code section 562A.12(3). The existence of our precedent alone, however, will not prove actual knowledge of illegality in a future case, *but it will be a circumstance to be considered by the fact finder making that determination.*

(Caruso, at pp. 13, 15). Second, the Court in De Stefano held that a tenant is only allowed to recover punitive damages from the landlord for improper retention of deposit amounts when the landlord's actions were "dishonest," and not merely intentional or deliberate and, therefore, reversed the lower court's finding in this regard. (De Stefano at pp. 58, 63). Finally, the Court ruled upon a question regarding recovery of attorney's fees in small claims matters, which works to benefit both landlords and tenants who prevail in small claims matters. The Court held that the \$5,000 maximum recovery cap in small claims matters does not apply to attorney's fees, thereby meaning that a landlord (or a tenant) can recover from the other party up to \$5,000 in damages, plus its incurred reasonable attorney's fees, as awarded by the Court.

As shown above, the Iowa Supreme Court's two decisions, by and large, are consistent with the prior decisions rendered by the Iowa Court of Appeals and district courts and establish legal precedent regarding the landlord-tenant issues addressed in those two decisions. The clear implication for all Iowa landlords is that, in light of these precedential decisions, landlords must carefully review their leases and Rules and Regulations, remove any unlawful provisions, and otherwise ensure their leases and other documents contain no unlawful provisions. Please feel free to contact me if you have any questions.



Jodie McDougal, Davis Brown Law Firm, 515-288-2500, jodiemcdougal@davisbrownlaw.com

Jodie McDougal is a partner at the Davis Brown Law Firm and is an Iowa Landlord-Tenant Lawyer, Iowa Construction Law Attorney, and Litigation Attorney at the Davis Brown Law Firm. In her real estate and construction law work, Jodie has represented apartment and other residential landlords, landlords of manufacturing housing/mobile home communities, commercial landlords and tenants, real estate buyers and sellers, and construction contractors and subcontractors.

Jodie McDougal, Real Estate and Construction Attorney, 515-246-7951, jodiemcdougal@davisbrownlaw.com

DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C. • 515.288.2500 • WWW.DAVISBROWNLAW.COM