IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY
SMALL CLAIMS DIVISION

SOPHIE BORER,

Plaintiff(s),

vs.

APTS. DOWNTOWN, INC.
N1, LLC, and GILBERT MANOR, LLC.

Defendant(s).

NO. SCSC081695

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

FILED
2013 SEP -3 AM 8:09
CLERK OF DISTRICT COURT
JOHNSON COUNTY, IOWA

September 2, 2013

On the 14th day of September 2012, this matter came before the Court for trial upon Plaintiffs' claim for money judgment for a violation of Iowa Code 562A.12, alleging the unreasonable failure to return the Plaintiffs' security deposit, for tortious conduct, for overcharging for repairs, for abuse of process, and for violations of the Iowa consumer credit and debt collection statutes, and for willfully using a rental agreement with known prohibited provisions, punitive damages and attorney fees. This matter was tried as the second of three companion cases: Elyse DeStefano v. Joseph Clark, et. al. SCSC080575, tried July 12, 2012, and Lenora Caruso v. Joseph Clark, et al, SCSC081696, tried October 12, 2012 and November 9, 2012. In all cases, the Plaintiffs appeared in person and with their attorneys Christopher Warnock and Christine Boyer and the Defendants all appeared by Joseph Clark and James Clark and Attorney Joseph Holland of Holland & Anderson and James Affeldt of Elderkin and Pirnie, P.L.C. The Court reviews the file in this matter and finds the following:

1. Plaintiff's Application to Defer Payment of Costs filed May 26, 2012;
2. Court's Order granting application to defer payment of costs filed May 27, 2012;
3. Original Notice (Action for Money Judgment in small claims with attached exhibits May 27, 2012;
4. Returns of service (4) filed April 5, 2012;
5. Answer of Defendant Joseph Clark filed by James W. Affeldt and Appearance of Counsel (Joseph Holland) and Answer of James Clark, N-1 L.L.C. and Gilbert Manor, L.L.C. both filed April 16, 2012;
6. Defendant Joseph Clark's Motion to Consolidate and Stay Proceedings (pending district court ruling in LACVO72840 Michael Conroy, et al v. Apts. Downtown, Inc. et al) filed April 17, 2012;
7. Plaintiff's Resistance Motions to Consolidate and Expedited Hearing Requested filed April 20, 2012,
8. Order issued by the Honorable Paul D. Miller, denying motion to consolidate, filed May 17, 2012;
9. Plaintiff's Motion to Set Hearing and Letter from Attorney Christopher Warnock to Clerk of Court (availability for trial dates) both filed June 4, 2012;
10. Appearance of Christine Boyer for Plaintiff, filed June 4, 2012;
11. Defendants James Clark, N-1 LLC and Gilbert Manor, LLC Response to Plaintiff's Motion to Set Hearing, field June 6, 2012;
12. Defendant Joseph Clark's Response to Motion to Set Hearing;

13. Order setting trial, filed June 7, 2012;
14. Defendant Joseph Clark's Motion to Change Trial Date; Motion to Try Case Separately from Two Other Small Claims Action, filed June 15, 2012;
15. Plaintiff's Consent Motion to Substitute Defendants, naming Apartments Downtown, Inc., as Defendant, filed June 15, 2012;
16. Plaintiff's Resistance to Motion to Continue, filed June 18, 2013;
17. Defendant Gilbert Manor LLC and n-1 LLC's Motion for Separate Trial, filed June 26, 2012;
18. Plaintiff's Resistance to Second Motion to Continue, filed July 2, 2012;
19. Subpoena directed to Apartments Downtown, Inc., filed July 6, 2012 and return of service, filed July 6, 2012;
20. Order continuing trial, filed July 12, 2012;
21. Order setting trial, filed July 20, 2012;
22. Plaintiff's Hearing Memorandum without Exhibits, filed August 24, 2012;
23. Subpoena directed to Joseph Clark, filed August 29, 2012, and return of service filed August 29, 2012;
24. Subpoena directed to Megan Clabaugh, filed August 31, 2012, and return of service filed September 6, 2012;
25. Defendant's, Joseph Clark, Trial Memorandum of Law, filed September 21, 2012;
26. Plaintiff's Response to Defendant's Trial Memorandum, filed October 1, 2012;
27. Plaintiff's Motion to Set Appeal Bond, filed June 25, 2013;
28. Attorney Fee Affidavit (Christopher Warnock), filed June 25, 2013;
29. Attorney Fee Affidavit (Christine Boyer), filed June 27, 2013;
30. Defendant Joseph Clark's Resistance to Motion to Set Appeal Bond;
31. Defendant Joseph Clark's Motion to Strike, filed July 5, 2013;
32. Plaintiff's Resistance to Motion to Strike Attorney Fee Affidavits.

On September 14, 2012, the Plaintiff Sophie Borer appeared in person and with her attorneys Christopher Warnock and Christine Boyer. The Defendant Apts. Downtown, Inc. appeared by Joseph Clark and his attorney James Affeldt and James Clark, N-1, LLC and Gilbert Manor LLC, appears by attorney Joseph Holland. The Court received the testimony of the parties, witnesses, and exhibits submitted by the Plaintiff and the Defendant, including the deposition of an unavailable witness, Amanda Scott, a manager of Apartments Downtown, Inc. Upon the matter submitted, the Court now makes the following findings of fact.

Pursuant to a written lease agreement, the Plaintiff and two other tenants, Elizabeth Orr and Kathryn Meltzer, rented a three bedroom apartment/residence from the Defendant located at 412 South Dodge Street, Apt. # 7, in Iowa City, Johnson County, Iowa. The tenancy period ran from August 5, 2011 to July 29, 2012. Pursuant to the rental agreement, the Plaintiffs provided a $1,349.00 security deposit (one month's rent). The written lease agreement was three pages long but held 70 paragraphs of lease provisions in extremely small type. The lease was signed by Sophie Borer and a guarantor Anita Meltzer on December 17, 2010; by Elizabeth Orr and Kathryn Meltzer on August 24, 2011; and by a representative of Apartments Near Campus, as landlord, on December 17th (year illegible). The Plaintiff and the other tenants moved into the property, paid the required security deposit, and paid monthly rent throughout the rental period.

During the rental period, on or about October 24, 2011, the Plaintiff's father came to visit the Plaintiff at her apartment, which is the subject of this matter. The Plaintiff is a college

student. The Plaintiff and her father went grocery shopping and, when they returned from shopping, the Plaintiff's father brought the family dog (small white dog) into the apartment for a brief period of time. After the brief visit, the Plaintiff's father left, taking the family dog with him. No damage to the apartment was caused by the family dog's brief visit. The Plaintiff immediately received a phone call from her landlord advising her that she had violated the pet prohibitions in her lease and that she would be assessed the pet fee. The Plaintiff was advised that the pet had to be removed and that the fine would be assessed. The Plaintiff called her father for assistance regarding the fine for having the family dog visit her apartment. The Plaintiff's father, outraged, then contacted Apartments Near Campus. Mr. Mark Borer, the Plaintiff's father, explained that he was aware that no dog would be allowed to live there, but that he did not understand that no pet could visit there. Mark Borer was advised by someone at Apartments Near Campus that, if the Plaintiff paid $300.00 before December 1, 2011, the matter would be resolved. A few days later, the Plaintiff received a written notice from Apartments Near Campus, which is essentially owned and operated by Joseph Clark and James Clark, and is associated with Apartments Downtown, N-1, L.L.C., Gilbert Manor L.L.C., and Iowa City Maintenance, the required maintenance company for the properties. In the letter dated November 8, 2011, the Plaintiff was advised:

LEASE CHARGE FOR A PET VIOLATION.
PET VIOLATION FEE (1 dog) $600.00

The statement set forth that "*Random checks of your unit will be made regarding this violation*" and further stated:

See your lease SECTION:
54. No animals are allowed in the building or on the premises. If pets are on the property a penalty of $600.00 per pet plus $20.00 per day will be charged for each violation.

The Plaintiff refused to pay the $600.00 fine and was then assessed $40.00 per month late fee for the non-payment of the fine or penalty for her father's visit with the family dog. On February 27, 2012, Mark Borer, on behalf of the Plaintiff, wrote a letter to Apartment Near Downtown and emailed it on the same day. Mr. Borer set forth that he was protesting the fine levied against his daughter and the other tenants. Mr. Borer set forth that his daughter, the Plaintiff, was a college student and had asked him to bring their dog on his visit so she could see the dog. Mr. Borer additionally set forth that, *"regardless of the lease terms, a fine of that magnitude, for what occurred, was ridiculous. It would be one thing if the dog was living in the apartment, but the dog did not and has never lived there. Furthermore, there was no damage to the unit of any kind."* Mr. Borer asked the owners of the property to remove the fine and the fees associated with the fine because of the circumstances of the incident.

Apparently in response to Mr. Borer's letter, Apartments Near Campus, sent a letter to the Plaintiff and the other tenants on March 7, 2012. The letter, which was unsigned and the author unidentified, indicated that an offer to reduce the fine had not been acted upon and therefore the $600.00 plus account fees was due by April 1, 2012. The letter went on to warn, *"Please understand that if you are found in violation of a pet in your apartment or in the premises again you will be fined $600.00 per occurrence."*

On or about April 6, 2012, the Plaintiff and other tenants received a notice of the account balance due. The Plaintiff was advised that the balance owed was $727.00 and that the account transactions to date showed a monthly $40.00 late charge for January 2012, February

2012, March 2012, and April 2012, as well as $40.00 late fees for 3-day notice to quit dated January 20, 2012 and February 21, 2012. The transaction listing of all amounts assessed and amounts paid from January 16, 2011 through March 5, 2012, showed that all but thirty dollars in late fees had been assessed after the December 9, 2011 pet fee of $600.00 was assessed. Rent in the amount of $1,349.00 was paid each month, with an additional payment of $113.00 paid by the tenants on April 2, 2012.

By May 2012, the Plaintiff wished to sublease the apartment so that she could go home for the summer. The Plaintiff was advised that she would not be allowed to sublease the apartment unless her account was paid in full. The Plaintiff had refused to pay the $600.00 fee from October 2011 through April of 2012. The Plaintiff had also received eviction notices that had been mailed to her but never posted on her door. The Plaintiff was not evicted and no forcible entry or detainer action was initiated by the landlord. The Plaintiff was assessed a $40.00 fee for each three-day notice to quit but was not evicted so long as she continued to pay her rent.

When the Plaintiff learned that she would not be able to sublease her apartment, the Plaintiff's father paid the account balance on her behalf and sent a letter to the landlord, setting forth that the payment was being made under protest because the landlord would not allow her to sublease unless the pet fee, the subsequent late fees, and three day notice fees were paid. On March 27, 2012, the Plaintiff filed her money claim.

The Plaintiff testified that she had never rented an apartment before, had read the lease for the apartment she was renting, and knew that she was bound by its terms. The lease she signed set forth the following relevant provisions:

> *54. No animals are allowed in the building or on the premises. If pets are on the property a penalty of $600.00 per pet plus $20.00 per day will be charged for each violation.*
>
> *57c. Only apartments whose rental agreements are in good standing may sublease. All rent/fees on the account must be paid before Landlord consents to a sublease.*

The Plaintiff testified that she was also provided a written "Helpful Hints for Tenants," which directed that, unless otherwise specified in the lease, ABSOLUTELY NO PETS allowed visiting or living in the building at any time! A fee of $600 + $20 per day will be assessed per finding of any pet in any unit at any time. NO EXCEPTIONS!

Megan Clabaugh testified that she is a manager of Apartments Downtown and Apartments Near Campus and that her boss is Joe Clark. She testified that she was aware of the letter written to the Plaintiff on March 7, 2012 and that a dog had been seen in the unit and that a $600.00 pet fee had been assessed. She testified that the Plaintiff paid the pet fee and the late fees for "rent" associated with the unpaid pet fee. Ms. Clabaugh testified that it is her job to ensure that the tenants follow the requirements of the lease and that she makes sure that the rent comes in and is paid according to the lease. Ms. Clabaugh testified that she did not recall any FEDs (evictions) that were filed in the 2011-2012 rental period and believes that they were able to resolve everything. Ms. Clabaugh further testified that she did not recall how many 3-day notices had been issued for all properties of Apartments Downtown. She reported that in this case the pet fee was applied to the account and, even though rent was paid, a three-day notice was sent to the tenants at 412 S. Dodge, Apt. 7. Ms. Clabaugh further testified that the late fees for January

through March were due to the balance on the account. She could not recall whether anyone had ever been evicted for an unpaid pet fee but that the three-day notices are sent for the purpose of the landlord being able to proceed with the eviction process.

Rockne Cole testified that he is an attorney and that in October of 2011 he had a conversation with a manager from Apartments Downtown regarding a three-day notice sent to a client who had been charged with a criminal offense. Mr. Cole testified that he contacted Amanda Scott, a manager for Apartments Downtown and she advised him that Apartments Downtown had no intention of evicting the tenant but had only done so to get his attention. The tenant, Mr. Fleming, did not pay the assessed fine, was not evicted, and was no longer residing at a residence owned and managed by Apartments Downtown.

Gregory "Joseph" Clark testified that he is the business manager for Apartments Downtown, L.L.C. and that he is involved in helping out in the day-to-day duties of Apartments Downtown, whose offices are located at 414 Market Street. He testified that he also deals with Apartments Near Campus, whose offices are located on Burlington Street. Mr. Clark testified that Apartments Downtown is the legal name and that Apartments Near Campus is a fictitious name. He testified that Apartments Downtown, Michael's Properties, and Apartments Near Campus have separate offices, manage different apartments, and while the leases for each entity are similar, there are some differences. Joseph Clark testified that, during the rental year of 2011-2012, he had help from legal counsel to look over his lease each year and make changes. Mr. Clark testified that he used attorney Joe Holland and his office to approve the leases and that the that he believed that the lease Ms. Borer signed was used commonly. He had never had any provision of his lease found to be invalid and that specifically his lease paragraph 54 regarding the dog provision had never been determined by a court to be invalid. Mr. Clark testified that the law allows him to put provision in his leases that are not specifically prohibited. He testified on his understanding of prohibited provisions and the process of providing three-day notices to tenants for non-payment of rent. Apartments Downtown provides a three-day notice because it is required in the event they choose to move forward with the legal process of eviction, such as paying the filing fee and coming to court. He testified that they try to work with the tenant to keep them in the apartment. If there is no communication, then they may need to proceed with an eviction.

Regarding the specific pet policy, Joseph Clark testified that they have tenants look over the lease and give them copies. Because he believed that they [Defendants] are not strictly prohibited from having a pet policy, it is the responsibility of the tenant to choose not to rent knowing that they are not allowed pets. He testified that it is the duty of the landlord to keep the building in good shape. They do not want smells, sounds, or signs of a pet for new tenants. For that reason, the Defendant decided on $600.00 fee as they tried to figure out the cost of replacement for flooring. At 412 S. Dodge Street, the cost of flooring would be around $5,000.00. In addition, dogs can cause damage to drywall, baseboards, urine damage, etc. When tenants vacate, it results in a loss of rent. Mr. Clark testified that the "fee" was for a violation of the lease and that they look at the fee as revenue. He testified that, even if the pet fee of $600.00 was charged, if the damages were higher, those charges would be added to the tenant's obligations. Mr. Clark further testified that the pet fee was charged and was paid in this matter.

The Iowa Uniform Residential Landlord and Tenant Law [IURLTA] is set forth in Chapter 562A, Code of Iowa. Under the general provisions, the landlord and tenant may include in a rental agreement, terms and conditions not prohibited by the chapter or other rule of law

including rent, term of the agreement, and other provisions governing the rights and obligations of the parties. §562A.9(1).

A landlord is also permitted, from time to time, to adopt rules concerning the tenant's use and occupancy of the premises. However, the rules are only enforceable if they are written, for the purpose of promoting the convenience, safety and welfare of the tenants, are applied in a fair manner, and not for the purpose of evading the obligations of the landlord. §562A.18.

A lease vests in a tenant the right of exclusive possession, which precludes entry by the landlord except for limited purposes. Milton R. Friedman, *Friedman on Leases* § 4:3.1, at 4–21 (Patrick A. Randolph, Jr. ed., 5th ed.2012). Under the IURLTA, a "landlord may enter the dwelling unit without [the] consent of the tenant in case of emergency." Iowa Code § 562A.19(2). The landlord, however, "shall not abuse the right of access or use it to harass the tenant." *Id.* § 562A.19(3). Except in cases of emergency or when it is impractical, the landlord is directed to give the tenant twenty-four hour notice before entering. *Id.* Aside from the Code section, the landlord does not have another right of access "except by court order, and as permitted by sections 562A.28 and 562A.29, or if the tenant has abandoned or surrendered the premises." *Id.* § 562A.19(4).

Section 562A.11 provides that:

1. A rental agreement shall not provide that the tenant or the landlord:

   a. Agrees to waive or to forego rights or remedies under this chapter ...;
   b. Authorizes a person to confess judgment on a claim arising out of the rental agreement;
   c. Agrees to pay the other party's attorney fees; or
   d. Agrees 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.

2. A provision prohibited by subsection 1 included in a rental agreement is unenforceable. If a landlord willfully uses a rental agreement containing provisions known by the landlord to be prohibited, a tenant may recover actual damages sustained by the tenant and not more than three months' periodic rent and reasonable attorney fees.

A rental agreement shall not contain provisions that are unconscionable. "Unconscionability" is defined in section 562A.7 and states as follows:

1. If the court, as a matter of law, finds that:

a. A rental agreement or any provision of it was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of an unconscionable provision to avoid an unconscionable result.
b. A settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of an unconscionable provision to avoid any unconscionable result.

2. If unconscionable is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

A bargain is "unconscionable at law" if it is "such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other." *Casey v. Lupkes,* 286 N.W.2d 204, 207 (Iowa 1979). The Court determines unconscionability as of the time the lease was entered. *Id.* at 208.

A landlord's inclusion of a provision prohibited in Iowa Code section 562A.11(1), even without enforcement, can be considered "use" under Iowa Code section 562A.11(2) and the landlord may be liable for the inclusion of the prohibited provisions in the rental agreement, even without enforcement, if the landlord's inclusion was willful and knowing. In order to recover damages, the tenant had the burden of proving the landlord willfully used, i.e., willfully included, "provisions known by the landlord to be prohibited." Staley, et.al. v. Barkalow, et.al., 2013 WL 2368825 (Iowa Ct. App. 2013).

The Plaintiff makes several claims for damages in this case: (1) that the pet fee is: an illegal penalty; an excessive liquidated damage; is a violation of the Landlord Tenant Act; and is unconscionable; (2) that the Defendant(s) has engaged in an abuse of process and has violated the Iowa Debt Collection statute; (3) that the Defendant(s) has willfully used a rental agreement containing provision known by the landlord to be prohibited; and (4) that Joseph Clark is personally liable for any illegal or tortious conduct he personally participated in.

The Defendant argues that the parties are free to contract on essentially any terms and conditions within a lease and that, once the tenant has accepted the terms and conditions of the contract, the tenant should be liable for any breach and the payment of any damages owed the landlord from the breach.

Upon the evidence submitted, the Court is unable to find that the Plaintiff has sustained her burden that Joseph Clark or James Clark should be held personally liable for any illegal conduct in this matter. The Court is unable to find that the Defendant(s) engaged in a violation of the Debt Collection Act or that the Defendant(s) engaged in an abuse of process for the reasons substantially set forth in Defendant Joseph Clark's Trial Memorandum of Law.

Upon the evidence submitted, the Court however does FIND that the Defendants, Apartments Downtown, L.L.C., Apartments Near Campus, L.L.C., et. al., included a "pet/animal penalty provision within the rental agreement that was harsh, unreasonable, inequitable, unconscionable and illegal, in violation of the Iowa Uniform Landlord Tenant Act and the the Iowa Civil Rights Act of 1965.

Pursuant to the general provision of IURLTA, parties are free to contract regarding terms and conditions and respective responsibilities within the rental agreement, so long as the terms and conditions contained in the lease are not prohibited by Chapter 562A or *other rule of law*, including rent, term of the agreement, and other provisions governing the *rights* and obligations of the parties.

One rule of contract construction relevant here is that we give words their commonly accepted meaning and interpret them in the context in which they are used. Home Fed. Sav. & Loan Ass'n. v. Campney, 357 N.W.2d 613, 617 (Iowa 1984). The Defendant included a provision in the lease agreements that required a tenant to pay "penalty" of $600.00 per pet/animal found to be in the building or on the premises plus an additional $20.00 per day. Mr. Joseph Clark testified that the $600.00 was assessed due to difficulty in determining damages from pets or animals as essentially a liquidated damage. Liquidated damages are a remedy for a breach of a contract. Restatement (Second) of Contracts §§ 346, 356. Parties include a liquidated damages provision in their contracts to provide a ready and relatively easy calculation of damages if there is a breach of contract. *See* Restatement (Second) of Contracts § 356 cmt. a, at 157 (stating purpose of liquidated damages provision is to provide a way to establish damages for nonperformance when those damages would otherwise be difficult to determine). A liquidated damages provision will be held to violate public policy, and hence will not be enforced, when it is intended to punish, or has the effect of punishing, a party for breaching the contract, or when there is a large disparity between the amount payable under the provision and the actual damages likely to be caused by a breach, so that it in effect seeks to coerce performance of the underlying agreement by penalizing non-performance and making a breach prohibitively and unreasonably costly. Barrie School v. Patch, 401 Md. 497, 933 A.2d 382, 225 Ed. Law Rep. 973 (2007). *See* Restatement (Second) of Contracts § 356 (1981) .

In this case, Mr. Clark admitted that additional charges would be assessed for damages exceeding $600.00 as later determined. The evidence presented clearly indicates that the $600.00 pet fee clause was not a liquidated damages clause but instead was a penalty. The Defendant used the term "penalty" within the contract provision and Mr. Clark additional confirmed that the $600.00 was a penalty. A "penalty" is defined as: **1.** (Law) a legal or official punishment, such as a term of imprisonment; **2.** some other form of punishment, such as a fine or forfeit for not fulfilling a contract; **3.** loss, suffering, or other unfortunate result of one's own action, error, etc.; **4.** (General Sporting Terms) *Sport Games* a handicap awarded against a player or team for illegal play, such as a free shot at goal by the opposing team, loss of points, etc. [from Medieval Latin *poenālitās* penalty; see PENAL] Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003

The Defendant's lease in this case labels the $600.00 fee for having any animal in the property or in the premises as a "penalty" and this Court determines it to be the same. The $600.00 fee provision is not a liquidated damages clause. Therefore the Court FINDS that the assessment of a $600.00 penalty due to the brief visit of the family dog to a college student's apartment, resulting in no damage whatsoever, is outrageous, unreasonable, and unconscionably disproportionate to the offense. It bears no correlation to any actual damages likely to be caused by the breach caused by a visiting animal.

The Defendant's coercive intent regarding the penalty is further reflective in the notice provided to the Plaintiff, After having determined that the Plaintiff's family dog had been in her apartment, the Defendant then informed the Plaintiff of the landlord's intentions to make *"random checks of your unit,"* in violation of §562A.19. Such intrusions, if utilized by the Defendant, would be illegal. The coercive nature of the threat can only be considered willful in its use.

A tenant has a right of quiet enjoyment of the property. The covenant of quiet enjoyment is a warranty by the lessor that the tenant shall have quiet and peaceful possession of the premises as against the lessor, any person claiming title through or under the lessor, or any

person with a title superior to the lessor. Cohen v. Hayden, 180 Iowa 232, 249, 163 N.W. 238, 239 (1917) (supplemental opinion on rehearing); Kane v. Mink, 64 Iowa 84, 86, 19 N.W. 852, 853 (1884). This right to enjoyment of the exclusive possession of the leased property extends to the tenants right to associate with family, friends, and others, so long as the tenant maintains the dwelling unit as required by §562A.17. This association extends to those with disabilities, many of whom require service animals. The Defendant's lease in this matter could have reasonably restricted the tenant's ability to have a pet *living* in her property (with potential damages recoverable from the tenant's security deposit). Instead, the provision set forth in paragraph 54 of the lease results in unreasonable discrimination against others with disabilities who require service animals. The Defendant makes NO EXCEPTIONS for persons with such disabilities and therefore the lease provision is in violation of the Iowa Civil Rights Act.

Section 216.8A(3)(b) and (c) of the Iowa Civil Rights Act, additional unfair or discriminatory practices-housing sets forth the following:

b. A person shall not discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of any of the following persons:

(1) That person

(2) A person residing in or intending to reside in that dwelling after it is sold, rented or made available.

(3) A person associated with that person

c. For the purposes of this subsection only, discrimination includes any of the following circumstances.

(1) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford the person full enjoyment of the premises. However, it is not discrimination for a landlord, in the case of a rental and where reasonable to do so, to condition permission for a modification on the renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling.

Under the facts of this case, there is no allegation or evidence presented that the Plaintiff, Sophie Borer was a disabled person in need of accommodations under the rental agreement. However, today many persons suffer from disabilities that require service animals, including animals for hearing assistance, mobility assistance, seizure alerts, and emotional support animals from those suffering from PTSD. A tenant is entitled to the full use and enjoyment of the rental unit, including association with family, friends, colleagues, classmates, and those providing services to the tenant in her own residence. Some of these individuals associated with the tenant may have disabilities requiring service animals. While a landlord may adopt rules for the purpose of promoting the convenience, safety and welfare of the tenants, the landlord may not include in the rental agreement terms and conditions which are prohibited by Chapter 562A or other rule of law. The Defendant's lease provision not only prohibits the tenant from having a pet in the residence, which absent a tenant's need for accommodations due to a disability would be permissible, but also sets forth that "***No animals are allowed in the building***

or on the premises." The Defendant's "Helpful Hints for Tenants" rules advised tenants that "ABSOLUTELY NO PETS allowed visiting.....NO EXCEPTIONS!" Section 216.8A(3)(b) makes it quite clear that a landlord **shall not discriminate against another person** in the terms, conditions, or privileges of a rental of a dwelling **because of a disability of a person associated with the tenant.** Because there are no exceptions, if the Plaintiff's brother was a veteran with PTSD requiring a service animal, the tenant would not be allowed to have her brother visit with her at her apartment. If the Plaintiff wished to have goods delivered to her home by a delivery person who utilized a service dog for his/her seizure disorder, the Plaintiff would be assessed $600.00. Should a census taker, a salesperson, a lost person, etc., come to the Plaintiff's door or even the hallway to her door, with a service animal, then under the terms of the lease provision, the Plaintiff would be assessed a penalty by the Defendant for those unsolicited visits as well. The Defendant's expansive restriction of "visiting" animals/pets, with the required $600.00 per violation penalty, is wholly unrelated to any actual damages or liquidated damages and does not promote the convenience, safety, enjoyment or welfare of the tenants as it is written. The Defendant's lease provision has the potential to result in discrimination against the Plaintiff based upon of the Plaintiff's association with a disabled person who requires the use of a service dog or other service animal.

The Court THEREFORE FINDS that the Defendant's pet penalty provision set forth in paragraph 54 of the lease agreement, as written, is illegal. The provision is in violation of the Iowa Uniform Residential Landlord and Tenant Act and the Iowa Civil Rights Act. The provision is unenforceable and unconscionable.

Joseph Clark testified that he had been an employee of Apartments Downtown for 17 years and has been the general manager for 15 years. The Plaintiff testified that this was the first rental agreement she had ever signed. The practices and actions by the Defendant in this case are also reflective of the concerning issues addressed in the recent Iowa Court of Appeals ruling in Staley, et.al. v. Barkalow, et.al., 2013 WL 2368825 (Iowa Ct. App. 2013).In Staley, the tenants argued that the conduct of simply asserting a clause into a lease that is in violation of the Uniform Residential Landlord and Tenant Act "prohibited provision" section constitutes a violation, even if the landlord does not "willfully use" or enforce the clause. In this case, while the landlord enforced the clause for reasons other than a disabled associate of the Plaintiff requiring the use of a service animal, the "willful use" of the penalty remains the same.

Based upon the evidence presented in this matter, the Court FINDS that the Defendant willfully used this rental agreement containing at least one provision (paragraph 54) known by the landlord to be prohibited under 562A.11 and prohibited by law. Said use of the illegal provision caused damage to the Plaintiff in the amount of $840.00 ($600.00 pet penalty + $40.00 x 6 (four late fees and two 3-day notices).

Accordingly, the Court now ORDERS that judgment enter in favor of Plaintiff Sophie Borer and against the Defendants Apartments Downtown, L.L.C., Apartments Near Campus, et. al., in the amount of $840.00 (pet penalty plus associated fees) plus $4,047 (damages in the amount of three month's rent pursuant to 562A.11 (willful use of a rental agreement containing provisions that the Defendant knew to be prohibited), for a total of **$4,887.00**. The Court further awards attorney fees as costs in this matter in the amount of $1,300.00 to Attorney Boyer and $4,250.00 to Attorney Warnock. The Court apologizes to the parties for the delay in this ruling.

The parties are informed of their right to appeal by filing a written notice of appeal no later than twenty (20) days from the date of the filing of this ruling.

Appeal bond: $5,000.00.

Clerk to notify.

KAREN D. EGERTON
Magistrate, Sixth Judicial District