

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

FOUR D DEVELOPMENT, L.L.C.,)	
)	
Plaintiff,)	No. SCSC087775
)	
vs.)	JUDGMENT ORDER
)	
COREY GRADERT,)	
)	
Defendant.)	
)	
)	
)	

The parties appeared before the Court on October 21, 2015. David Pitts appeared in person and on behalf of the named plaintiff. Attorney Christopher Warnock appeared on behalf of the defendant. Defendant Corey Gradert appeared in person

The Plaintiffs request the amount of \$5,000 from the Defendant for damages to a rental property located at 4045 Crestview Drive in Solon, Iowa.

The Defendant has filed a counter-claim, seeking \$1,000 for violations of the Iowa Unigofrm Residential Landlord Tenant Act and breach of contract, including actual and punitive damages and attorney fees.

Burden and standard of proof: Pursuant to Iowa Code Section 631.11(4), the plaintiff Four D Development must demonstrate by a preponderance of the evidence that it has been damaged by the action (or lack of action) of the defendant.

Discussion: Mr. Pitts testified at trial that he met Mr. Gradert for the first time on July 27, 2014. Mr. Pitts and Mr. Gradert negotiated a purchase price for the home located at 4045 Crestview Drive in Solon, Iowa of \$350,000 and negotiated a Buyer’s Interim Occupancy Prior to Closing agreement. Plaintiff’s Exhibit 2. Mr. Pitts testified that he prepared the interim Occupancy Agreement but that Mr. Gradert did not sign it. Mr. Pitts stated that Mr. Gradert did act in accordance with the interim occupancy agreement and paid \$2238 for one month’s occupancy on August 14, 2014, and paid another \$2238 as a security deposit on August 14, 2014.

Mr. Pitts testified that Mr. Gradert intended to have the property inspected and informed Mr. Pitts via e-mail that the inspection would take place on August 21, 2014. Mr. Pitts stated that Mr. Gradert never provided a copy of the inspection report to Mr. Pitts. Mr. Pitts stated that he prepared a purchase agreement for Mr. Gradert’s review and signature, but that Mr. Gradert never signed or returned the purchase agreement.

Mr. Pitts testified that the house had “some plumbing problems” but that he was cooperative in repairing those things that Mr. Gradert brought to his attention. Mr. Pitts testified that throughout September and October of 2014, he and Mr. Gradert worked together to fix some problems with the home.

Mr. Pitts testified that he sent a lease agreement to Mr. Gradert in November of 2014, but that Mr. Gradert refused to sign the lease agreement. Mr. Gradert then sent a lease agreement to Mr. Pitts on November 21, 2014, but Mr. Pitts testified that he was not comfortable with the form of the lease. Mr. Pitts testified that Mr. Gradert and his wife signed a month to month lease in December of 2014, although the document was dated August 15, 2014. Defendant’s Exhibit A. Mr. Pitts testified that the additional paragraph on page four of the lease was added at Mr. Gradert’s behest. Mr. Pitts testified that he never required Mr. Gradert to carry renter’s insurance.

Mr. Pitts testified that there were some problems collecting the rent in February of 2015, but that Mr. Gradert did eventually get the rent paid. Mr. Pitts testified that on March 4, 2015, Mr. Gradert sent an e-mail stating that he and his family were moving out of the home and Mr. Pitts treated the e-mail as a 90 day notice as contemplated by paragraph 34 of the lease. Defendant’s Exhibit 1, p. 4.

Mr. Pitts testified that he requested a final walk-through inspection with Mr. Gradert prior to Mr. Gradert leaving the property and attempted to schedule such an inspection with Mr. Gradert on at least three occasions. Mr. Pitts stated that the final walk through inspection with Mr. Gradert never happened and that Mr. Pitts inspected the home after Mr. Gradert had moved out. Mr. Pitts testified that his inspection revealed damage to the property caused by the Gradert family and their pets and that those damages required extensive labor and materials to repair.

Mr. Gradert testified that when he first began working with Mr. Pitts, it was his intention to purchase the home at 4045 Crestview Drive in Solon and that his purchase was contingent on the sale of his home in Illinois. Mr. Gradert testified that after he and his family moved in to the home, there were extensive problems with water. Mr. Gradert indicated the following timeline of events related to the home:

August 14, 2014 The parties agreed to an interim occupancy agreement prior to closing. Mr. Pitts drafted this agreement, but Mr. Gradert did not sign it.

August 21, 2014 Mr. Gradert had a professional inspection of the home done (Defendant’s Exhibit E).

Sept. 11, 2014 Mr. Gradert asked Mr. Pitts to replace showers in the home due to leaks. Mr. Pitts replaced two showers in the home.

- Dec. 2014 The parties signed a month to month lease on the property and used a form dated August 15, 2014, even though it was signed in December of 2014.
- Dec. 23, 2014 Water line broke in the downstairs bedroom
- Jan. 8, 2015 Water line froze in the house
- Feb. 28, 2015 Water pipe in the kitchen split
- March 4, 2015 The dishwasher broke; Mr. Gradert provided 90 days' notice to terminate the lease.
- May 28, 2015 Mr. Gradert e-mailed Mr. Pitts to say the family would be out by May 31.

Mr. Gradert testified that the family had just had too many problems with water and they decided the house was not going to meet their needs. Mr. Gradert testified that he tried to cooperate with Mr. Pitts but that there were so many problems with the house he became frustrated and simply wanted to be out of the property.

Mr. Gradert testified that he had received permission from Mr. Pitts to dispose of the refrigerator on the premises as it was non-functioning (Defendant's Exhibit I, page 5) and that he and his family cleaned the house when they moved out. Mr. Gradert testified that he did not do a final walk through inspection with Mr. Pitts because he did not think it was important.

Mr. Gradert testified that he did not recall ever telling Mr. Pitts directly that he had changed his mind and did not intend to purchase the home.

Findings of Fact:

- Mr. Gradert indicated his intent to purchase the property to Mr. Pitts on August 12, 2014, contingent upon the sale of Mr. Gradert's Illinois home.
- Mr. Pitts drew up a Purchase/Sale Contract on August 14, 2014. Mr. Gradert did not sign this document. Defendant's Exhibit G.
- Mr. Pitts drew up a Buyer's Interim Occupancy Prior to Closing form on August 14, 2014. Plaintiff's Exhibit 2.
- Mr. Pitts signed the Interim Occupancy agreement, Mr. Gradert did not sign the interim occupancy agreement.
- Mr. Gradert acted in accordance with the interim occupancy agreement through December of 2014.
- Mr. Pitts drew up a month to month rental agreement on August 15, 2014. It is not clear when Mr. Pitts signed the document. Mr. and Mrs. Gradert signed the document in December 2014. Defendant's Exhibit A.
- Mr. Gradert never told Mr. Pitts directly that he did not intend to purchase the home.

- Mr. Gradert informed Mr. Pitts by e-mail on March 4, 2015, that the Graderts would be vacating the home.
- The document governing the parties' relationship from August 14, 2014, through December 15, 2014, was the Buyer's Interim Occupancy Prior to Closing form. Plaintiff's Exhibit 2.
- The document governing the parties' relationship from December 16, 2014, through May 31, 2015, was the month to month lease. Defendant's Exhibit A.

Proof of damages - plaintiff's claim: Mr. Pitts provided photographic evidence of damage to the rental property. Mr. Pitts testified that the photos were taken at the time of the walk through inspection immediately after the Graderts had vacated the property. Plaintiff's Exhibit 1. The Court notes that there is visible damage in some of the photographs.

Mr. Pitts provided to the Court a listing of names and monetary amounts. Plaintiff's Exhibit 5, page 3. However, Mr. Pitts provided no receipts, billing invoices or other itemizations to the Court regarding what expenditures were specifically required to repair the damage to the property.

The Court notes that Defendant's Exhibit B contains invoices, an estimate and several receipts from Menard's and purports to be documentation of the expenditures required to repair the home. Upon careful review of these documents the court notes the following:

1. The invoice for painting is not dated (Defendant's Exh. B, p. 1);
2. The Manning invoice appears to be an estimate (Defendant's Exh. B, p. 2); and
3. The receipts from Menards include items not needed for repair of the home including but not limited to: red mulch (Defendant's Exh. B, p. 5 & 7), black gourmet licorice, and a smart phone tool kit (Defendant's Exh. B, p. 9).

The Court cannot ascertain from the information available and in evidence what the actual cost was to plaintiff to repair the property.

Counter claim - legality of lease provision re: renter's insurance: The defendant challenges the legality of the provision concerning renter's insurance at paragraph 28 of the month to month lease between the parties. Defendant's Exh. A, p. 4. The Court notes that Mr. Pitts testified that he added the written language at the bottom of page 4 at the request of the defendant and that Mr. Gradert testified that he did not tell Mr. Pitts to include the language concerning renter's insurance.

The Court finds that the written paragraph at the bottom of page 4 is not controlling, but the paragraph numbered 28 at the top of page 4 is. That paragraph reads: "Tenant's personal property and vehicles are not insured by Landlord or, if applicable, owner's association, against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or

any other cause. Tenant is to carry Tennant's own insurance (Renter's Insurance) to protect Tenant from any such loss."

Interpretation of the contract requires the parties to assign the ordinary meaning to words used in the contract and to interpret the words within the context of the contract. Northern Natural Gas Co. v. Knop, 524 N.W. 2d 668, 671 (1994). Using this approach, the Court finds that paragraph 28 of the lease informs the tenant that the landlord is not responsible for insuring the property of the tenant. The paragraph further advises the tenant to procure renter's insurance in order to protect the tenant's property. The paragraph does not use the word "shall" and does not impose a requirement on the tenant to procure renter's insurance. The Court concludes that this is not an illegal provision.

Paragraph 5 of the Buyer's Interim Occupancy Prior to Closing form states: "On or before the date set forth in paragraph #1 above, Buyer(s) shall provide Seller(s) with proof of adequate personal contents and liability insurance." Plaintiff's Exh. 2. The Court construes this paragraph to require Mr. Gradert to have renter's insurance (or some sort of insurance). However, the Court finds that Mr. Gradert is not in the role of tenant in this agreement, but rather a buyer and is therefore not subject to the protections described in the Iowa Uniform Residential Landlord Tenant Act.

The Court FINDS the following:

1. The Plaintiff has failed to prove damages claimed.
2. The paragraph in the month to month lease addressing renter's insurance does not require the tenant (defendant) to procure renter's insurance and is not illegal.
3. The Plaintiff did not breach the contract as stated in the counter claim.

The Court ORDERS the following:

1. Plaintiff's claim is dismissed.
2. Defendant's counter claim is dismissed.
3. The parties are responsible for their own attorney fees.
4. Court costs are to be assessed to the Plaintiff.

Appeal bond is set in the amount of \$2,500.

Clerk to notify.



State of Iowa Courts

Type: OTHER ORDER

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So Ordered

A handwritten signature in cursive script that reads "Lynn Rose". The signature is written in black ink and is positioned above a horizontal line.

Lynn Rose, Magistrate,
Sixth Judicial District of Iowa