Almost Everything You Wanted to Know About Minnesota Residential Security Deposits
CLE Presented March 29, 2020

Appendices, Table of Contents

[1]Westlaw version reprinted under 25-case rule, https://legal.thomsonreuters.com/en/legal-notices/contacts

Sure Deposit Frequently Asked Questions URL → https://www.mysuredeposit.com/faq

Three examples of security-deposit-bond contracts follow.

BOND ENROLLMENT & ACKNOWLEDGEMENT AGREEMENT

Bond Number: ABIC 1296-1303	Alliance Residential Company

COMMUNITY/LANDLORD INFORMATION

Name: Broadstone Passerelle	HTID: 2669354	ID: ARC15845
Address: 895 Broadstone Way		
City, State and Zip Code: Altamonte Springs, FL 32714		

RESIDENT INFORMATION

Move in Address:	890 Broadstone Way	Building #:		Apartment #:	303
City, State and Zip Code:	Altamonte Springs, FL 32714				

	First Name	Last Name	Social Security Number	Date of Birth	E-mail Address
1	Joseph	Forese	On File	7/14/1993	foresejoe@yahoo.com
2					
3					
4					

Effective Date (Move in Date): 7/13/2017 (MM/DD/YEAR)

BOND LIMIT AMOUNT:	$1,000.00
NON-REFUNDABLE PAYMENT:	$175.00
REFUNDABLE DEPOSIT DUE TO LANDLORD:	$0.00

IMPORTANT INFORMATION - READ BEFORE SIGNING

As described below, this is an agreement for the election to enroll in the SureDeposit bond program. By signing below, which I choose to do voluntarily, I intend to be legally bound, understand the terms and conditions, and agree to the following terms, conditions and obligations:

SureDeposit: SureDeposit is a voluntary surety bond program whereby I choose to make a one-time, nonrefundable payment in lieu of making a traditional security deposit in connection with the lease I entered into with the community's property manager or property owner (the "Landlord"). I freely elect to participate in the SureDeposit program and understand that the payment that I am making to participate in the program is NOT a security deposit, and that I will NOT receive a refund of the one-time payment at the end of my lease. I have not been required or compelled to enter into this agreement by any person or entity, and I understand that electing to participate in the SureDeposit program does not waive or release me from complying with the terms of my lease.

"SureDeposit" is the trade name of the surety bond program offered to residents of this community. **It is NOT insurance and does not protect me against any acts or risks typically covered by insurance**. American Bankers Insurance Company of Florida (an Assurant company) is the surety company (the "Surety") that has a bonding agreement with your Landlord.

Liability for Damages: The SureDeposit bond provides protection for any physical damage I may cause to the rental property (beyond normal wear and tear) and any of my financial obligations under the lease agreement that are not paid. I understand that if the Landlord makes a claim to the Surety after I move out or if the lease terminates because I caused property damage or I did not fulfill my financial lease obligations (such as not paying rent or not paying imposed fees), the Surety will pay the Landlord's claim, up to the specified Bond Limit Amount. If a claim is paid by the Surety to the Landlord, (a) I will be required to reimburse the Surety for the amount paid; and (b) If applicable, I must also reimburse the Landlord directly for any outstanding obligations in excess of the Bond Limit Amount.

Debt Owed to Surety: If Surety pays the Landlord any amount on my behalf and then seeks reimbursement from me: (a) I authorize the Landlord to furnish Surety any information that will assist Surety in collecting the money I owe to Surety, (b) I acknowledge that Surety, SureDeposit or a collection agency (as an assignee) may be identified as the creditor (at their discretion) for purposes of the collection and credit reporting process, and (c) I acknowledge that if I do not pay Surety (or the designated entity), the debt may be reported to the credit reporting bureaus which may have a negative impact on my credit profile. I also expressly permit the Landlord, Surety, or a collection agency to contact me by telephone (land line or mobile) or by electronic means (such as e-mail) to collect any amount that I owe.

Cancellation of SureDeposit Program Participation: I may cancel the election to participate in the SureDeposit program for a full refund within five (5) calendar days of the Effective Date upon submission of written notice to my Landlord, whereupon my payment will be refunded to me. IF I TAKE THIS ACTION, I UNDERSTAND I MUST PAY THE REQUIRED SECURITY DEPOSIT TO MY LANDLORD.

Arbitration: Any dispute or claim arising out of or relating to this agreement will be resolved by a single arbitrator in a binding arbitration proceeding administered by the American Arbitration Association or other appropriate entity that we mutually accept, except that the Surety or I may choose to pursue claims in small claims court if the claims relate solely to the collection of any debts I owe to the Surety. Judgment on the arbitrator's award may be entered in any court with appropriate jurisdiction. In any arbitration or court proceeding, Surety and I waive any claims for punitive damages, and I waive any right to pursue any claims, causes of action or any monetary, injunctive or prohibitory relief on any class or representative basis, and I agree and understand that I cannot and will not serve as a class representative at any such action or proceeding.

This is the entire agreement between Surety and I and I am not relying on any oral promises or statements.

Signed By: Joseph Forese

Wed Jul 12 06:39:21 AM CST 2017

Signature of Resident 1	Signature of Co-Signer/Guarantor	Signature of Resident 3	Signature of Co-Signer/Guarantor
Signature of Resident 2	Signature of Co-Signer/Guarantor	Signature of Resident 4	Signature of Co-Signer/Guarantor

FIDELITY
National Property & Casualty Insurance Company

SUREDEPOSIT ENROLLMENT & BOND ACKNOWLEDGEMENT

SURE DEPOSIT

Bond Number: FNPAC 100069	**Flaherty & Collins**

Knobs Pointe Apartments

ID: FC122F

Street Address: _____ **Building #**_____ **Apartment#**_____

New Albany, IN, 47150

Resident 1			**Resident 2 (For more than two, use a separate form)**		
First Name	MI	Last Name	First Name	MI	Last Name
Date of Birth	Social Security Number		Date of Birth	Social Security Number	
Effective Date (move in date)			Effective Date (move in date)		

Make Payments To: SureDeposit 293 Eisenhower Parkway Suite 320 Livingston, NJ 07039-1711

BOND COVERAGE AMOUNT	**NON-REFUNDABLE PREMIUM**

PLEASE READ THE FOLLOWING BEFORE SIGNING:

I intend to be legally bound, and I understand and agree that:

I am enrolling on a bond that Fidelity National Property & Casualty Company (Company) issued for the benefit of the apartment community named above. **The premium that I am paying for the enrollment is not a security deposit, and I will not receive the premium back at the end of my lease**.

The bond is for the amount listed above in the box marked "Bond Coverage Amount." The bond provides coverage for any physical damage to the apartment (beyond normal wear and tear) or any of my obligations under the lease agreement that are not paid such as past due rent, unpaid rent or fees. **If the apartment community makes a claim that I owe it money because I created damage or did not fulfill lease obligations such as paying rent or applicable fees, Company will be obligated to pay the claim including collection expenses, court costs, or attorney fees. I will then be obligated to reimburse Company.**

If the apartment community has any of my money on deposit at the end of my lease, it will apply this money first to pay the claim. If Company pays the apartment community on my behalf and then tries to collect reimbursement from me: a) I authorize anyone to furnish Company (or its employees or agents or assigns) any information that will assist Company in collecting the money I owe to Company; and b) the apartment community is not a party to, and is not responsible for, the actions that Company takes during any collection efforts. If I fail to pay money that I owe to Company as a result of my obligations under this bond: a) my credit rating may get worse, b) I might have trouble renting an apartment, and c) I might have trouble getting insurance coverage.

Any dispute or claim arising out of or relating to this agreement will be resolved by a single arbitrator in a binding arbitration proceeding administered by the American Arbitration Association or other appropriate entity that we mutually accept, except that Company or I may choose to pursue claims in court if the claims relate solely to the collection of any debts I owe to Company. Judgment on the arbitrator's award may be entered in any court with appropriate jurisdiction. In any arbitration or court proceeding, Company, SureDeposit and I waive any claims for punitive damages, and Company, SureDeposit and I waive any right to pursue claims on a class or representative basis.

This is our entire agreement, and I am not relying on any oral promises or statements.

Signature of Resident #1	Signature of Co-Signer or Guarantor	Signature of Witness
Signature of Resident #2	Signature of Co-Signer or Guarantor	Signature of Witness

DepositIQ, LLC

PO Box 22476
Denver, CO 80222
877-684-4039 Toll Free 877-306-8473 Fax

depositIQ

Enrollment and Bond Acknowledgement Form

Bond Number: 106534					
Apartment Community Name:	Washington Crossing			ID:	286
Street Address:	[redacted]55987	Building #:	[redacted]	Apartment #:	[redacted]
State and Zip Code:	MN 55987				

#1: Resident	
First Name	Last Name
[redacted]	[redacted]
Date of Birth	Social Security Number
xx/xx/[redacted]	xxx-xx[redacted]

Security Bond Coverage Amount: $750.00 **Pet Bond Coverage Amount:** $0.00
Refundable Deposit Due To Community: $0.00 **Refundable Pet Deposit Due to Community:** $0.00
Non-refundable Purchase Price: $131.25

PLEASE READ THE FOLLOWING BEFORE SIGNING:

I intend to be legally bound, and I understand and voluntarily agree that:

I am enrolling on a bond that Bankers Insurance Company (Surety) issued for the benefit of the apartment community named above. The premium that I am paying for the Bond is not a security deposit, and I will not receive the premium back at the end of my lease. Moreover, this bond is not liability or other insurance, and thus does not relieve me of any responsibilities I have under the lease, including responsibility for physical damage to the property or for unpaid rent.

The bond is for the amount listed above in the box marked "Bond Coverage Amount." The bond provides coverage for damages that I may be responsible for under the lease and under law, including physical damage to the apartment (beyond normal wear and tear) or for any unpaid obligations under my lease agreement, such as unpaid rent or fees ("Covered Damages"), up to the Bond Coverage Amount. Therefore, if the apartment community makes a claim for Covered Damages, and provided the apartment community strictly complies with the lease terms and applicable law, Surety will be obligated to pay the claim for Covered Damages, including any collection expenses, court costs, and attorney fees, but not to exceed the Bond Coverage Amount. I will then be obligated to reimburse Surety the amount of the claim.

Nothing in this agreement limits the apartment community from first applying any money that I have on deposit with the apartment community to pay the claim. Moreover, if Surety pays a claim on my behalf, it will then seek to collect reimbursement from me. If this happens, subject to all applicable legal limitations, I authorize anyone to furnish Surety (or its employees or agents or assigns) any information that will assist Surety in collecting the money I owe. Moreover, the apartment community and the Surety are not affiliated in any manner, and the apartment community is not responsible for the actions that Surety takes during any collection efforts. I understand that if I fail to pay money that I owe to Surety as a result of my obligations under this bond: a) my credit rating may get worse; b) I might have trouble renting an apartment; and c) I might have trouble getting insurance coverage.

Any dispute or claim arising out of or relating to this agreement will be resolved by a single arbitrator in a binding arbitration proceeding administered by the American Arbitration Association or other appropriate entity that we mutually accept. Judgment on the arbitrator's award may be entered in any court with appropriate jurisdiction. In any arbitration or court proceeding, Surety, DepositIQ and I waive any claims for punitive damages, and Surety, DepositIQ and I waive any right to pursue claims on a class or representative basis – or to be included in any such class.

This is our entire agreement, and I am not relying on any oral promises or statements.

INITIAL THAT YOU HAVE BEEN SHOWN THE REVERSE SIDE OF THE AGREEMENT: [redacted]

RESCISSION RIGHTS: Within five (5) Calendar Days of signing this Bond Enrollment Form, I may rescind this bond enrollment for a full refund, PROVIDED I take certain action. I have been informed that a complete description of such actions (for example, the lease agree is lawfully terminated) is available at www.depositiq.com/rescission.html.

Signed by [redacted]
10/15/2018 11:52 AM MDT

Signature of #1: Resident

THIS IS PART OF THE AGREEMENT. PLEASE READ CAREFULLY

1. This constitutes our entire agreement, which supersedes all prior agreements and understandings pertaining thereto, and I am solely relying on what is written in this document, and not relying on any oral representations or promises.
2. The parties hereto shall have all remedies for breach of this Agreement available to them provided by law.
3. This agreement is not intended to be for the benefit of and shall not be enforceable by any person who or which is not a party hereto.
4. Neither Party may assign or delegate any of its rights or obligations under this agreement, although Surety may assign this agreement and any resulting judgment, for purposes of collection.
5. I understand that Surety and apartment community are independent and unaffiliated companies, and, that they are therefore not agents, joint venturers, partners, parents, or subsidiaries of one another. Therefore, I understand that the apartment community is not responsible for the conduct of the Surety, and the Surety is not responsible for the conduct of apartment community.
6. **I am enrolling in the bond program voluntarily, and not under the pressure, influence or recommendation of any person. I fully understand that I don't have to enroll in this program. But after considering the matter, I choose to enroll because I believe that it makes sense for me to do so.**
7. I have had sufficient opportunity and time to review this agreement.

THANK YOU, IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THIS EXCITING PROGRAM, PLEASE VISIT OUR WEBSITE AT WWW.DEPOSITIQ.COM, OR CALL A CUSTOMER SERVICE REPRESENTATIVE AT (877-684-4039). WE WELCOME YOUR CALLS AND FEEDBACK.

Payment Received

Receipt # 87151

Bond # 106534

Amount: $131.25

Payment Type: eCheck

Status: Succeeded

Message: Payment is complete

106534

Security Deposit Interest Worksheet[1]

Instructions

1. Multiply the amount of security deposit by the interest rate at the time one lived there
2. Divide the number of months lived in apartment by 12
3. Multiply the total of step 1 by the total of step 2

or in mathematical terms

((security deposit) x (interest rate)) x ((number of months) ÷ 12) = _____

that is:

(_____ x . 05[2]) x ((# of months prior to October 1984 and > June 30,1973) ÷ 12) = _____
(_____ x . 055[3]) x ((# of months between October 1, 1984 and April 30, 1992) ÷ 12) = _____
(_____ x . 04[4]) x ((# of months between May 1, 1992 and March 1, 1996) ÷ 12) = _____
(_____ x . 04[4]) x ((# of days between March 1, 1996 and March 21, 1996) ÷ 365) = _____
(_____ x . 03[5]) x ((# of days between March 22, 1996 and March 31, 1996) ÷ 365) = _____
(_____ x . 03[5]) x ((# of months between April 1, 1996 and July 31, 2003) ÷ 12) = _____
(_____ x . 01[6]) x ((# of months between August 1, 2003 and now) ÷ 12) = _____

Total (add the column above) = _____

Example: The following example is for a tenant who paid a $275 security deposit on 27 July 1985, lived in his apartment from 1 August 1985 to 29 July 2019, and got the deposit returned 21 August 2019 (remember don't count partial initial month but do count partial final month).

(275 x .05) x (0÷ 12) = $0	# of months prior to Oct. 1984 = 0
(275 x .055) x (81 ÷ 12) = $102.09	# of months between Oct. 1, 1984 and April 30, 1992 = 81
(275 x .04) x (46 ÷ 12) = $42.17	# of months between May 1, 1992 and Mar. 1, 1996 = 46
(275 x .04) x (21 ÷ 365) = $0.63	# of days between Mar. 1, 1996 and Mar. 21, 1996 = 21
(275 x .03) x (10 ÷ 365) = $0.23	# of days between Mar. 22, 1996 and Mar. 31, 1996 = 10
(275 x .03) x (88 ÷ 12) = $60.50	# of months between April 1, 1996 and July 31, 2003 = 88
(275 x .01) x (193 ÷ 12) = $44.23	# of months between Aug. 1, 2003 and Aug. 31, 2019 = 193

Total = $249.84

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[1]Adopted from HOME Line's worksheet, see http://homelinemn.org/wp-content/uploads/security-deposit-interest1.pdf

[2]See 1973 Minn Laws ch. 561, s. 1

[3]See 1984 Minn Laws ch. 565, s. 1-2

[4]See 1992 Minn Laws ch. 555, art. 2, s. 1,3

[5]See 1996 Minn Laws ch. 357, s. 1,4

[6]See 2003 Minn Laws ch. 52, s. 2

State of Minnesota
McLeod County

Conciliation Court
First District
Court File Number: 43-CO-15-96
Case Type: Conciliation

Delores Ann Graven vs AHMC Properties

Order for Judgment on Claim and Counterclaim

Appearances: ☒ Plaintiff ☒ Defendant ☐ Neither Party ☐ Contested ☐ Default

Upon evidence received, IT IS ORDERED:

☒ Plaintiff is entitled to judgment against Defendant for the sum of $ 1,013.02, plus fees of $ 70.00, disbursements of $ N/A, and conditional costs of $ N/A, for a total of $ 1,083.02

☐ Judgment shall be entered in favor of _____ (without damages).

☐ _____'s claim is dismissed without prejudice.

☐ _____'s claim is dismissed without prejudice.

☐ _____'s claim is dismissed with prejudice.

☐ _____ shall immediately return _____ to the _____ and that the Sheriff of the county in which the property is located is authorized and directed to effect repossession of such property according to Minn. Stat. § 491A.01, subd. 5, and turn the property over to _____.

☒ Other / ☒ Memo: (see attached)

FILED
NOV – 5 2015
COURT ADMINISTRATOR
McLEOD COUNTY, MN

Dated: 4 Nov 2015. Judge: _____

JUDGMENT is declared and entered as stated in the Court's Order for Judgment set forth above, and the Judgment shall become finally effective on the date specified in the notice of judgment set forth below.

Dated: November 5, 2015 Court Administrator/Deputy: Jan Furman

NOTICE: THE PARTIES ARE NOTIFIED that Judgment has been entered as indicated above, but the Judgment is stayed by law until November 30, 2015. (Time) 4:30 p.m. (to allow time for an appeal/removal if desired).

THE PARTIES ARE FURTHER NOTIFIED that if the case is removed to District Court and the removing party does not prevail as provided in Rule 524 of the Minnesota General Rules of Practice for the District Courts, the opposing party will be awarded $50 as costs.

Dated: November 5, 2015 Court Administrator/Deputy: Jan Furman

Transcript of Judgment: I certify that the above is a correct transcript of the Judgment entered by this Court.

Dated: _____ Court Administrator/Deputy: _____

How Do You Pay a Judgment?

- Payment should be made directly to the party that wins the case (prevailing party/creditor). If you are unable to pay the creditor directly, contact the court administrator (or conciliation court) for further information.
- If the prevailing party is paid directly, obtain a statement of payment from the party (satisfaction of judgment) and file this with the Court. Special forms for this procedure are available at the Conciliation Court office.
- If the Court is not properly notified of payment, you will have an unsatisfied judgment on your record and your credit rating may be affected.

How Do You Collect a Judgment?

Although a case is decided in your favor, a Conciliation Court judgment does not create a lien against the debtor's property unless the procedure outlined below is followed. You can try to collect the judgment yourself if it has not been paid within the required 20-day period, and if the other party has not filed an appeal. Once a judgment is entered, the judgment is enforceable for 10 years from the date of entry. If the party is declared bankrupt following the judgment, you may receive part of your payment if assets are divided among the party's creditors, or the debt may be discharged and you cannot collect.

The following information may help you in collecting the amount of the judgment.

- In order to collect on your judgment you must obtain a transcript (record) of your judgment from the Conciliation Court and file it in District Court together with an Affidavit of Identification. The judgment will then be "docketed." There is a fee for obtaining that transcript.
- Upon docketing, you may obtain a Writ of Execution from the Court Administrator. A Writ of Execution is a legal paper authorizing the sheriff to levy (collect) on a debtor's assets. The most common assets that can be levied upon are bank accounts and wages. You must be able to provide detailed information regarding the assets before the sheriff can make a levy. There is a fee for an Execution. Fees expended for the Execution process may be recovered from the debtor.
- If you do not know what assets the judgment debtor has, you may request the Court to order the debtor to tell you what those assets are. You can make the request only if:

    1. The judgment has been transcribed to district court.
    2. You have not received payment of the judgment.
    3. You and the debtor have not agreed to some other method of settlement.

If those provisions can be met, the Request for Order for Disclosure form can be obtained from the Court Administrator. A fee is required. If the request is granted, the debtor will be ordered to complete and mail to you a listing of his/her assets within 10 days. Once you have that information, you can give the Execution to the sheriff, advise the sheriff of the debtor's assets and ask him/her to collect your judgment.

How Do You Appeal a Judgment?

Any party who was not present at the trial, and who has good reason for not having been present, may apply to the Court, not later than the date indicated on the "Notice of Judgment" (on the front of this form) for permission of the Court to re-open the case for another trial. If the Court grants another trial, the Judge may require payment of costs to the other party, absolute or conditional.

Any party who believes this judgment to be incorrect may appeal to the District Court for a completely new trial by a different judge or by a jury if desired. The statutory requirements for such an appeal must be complied with not later than the date indicated on the "Notice of Judgment" (on the front of this form). These requirements are time-consuming and it is suggested that inquiries regarding the requirements be made well in advance of the date indicated. Please note that in District Court corporations must be represented by attorneys. The attorney must sign the appeal documents and appear at District Court hearings and trial.

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF MCLEOD | FIRST JUDICIAL DISTRICT

Delores Ann Graven,

PLAINTIFF,

MEMORANDUM

-V-

AHMC Properties

DEFENDANT. | FILE NO. 43-CO-15-96

The above-entitled matter came on for a conciliation hearing before the Honorable Timothy J. Looby, Judge of District Court, on October 30, 2015, at the McLeod County Courthouse in Glencoe, Minnesota. Plaintiff Delores Ann Graven was personally present at the hearing along with her son, Will Graven. Defendant AHMC Properties was represented at the hearing by Beth Gamache and Bea Sommerfeld.

Both parties presented arguments in support of their respective position on the issues before the Court. The Court received numerous exhibits pertaining to the issue of whether Defendant is obligated to return some or all of Plaintiff's security deposit following the conclusion of the term of her rental agreement. Based upon all the files and records herein, the evidence and testimony entered into the record at the hearing, and the Court being duly advised, issued its ruling. The attached Memorandum explains the Court's reasoning.

MEMORANDUM

The issue before the Court is whether Plaintiff is entitled to receive some or all of her security deposit following the conclusion of an apartment lease agreement with Defendant. Including interest accrued, Plaintiff's total security deposit with Defendant equaled $1,013.02 on the date her tenancy ended. (Exhibit # 1).[1] Defendant claims that Plaintiff is not entitled to receive any of the security deposit because the total damages amounted to $1,075.00. (Id.). Plaintiff rented the property from Defendant for 15 years and argued that all the charges claimed by Defendant are classified as "ordinary wear and tear" and therefore should not have been deducted from the security deposit. Plaintiff smoked inside her apartment during her 15-year tenancy, which was the cause of many of Defendant's claimed damages and cleaning costs. However, Defendant did not prohibit smoking inside the apartment, and the lease was silent on this issue.

Under Minnesota law, "[t]he landlord may withhold from the deposit only amounts reasonably necessary: (2) to restore the premises to their condition at the commencement of the tenancy, *ordinary wear and tear excepted*." Minn. Stat. § 504B.178, subd. 3(b)(1) (emphasis added). "In any action concerning the deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of the deposit shall be on the landlord." Minn. Stat. § 504B.178, subd. 3(c). Pursuant to the signed lease between the parties, "The reasonable cost of repairing any waste, neglect, or damages for which Tenant is responsible, *normal wear and tear excepted*, may be deducted from the security deposit." (Exhibit #9) (Emphasis added). Also, the AHMC Properties Tenant Handbook states, "[w]e

[1] The Court has attached a copy of Exhibit #1 to this Memorandum, which lists the claimed damages and corresponding amounts in question.

expect the normal wear and tear that goes with living in any home, but we also expect that your apartment will be left in approximately the same condition that you found it when you moved in. The following charges will be deducted from your security deposit for any of the items **beyond ordinary wear and tear** that have not been taken care of at the end of your tenancy." (Exhibit # 11) (Emphasis in original). The Handbook then lists certain cleaning charges which would be the responsibility of the tenant if his/her conduct amounts to "damage, waste, or neglect" which is beyond ordinary wear and tear. (Id.).

After reviewing all exhibits, including the photographs submitted by both parties, this Court concludes that the claimed charges are all considered ordinary wear and tear, especially since Plaintiff rented the apartment for 15 years and was not prohibited from smoking inside the residence. During the hearing, Defendant conceded that the patio screen was not replaced, even though it was listed on Exhibit #1 as a claimed-damage. Further, the Court finds that all of the other listed charges are consistent with ordinary wear and tear and deal primarily with normal cleaning costs. Given that Plaintiff lived in this apartment for 15 years (and apparently paid her rent each month), the Court notes that she seems to have been an ideal tenant for Defendant. Over the span of 15 years, especially in an apartment where smoking was not prohibited, it certainly is to be expected that walls may need repainting, bathrooms may need scrubbing, and items may need replacing. The Court found no evidence that Plaintiff exhibited conduct which amounted to "damage, waste, or neglect" or "beyond ordinary wear and tear." The unclean portions of the apartments indicated in the photographs should have been anticipated by Defendant in this case given the length of the tenancy and allowance of smoking inside the apartment. Therefore, Plaintiff is entitled to the full amount of her security deposit.

Plaintiff also made a claim for $30.00 of costs (copies, mailing, and travel expenses) in addition to the $70.00 filing fee. While Plaintiff is entitled to the filing fee given her successful claim above, there is no basis for awarding costs here. Certain out-of-pocket expenses in litigating such a cause of action are unavoidable and are not awarded in this type of conciliation matter. Therefore, the Plaintiff shall be awarded $70.00 for her filing fee, but shall not be reimbursed for her claimed costs.

Lastly, Plaintiff claims that she should be entitled to $500.00 in punitive damages based on Minn. Stat. 504B.178, subd. 7. Namely, "The bad faith retention by a landlord of a deposit, the interest thereon, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $500 for each deposit in addition to the damages provided in subdivision 4." However, this Court does not find that Defendant acted in bad faith by retaining Plaintiff's security deposit. Based primarily on the provision in the Tenant Handbook (Exhibit #11) which lists certain cleaning charges that a tenant would be responsible for beyond ordinary wear and tear, Defendant certainly as least had an articulable basis for withholding the security deposit, albeit unjustified. After examining the photos submitted to the Court, it is clear that there are areas of the apartment which will require cleaning. Even though the Court found that these areas amounted to ordinary wear and tear, Defendant did not withhold the security deposit in bad faith and complied with the requirements listed in Minn. Stat. 504B.178. Plaintiff is entitled to $1,013.02 for the return of her security deposit and $70.00 for the filing fee, for a total judgment of $1,083.02.

TJL

1987 WL 19765

Court of Appeals of Minnesota.

The Gaughan Companies, Respondent,
v.
Doris Swanson, Appellant.

No. C3-87-825.
Nov. 17, 1987.

Attorneys and Law Firms: Virginia Stark, Cambridge, for appellant. Thomas P. Malone, Minneapolis, for respondent.

Heard, considered and decided by WOZNIAK, P.J., FORSBERG, J., and STONE,* J.

NONPUBLISHED OPINION

STONE, Judge, Sitting by Appointment.

*1 Respondent The Gaughan Companies sued appellant Doris Swanson in conciliation court to recover the cost of repairing and cleaning appellant's rental unit after she vacated. Judgment was entered for respondent, and Swanson appealed to the district court. Appellant also counterclaimed for the return of her security deposit and the statutory penalty for withholding the deposit beyond the three week time limit. The trial court assessed damages against appellant for the cost of repairing and cleaning the apartment, and dismissed her counterclaim for the security deposit. We affirm the judgment and modify damages to conform to the trial court's findings.

FACTS

In June 1984 appellant and her three young children rented a two-bedroom apartment in a complex owned and managed by respondent. Appellant testified that upon moving in, the ten year old carpet was worn, smelly and stained, there was a missing door stop by the entry door, loose wallpaper, marks and holes in the walls and ceiling, scratches in the woodwork, a leaking pipe in the kitchen, and broken tiles in the bathroom.

Early January 1986, appellant found other housing for her family, and informed the resident manager she wished to move by the end of the month. The manager asked her to vacate a week before the end of January so that the apartment could be cleaned. If appellant complied, she would not be held liable for any rent due because of her untimely notice.

Appellant moved out on January 20, 1986, leaving her forwarding address and keys in the manager's mailbox. The following day, respondent entered the apartment and started painting,

replacing the carpet, and cleaning. The property supervisor testified the apartment was filthy and smelled rancid. She said there were wooden matches on the closet floor, dirt, dried cereal, burn marks, bird droppings, and cigarette butts on the carpet, as well as crayon marks and food spills on the walls. A closet door panel had to be replaced, and there was a large hole where the doorknob met the wall in the entryway. On February 14, 1986 respondent mailed appellant a summary of charges for the cleaning and repair work done on the apartment.

The trial court found the apartment to be in extremely dirty condition due to appellant's unreasonable treatment of the premises. In its April 4, 1987 judgment, the trial court concluded:

1. Defendant has failed to use the apartment in a reasonable manner.

2. The amount plaintiff has charged defendant for cleaning and repairing damage to walls due to holes is proper and reasonable.

3. Plaintiff has allowed defendant reasonable depreciation in its calculation of the cost of the carpet. The amount spent by plaintiff to replace the carpet was reasonable and, further, the amount charged defendant was reasonable and proper.

4. Plaintiff is entitled to Judgment in the sum of $618.17.

The summary of charges and the court's specific findings relative to them are:

	Charges	**Credits**	**Court's Finding**
Repair holes in wall	$107.77	40.00	107.77
Changed Lock	10.00		None
Security deposit		230.00	None
Interest Earned		20.69	
Hours Cleaning (15)	150.00		None
Repair holes & crayon marks	174.00		174.00
Traverse Rod	12.00		None
5 light bulbs	3.25		None
2 ice cube trays	1.96		.98
Closet Door Panel	38.86		None
Replace Carpet	412.00		412.00
	$909.84	$290.69	$694.75
			- 290.69
		Total Due	$404.06

*2 We agree with the trial court's conclusion that the evidence established appellant failed to use the apartment in a reasonable manner. The property supervisor testified the walls had crayon marks, 119 nail holes, grease, dirt and food spills on them. She also testified the carpet was

covered by numerous burn holes, food, bird feces and bird feed, cigarette butts and that it smelled rancid. Therefore, the evidence supports the finding that the carpet could not be cleaned and respondent was forced to replace it sooner than necessary.

The evidence, however, does not support the trial court's conclusion that appellant is liable to respondent for $618.17 in damages. Taking the trial court's findings by the four corners, we find support for the judgment only to the extent of $404.06. The other items of alleged damage were either not found by the trial court to have occurred or the monetary extent was not established as a fact.

We find no merit in appellant's contention that her tenancy terminated January 20, 1986, when she vacated the apartment, as opposed to January 31, 1986, when her lease period expired. A tenant that vacates and fails to give written notice of termination to the landlord amounts to no more than an abandonment of the premises, which does not automatically terminate a lease:

> A lessee's unilateral action in abandoning leased premises, *unless accepted by his lessor*, does not terminate the lease or forfeit the estate conveyed thereby, nor the lessee's right to use and possess the leased premises and, by the same token, his obligation to pay the rent due therefor. (citations omitted).

Markoe v. Naiditch & Sons, 303 Minn. 6, 7, 226 N.W.2d 289, 290 (1975) (quoting Gruman v. Investors Diversified Services, Inc., 247 Minn. 502, 507, 78 N.W.2d 377, 380 (1956)) (emphasis in original).

As a result of the above determination, the statement of charges mailed to appellant on February 14, 1986, having been mailed within three weeks of the tenancy ending, was timely.

Minn.Stat. § 504.20, subd. 3 (1986). Since the three week statutory period to submit charges began January 31, 1986, and not January 21, 1986, appellant's request of a penalty from respondent, in the amount of twice her security deposit, must be denied. Minn.Stat. § 502.20, subd. 4 (1986).

We affirm the trial court's judgment as to its conclusion that appellant caused damage to the apartment beyond normal wear and tear. We also affirm that her lease terminated January 31, 1986, and, therefore, the statement of charges was made in a timely manner. However, we modify the damage amount to $404.06, in accordance with the trial court's findings of fact.

Affirmed as modified.

*Acting as judge of the Court of Appeals by appointment pursuant to Minn. Const. art. 6, § 2.

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Kristofer Babler and Christine Babler,
Plaintiffs,
vs
Jaime Penn,
Defendant

Findings of Fact, Conclusions of Law, and Order for Judgment

File No. 62-CV-13-~~1359~~ 1539

This case was tried on June 16, 2013. By the prior agreement of the parties, Daniel S. Kleinberger presided as Consensual Special Magistrate (the "Magistrate").[1] Plaintiffs Kristofer Babler and Christine Babler appeared *pro se* (in person, not represented by a lawyer). Defendant Jaime Penn appeared in person and was represented by attorney Chad McKenney. This document states the Magistrate's decision in this matter.

Based on the evidence presented at the trial, the Magistrate makes the following Findings of Fact, Conclusions of Law, and Order for Judgment.

Findings of Fact

Background

1. From November 15, 2010 through October 31, 2012, Plaintiffs rented from Defendant the condominium (the "Condominium") located at 697 Laurel Avenue, Unit 3W, St.

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[1] The trial was recorded, and the recording is on an MP3 file: 62-CV-13-1539 06192013 (LS_70123).MP3. References to the recording are in this form: Trial Recording, [number]:[number]. The first number refers to hours, and the second number refers to minutes. Times are approximate.

Paul, Minnesota 55104 (the "Tenancy"), under a written lease "entered into" October 25, 2010 (the "Lease"). Pl. Ex. 8.[2]

2. This dispute concerns:

    a. the condition of the carpet in the Condominium (the "Carpet") at the end of the Tenancy (at "Move-Out")—in particular whether cat urine in the Carpet necessitated its replacement;[3]

    b. whether Defendant provided Plaintiffs proper, timely notice of Defendant's reason for withholding Plaintiffs' security deposit (the "Security Deposit"); and

    c. whether Plaintiffs are liable to Defendant for Defendant's attorney's fees and other expenses incurred in this matter.

3. The parties agree on most of the facts, including that:

    a. Throughout the Tenancy, the parties communicated with each other almost exclusively through email.

    b. The amount of the Security Deposit was $1325.00.

    c. Plaintiffs:

        i. fully paid all rent due during the Tenancy;

        ii. gave proper notice to end the Tenancy;

        iii. moved out of the Condominium on time; and

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[2] Pl.'s. Ex. = Plaintiff's Exhibit. Def.'s. Ex. = Defendant's Exhibit. Defendant's realtor, Ms. Constance Portlas, provided the Lease form to Defendant, presumably from the forms used by Ms. Portlas' company. Trial Recording, time 1:08.

[3] This issue has two aspects: (i) Plaintiffs' claim for return of the Security Deposit; and (ii) Defendant's counterclaim for damages exceeding the amount of the Security Deposit.

iv. with the exception of the alleged problem with the Carpet, left the Condominium in appropriate condition.

4. Defendant acknowledges that, except for the alleged problem with the Carpet, Plaintiffs were fine tenants.[4]

5. After Move-Out, Defendant communicated with Plaintiffs concerning the Security Deposit and the condition of the Carpet through, *inter alia*:[5]

i. an email dated November 9, 2012, which stated:

> Connie stopped by the condo this week and unfortunately she found a significant smell of cat urine on the in the living room and also in the back. Unfortunately I will have to hold onto your deposit until we get this sorted out and figure out exactly what needs to be done. She has reserved a carpet cleaning company to come out next week.[6]

ii. an email dated December 9, 2012, which stated:

> I apologize for how long it has taken to get this [situation] sorted out. However, we have made efforts to determine the best course of action. First we had the carpet cleaned in hopes of getting the smell out. I had planned to have the carpet cleaned any way and Connie advised me on the best professional cleaners for the job. But it was unsuccessful . . . . Unfortunately this damage must be corrected and that is the reason for the security and pet deposit. Your deposit was for $1325. It will cost over $1500 to re-carpet the entire area except the bedroom with a comparable carpet.[7]

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[4] Trial Recording, time: 0:11; 0:41.

[5] "Inter alia" means "[a]mong other things." Black's Law Dictionary (9th ed. 2009), inter alia. Thus, the listed items are some but not all of the communications. The items are noted because they are relevant to a legal determination. *See* Conclusions of Law Nos. 5-10.

[6] Pl.'s Ex. 5. "Connie" refers to Constance Portlas, who acted for Defendant. *See* Finding of Fact No. 12.

[7] Pl.'s Ex. 5.

iii. a certified letter dated December 14, 2012, recounting and somewhat expanding the information previously provided, and stating:

> [I] need to replace the carpet and the cost exceeds the deposit balance. Therefore I will not be returning any deposit funds to you. This matter has taken time to sort out, schedule and address[.] There was no delay beyond scheduling venders for estimates and services.[8]

The Condition of the Carpet at the Beginning of the Tenancy

6. During the trial and once before the trial, Plaintiffs[9] suggested that the Carpet had some urine smell when Plaintiffs moved in.[10]

7. However, on cross-examination, Mr. Babler effectively withdrew that suggestion.

> Mr. McKenney: At the time you moved in and to the time you moved out, did you ever smell cat urine in that property?
>
> Mr. Babler: No.[11]

Condition of the Carpet at Move-Out

8. As to the condition of the Carpet at "Move-Out," Plaintiffs presented the testimony of Mr. Babler and Mr. Michael Schmidt, each of whom testified that there was no smell of urine coming from the Carpet.[12]

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[8] Pl.'s Ex. 9.

[9] With regard to the Tenancy and Security Deposit, sometimes Mr. Babler acted for Plaintiffs and sometimes Ms. Babler did so. For simplicity's sake, this decision refers to "Plaintiffs" except when the identity of the individual is significant.

[10] Trial Recording, time: 0:29 (testimony of Mr. Babler), 1:20 (testimony of Ms. Portlas, referring to a telephone conversation with Mr. Babler); Def.'s Ex. 3 (email dated November 20, 2012, from Ms. Portlas to Defendant, referring to the same telephone conversation).

[11] Trial Recording, time: 0:31.

9. Mr. Schmidt helped Plaintiffs move out of the Condominium.

10. Mr. Babler testified that Plaintiffs' cat had no history of spraying and was "litter box trained."[13]

11. Defendant's evidence of the condition of the Carpet at Move-Out came exclusively from Ms. Constance Portlas, Defendant's real estate agent.[14]

12. Living out of state, Defendant depended on Ms. Portlas to:

    a. inspect the Condominium after Move-Out and report its condition; and

    b. arrange:

        i. to have the Carpet cleaned; and

        ii. to have the Carpet replaced, when the cleaning was unsuccessful.

13. On direct examination, Ms. Portlas testified that:

    a. She inspected the Condominium on November 7, 2012. As to that inspection, she stated:

        i. "[I] walked in the door and immediately smelled cat urine—immediately."[15]

        ii. "That was in the front living room space."[16]

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[12] *Id.*, time 0:32. ("*Id.*" is shorthand for the Latin word "idem," meaning "[t]he same" and "is used in a legal citation to refer to the authority cited immediately before." Black's Law Dictionary (9th ed. 2009), id. Thus, "*id.*" means that the authority or source for the information is the same as the authority or source indicated in the immediately previous citation.)

[13] *Id.*, time 0: 29.

[14] *Id.*, time 0:49, 0:58 (testimony of Defendant, stating that her information in this matter comes from Ms. Portlas and that she (Defendant) she has not seen the Condominium since Move-Out).

[15] *Id.*, time: 1:10.

[16] *Id.*

iii. "I actually got down on my hands and knees to smell the carpet to try to determine how large of an area it was . . . ."[17]

iv. The smell in front living room began "in front of the large window; it kinda curved around toward the fireplace."[18]

v. There was also "very strong cat order in the back carpet," located "[i]n the back hallway closest."[19]

b. She advised Defendant of the problem with the Carpet, and suggested and arranged remediation—first cleaning and then replacement.

c. Cleaning did not remedy the problem.[20] To the contrary, the smell became worse.[21]

d. She obtained bids from two companies to do the replacement work. She knew of these companies because the company she works with often uses them.[22]

e. She arranged for the work to be done after Defendant selected the lower bid.

f. The replacement of the Carpet resolved the problem.

14. On cross-examination, Ms. Portlas testified that:

a. After the Move-Out, after the Carpet was cleaned, and before the Carpet was replaced:

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[17] *Id.*

[18] *Id.*, time 1:13.

[19] *Id.*, time 1:15.

[20] The cleaning cost $200.00, but Defendant is not claiming anything for the cost of cleaning. In an email dated October 16, 2012, she undertook to have the carpets cleaned. Pl.'s Ex. 3.

[21] *Id.*, time 1:11; 1:19.

[22] *Id.*, time 1:12–13.

i. She showed the Condominium to approximately five potential tenants.

ii. She received one application, but the application "did not move forward."[23]

iii. None of the potential tenants made any comment about the urine smell, but "they did not become tenants."[24]

iv. She told at least some of the prospective tenants that the new carpet was to be installed but did not explain why.[25]

b. Other than the urine problem, the Carpet was in good shape—not new but showing no signs of wear and no signs of any other problem.[26]

15. In response to questions from the Magistrate, Ms. Portlas testified that she:

a. is as an experienced realtor, knowledgeable about "staging" premises for sale or rental; and

b. would not have recommended replacing the Carpet but for the urine problem.[27]

16. The Carpet had urine problems in two locations, which could be remedied only by replacing the Carpet and the underlying pad.

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[23] *Id.*, time 1:23. Ms. Portlas initially testified that she received no applications but, on further cross-examination, acknowledged having previously indicated that she had received one application. *Id.*

[24] *Id.*, time 1:24.

[25] *Id.*, time 1:28.

[26] Ms. Portlas reiterated this information and provided further detail in response to questions from the Magistrate. *Id.*, time 1:32–35.

[27] *Id.*, time 1:32.

a. There is no reason to doubt the good faith of any of the three witnesses who testified as to the urine issue.

b. However:

   i. Mr. Schmidt:

      - had a very limited basis for his testimony;
      - did not examine the Condominium to determine whether a cat urine smell was present; and
      - when shown photographs of two urine stains on the Carpet, taken shortly after Move-Out, acknowledged that he had not noticed the stains.[28]

   ii. Ms. Portlas' testimony was detailed, clear, and convincing.

      - She had nothing to gain by noting and reporting the problem with the Carpet.
      - To the contrary, the problem resulted in her doing substantial uncompensated work.

   iii. Mr. Babler's testimony can be reconciled with the Ms. Portlas' testimony; it is not unknown for a cat trained to use the litter box to have lapses.

   iv. The testimony concerning the showing of the Condominium before the Carpet was replaced was inconclusive.

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[28] *Id.*, time 0:34.

Extent, Timing, and Cost of the Replacement

17. Given the "shotgun" floor plan of the Condominium,[29] it was not possible to replace only the portions of the Carpet affected by the urine.[30] For aesthetic reasons, it was necessary to have the same carpet laid from the front to the back of the Condominium.

18. Approximately 10 weeks passed between Move-Out and Defendant accepting a firm bid to have the Carpet replaced.

    a. Defendant lives out of state and had to rely on Ms. Portlas to handle the matter.

    b. Given Ms. Portlas' other work commitments and her schedule, her attention to this matter was necessarily intermittent. For example:

        i. Ms. Portlas first inspected the Condominium on November 7, 2012, a full week after Move-Out.[31]

        ii. Almost two weeks passed between Ms. Portlas' first inspection and her return to the Condominium to determine whether the cleaning of the Carpet had solved the urine problem.

19. Defendant paid $1764.00 to replace the Carpet.[32]

20. Defendant's replacement of the Carpet was reasonable, because:

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[29] That is, the rooms are in a straight row.

[30] *Id.*, time 1:01–02.

[31] *See* Pl.'s Ex. 4 (showing date of Move-Out); Finding of Fact No. 13-a; s*ee also* Pl. Ex.'s 9, second page, text of "Connie Portlas Nov 7 to me [Defendant]" (stating "[s]orry for the delay" in inspecting the Condominium).

[32] Def.'s Ex. 6.

a. Defendant first tried a less expensive method to resolve the problem (i.e., professional cleaning).[33]

b. When cleaning failed to resolve the problem, Defendant (through Ms. Portlas) considered bids from two reliable contractors and then selected the contractor that had submitted the lower bid.[34]

c. Replacing all of the Carpet was reasonable. Replacing only the affected areas would have been inappropriate, due to:

   i. the layout of the Condominium;[35]

   ii. the two separate areas of the Carpet affected by the cat urine;[36] and

   iii. the predictably deleterious effect a crazy-quilt pattern of carpeting would have on the marketability of the Condominium (whether for rental or sale).[37]

21. Defendant:

a. took a long time to remedy the problem with the Carpet; and

b. could have done a better job at keeping Plaintiffs advised.[38]

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[33] *See* Pl. Ex.'s 9, second page, text of "Connie Portlas Nov 7 to me [Defendant]" ("I'm going to cancel Zerorez and have a property management company our firm uses bid and clean the carpet with a neutralizer to start.").

[34] Trial Recording, time: 1:01 (Defendant on re-direct examination).

[35] *See* Finding of Fact No. 17.

[36] *See* Finding of Fact No. 16.

[37] Defendant did not provide testimony that the replacement carpet was of the same general quality as the Carpet. Given the overall testimony of Defendant and Ms. Portlas, and Plaintiffs' failure to raise this issue, the Magistrate infers that the replacement was of the same general quality.

[38] There may have been a month gap in communications. Trial Recording, time 0:58 (testimony of Defendant).

Age of the Carpet and the Question of Depreciation

22. The testimony did not establish the exact age of the Carpet. Defendant's testimony suggests that:

    a. at Move-Out the Carpet may have been seven years old; and

    b. the Condominium may have been unoccupied for two of those seven years.[39]

23. Plaintiffs' Exhibit 10, an IRS publication dealing with the depreciation of property used in rental units, lists carpeting in the five-year category.[40]

24. On that basis, Mr. Babler testified: "In the eyes of the federal government, 5-year old carpet is worthless."[41]

25. Defendant's only evidence concerning the useful life of the Carpet came from Ms. Portlas, who testified that, in her opinion, the Carpet might have lasted 15 years or more but for the urine problem.

Defendant's Claim for Attorney's Fees

26. The Lease, paragraph C provides: "Lessee shall be liable for and pay Lessor all legal costs, including reasonable attorney's fees, all filing and service fees, including collection agency fees, incurred by Lessor in any court proceedings or any collection proceedings as a result of Lessee's tenancy."

27. Defendant has incurred attorney's fees in this matter.

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[39] Trial Recording, time: 0:54–57; 1:00. Defendant testified that she had lived in the Condominium for "two to three years," had left the Condominium in November 2008. *Id.* Plaintiffs moved into the Condominium in November 2010.

[40] Pl.'s Ex. 10, page 9, second item down.

[41] Trial Recording, time: 1:31.

28. In his closing argument, Defendant's counsel stated the fees incurred before the trial, and those fees were indubitably reasonable.

Conclusions of Law

Burden of Proof

1. Minnesota law has several different rules governing the burden of proof on claims pertaining to a security deposit for a residential tenancy.[42]
    1. "In any action concerning the [security] deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of the deposit shall be on the landlord." Minn. Stat. § 504B.178, subdiv. 3(c) (2012).
    2. In contrast, Minnesota Statutes section 504B.178, subdivision 4, which provides damages for failure to timely provide a written explanation of reasons for withholding any part of a tenant's security deposit, states no rule as to burden of proof, nor does chapter 504B state a burden of proof applicable to Defendant's counterclaim for expenses incurred in excess of the amount of the Security Deposit.
2. "In an ordinary civil action the plaintiff has the burden of proving every essential element of his case, including damages by a fair preponderance of the evidence." *Wick v. Widdell*, 149 N.W.2d 20, 22 (Minn. 1967). For a counterclaim, the burden of proof is on the defendant. *Kastner v. Wermerskirschen*, 205 N.W.2d 336, 338 (Minn. 1973); *Lahr v. Kraemer*, 97 N.W. 418, 419–20 (Minn. 1903).

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[42] The term "burden of proof" pertains to: (i) which party has the burden of persuading the finder of fact (in this case, the Magistrate); and (ii) how persuasive that party must be.

3. As a result, the burden of proof is on:

    a. Defendant as to:

        i. whether she is liable for withholding the Security Deposit improperly; and

        ii. her counterclaim for damages; and

    b. Plaintiffs regarding whether Defendant is liable for failing to give proper notice of her reasons for withholding the Security Deposit.

4. When a party has the burden of proof, the party "must prove every element of a claim, including the existence of damages, by a preponderance of the evidence. . . . Speculative damages, or those based on an 'off-the-cuff estimate,' may not be recovered. Although damages need not be proved with certainty, the amount of the damages must be established to a reasonable probability." *Lawrence v. Forthun*, No. A09-543, 2009 WL 4796754, at *3 (Minn. Ct. App. Dec. 15, 2009) (citing *Hill v. Tischer*, 385 N.W.2d 329, 332 (Minn. Ct. App. 1986) and *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 920 (Minn. 1990)).[43]

Sufficiency of Defendant's Notice to Plaintiffs as to Reasons for Withholding the Security Deposit

The Notice Requirement

5. Minnesota Statutes section 504B.178, subdivision 3(a)(1) (2012) states in pertinent part:

> Every landlord shall within three weeks after termination of the tenancy . . . and after receipt of the tenant's mailing address or delivery instructions,

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[43] Although *Lawrence* is an unreported decision and therefore without precedential value, the quoted passage expresses the law felicitously and rests securely on the authority of a decision from the Minnesota Supreme Court and a reported decision from the court of appeals.

return the deposit to the tenant, with interest thereon as provided in subdivision 2, or furnish to the tenant a *written* statement showing the specific reason for the withholding of the deposit or any portion thereof.

(Emphasis added.)

6. The email sent by Defendant to Plaintiffs on November 9, 2012 complies with the time limit set by Minnesota Statutes section 504B.178, subdivision 3(a)(1). The certified letter sent by Defendant to Plaintiffs on December 14, 2012 does not.

7. Plaintiffs' claim, therefore, depends on whether an email satisfies the requirement of Minnesota Statutes section 504B.178, subdivision 3(a)(1) for "written notice."

8. Minnesota has adopted the Uniform Electronic Transactions Act ("UETA"). Minn. Stat. ch. 325L.

    a. Section 325L.08(a) states:

        If parties have agreed to conduct transactions by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt.

    b. By its terms, section 325L.08(a) applies to the Minnesota Statutes section 504B.178, subdivision 2(a).[44]

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[44] Texas has also enacted the Uniform Entity Transactions Act. Texas Business & Commerce Code section 322.007 parallels Minnesota Statutes section 325L.08, and comment 2(b) to the Texas provision states:

> Where a state statute specifies or requires written communications, that requirement can be satisfied by e-mail, but only where the parties have agreed to communicate electronically. For example, Section 93.005 of the Property Code requires the landlord to refund the security deposit to a commercial tenant who "provides notice" of the tenant's forwarding address, and Section 93.009(a) requires that this notice be in the form of a "written statement of the tenant's forwarding address." Subsection 43.008(a) should permit landlord and tenant to agree that tenant may furnish this information by e-mail and should validate the tenant's e-mailing the new address to the landlord so long as the e-mail is capable of retention by the landlord as required by that subsection.

c. Section 325L.08(a) does not require an express agreement; a pattern of conduct can establish an implied agreement. *See* UETA § 2, cmt. 1 ("Whether the parties have reached an agreement is determined by their express language and all surrounding circumstances . . . . Where [the applicable substantive] law takes account of usage and conduct in informing the terms of the parties' agreement, the usage or conduct would be relevant as 'other circumstances' included in the definition [of "agreement"] under this Act."). *See also* RESTATEMENT (SECOND) OF CONTRACTS § 19(1) ("The manifestation of assent may be made wholly or partly by written or spoken words or by other acts or by failure to act."); *Roberge v. Cambridge Co-op. Creamery Co.*, 79 N.W.2d 142, 145 (Minn. 1956) ("Mutual assent may be manifested wholly or partly in written or oral words or partly in written or oral words and partly by the conduct of the parties. It may be partly expressed in words and partly implied in fact from acts and circumstances." (footnotes omitted) (citing RESTATEMENT OF CONTRACTS § 19, the predecessor provision to RESTATEMENT (SECOND) OF CONTRACTS § 19)).

9. The pattern of conduct noted in Finding of Fact No. 3-a implies an agreement between Plaintiffs and Defendant "to conduct transactions by electronic means."

10. Thus, in this matter an email does satisfy the requirement of Minnesota Statutes section 504B.178, subdivision 3(a)(1) for "written notice," and, therefore, Defendant complied with the statute's notice requirement.

Plaintiffs Liability to Defendant for the Carpet

11. Findings of Facts Nos. 13 and 16 compel the conclusion that Plaintiffs are liable to Defendant on account of the Carpet.

12. Determining the amount of the liability, however, is complicated.

    a. Plaintiffs' assertion that the Carpet had depreciated to worthlessness is unpersuasive.[45] Depreciation for tax purposes is quite different than actual decrease in value.[46]

    b. Nonetheless, awarding Defendant the full replacement cost would over-compensate her.[47] The Carpet had been in use for approximately five years.[48] The replacement carpet was new when installed.

    c. The damage to the Carpet is a breach of contract (i.e., the lease).[49]

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[45] *See* Finding of Fact No. 24. Mr. Babler also asserted this point in Plaintiffs' closing argument.

[46] *See, e.g.*, *Glass v. Oeder*, 716 N.E.2d 413, 417 (Ind. 1999) ("[D]epreciation, although properly calculated for tax purposes, may be overstated for purposes of determining income to measure child support. In general, we would assume that allowable depreciation under methods designed to encourage investment may be overstated for child support purposes."); *State ex rel. Empire Dist. Elec. Co. v. Pub. Serv. Comm'n*, 714 S.W.2d 623, 630 (Mo. Ct. App. 1986) (discussing in the context of public utility rate setting the complicated interrelationship of tax depreciation, accounting method, and rate calculation).

[47] *See Lane v. Spurgeon*, 223 P.2d 889, 892 (Cal. Ct. App. 1950) ("[The landlords] say that [they] were entitled to have the whole of the leased property turned back to them in condition for its continued and immediate use in a going business; that time did not serve for going about in an attempt to obtain used articles comparable to those under discussion. This may be true, but while respondents were entitled to have these articles returned in the condition agreed upon they were not entitled to have new articles in their place. That would be to more than make them whole and cannot be allowed.").

[48] *See* Finding of Fact No. 22.

[49] *See* Pl.'s Ex. 8, Lease ¶ G ("All . . . damage whatsoever . . . by the misuse of the Lessee . . . shall be repaired by the Management at the sole expense of the Resident."); Lease Addendum ¶D-17 ("ALL DAMAGES to the building caused by MISUSE . . . shall be paid by the Resident."). The Lease does not define "misuse," but cat urine on a carpet surely qualifies. In any event, even "[i]ndependently of express covenant a lessee is under an obligation imposed by law to return

d. "[T]he general measure of damages for breach of contract is the amount that will place the nonbreaching party in the same situation as if the contract had been fully performed."[50]

e. In particular, "[w]hen personal property has been damaged [through breach of contract], the general rule is that the damage is to be measured by the difference in the reasonable market value immediately before and immediately after the injury to such property."[51]

f. Moreover, the determination of market value must take into account the age, condition, and extent of depreciation of the property at the moment immediately before the damage occurred.[52]

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leased property in good condition, normal wear and tear excepted." *Lane v. Spurgeon*, 223 P.2d 889, 891–92 (Cal. Ct. App. 1950) (citing 51 C.J.S., *Landlord and Tenant* § 408 (2013)).

[50] 4 MICHAEL K. STEENSON & PETER B. KNAPP, MINNESOTA PRACTICE: CIVIL JURY INSTRUCTION GUIDES § 20.60 (5th ed. 2012) (citing *Peters v. Mutual Benefit Life Ins. Co.*, 420 N.W.2d 908, 915 (Minn. Ct. App. 1988) and *Sprangers v. Interactive Technologies, Inc.*, 394 N.W.2d 498, 503–04 (Minn. Ct. App. 1986)).

[51] *Cent. Freight Lines, Inc. v. Naztec, Inc.*, 790 S.W.2d 733, 734 (Tex. App. 1990) (breach of contract claim against a shipper); *see also Sadler v. Bromberg*, 106 N.E.2d 306, 307 (Ohio Ct. App. 1950) (acknowledging that" "with respect to personal property" damaged through breach of contract, "the measure of damages is the difference in market value of the property immediately before and after the injury"). A different rule applies "[w]here the injury to the property has not resulted in its total loss and the repair of the damaged property is economically feasible." *Cent. Freight Lines*, 790 S.W.2d at 734. In that situation, "the plaintiff may elect to recover the reasonable cost of repairs." *Id.* However, in this case, "the injury to the property . . . resulted in its total loss."

[52] *Williams v. Faria*, 297 P. 78, 80 (Cal. Ct. App. 1931) (reversing a judgment in favor of a landlord for a damages tenant caused to a barn and silo because "the barn was erected 15 years preceding its destruction, and also that the silo had been standing for about 11 years, and there is not a single scintilla of testimony in the record relative to the depreciation of the silo and barn during that period of time"); *Torres v. Cosmopolitan Associates, LLC*, 910 N.Y.S.2d 409 (N.Y. App. Div. 2010) (stating that, "if plaintiff was alleging the destruction of her appliances [through a power surge, allegedly a breach of contract by the landlord], it was incumbent upon her to show that the appliances were beyond repair and to show the actual value of such property taking into account the original cost and relative newness and the extent, if any, to which it has deteriorated or depreciated through use, age, decay or otherwise" (internal quotation and citation omitted)); *Slepoy v. Kliger*, 906 N.Y.S.2d 783 (N.Y. App. Div. 2009) ("Notwithstanding that a small claims court is not bound by the rules of evidence, there must be some testimony regarding the 'quality and condition' of a possession as a basis of a claim of value, such as its original cost, age and condition at the time of the [harm]." (citations omitted)); *Kodak v. Am. Airlines*, 805 N.Y.S.2d

13. "[*M*]*arket* value . . . is the amount that 'a willing buyer . . . would pay to a willing seller.'"[53] But there is no market for used residential carpet, and thus in this context a "market value" measure of damages is impracticable.[54]

14. As a result, calculation of damages must begin with reasonable costs of replacement, adjusted to avoid over-compensating the Defendant.

    a. "Where diminution in market value is unavailable or unsatisfactory as a measure of damages, courts have routinely turned to replacement or restoration costs as the appropriate measure of damages."[55]

    b. However:

> [e]ven if the facts justify consideration of evidence other than diminution in fair market value, care must be taken, if possible, not to permit the injured party to recover more than is fair to restore him to his position prior to his loss. He should not recover a windfall. We are well aware of the danger that evidence of repair or replacement costs may lead to an excessive award unless [they are] . . . *adequately* discounted for obsolescence and inadequacy as well as for physical depreciation. Thus, evidence of repair or replacement cost must be adjusted, if possible, to take into account the condition of the injured property at the time of the injury or loss. For example, if the property has deteriorated by the time of the injury, the plaintiff should not be

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223, 226 (N.Y. App. Div. 2005) ("The measure of plaintiffs' damages for the loss of their personal property [as a result of the airline's breach of contract] is the actual value of such property taking into account the original cost and relative newness and the extent, if any, to which it has deteriorated or depreciated through use, damage, age, decay or otherwise.").

[53] *Tuscaloosa Cnty. v. Jim Thomas Forestry Consultants, Inc.*, 613 So. 2d 322, 324 (Ala. 1992) (emphasis in original) (quoting *United States v. Certain Property in the Borough of Manhattan*, 403 F.2d 800, 802 (2d Cir. 1968)).

[54] *Massachusetts Port Auth. v. Sciaba Const. Corp.*, 766 N.E.2d 118, 124 (Mass. App. Ct. 2002) (stating that, although "[g]enerally . . . the appropriate measure of damages in actions for negligent injury to property is the difference between the fair market value of the property prior to the loss and its fair market value after the loss caused by the tortfeasor," a "predicate for the application of this principle is the existence of a relevant market in which the property can be freely exchanged or sold").

[55] *Id.* at 125.

awarded an amount that would put the property into a condition substantially better than it was at the time of the injury.[56]

15. Under the approach stated in Conclusion of Law No. 14, the Magistrate must take into account that:

    a. the likely useful life of the Carpet was 20 years;[57] and

    b. of those 20 years, at Move-Out the Carpet had been in use for five years[58]—25% of the useful life.

16. Defendant is therefore entitled to 75% of the replacement cost ($1764.00)[59] (i.e., $1325.00).[60]

Interest Due on the Security Deposit

17. Minnesota Statutes section 504B.178, subdivision 2 (2012) provides that interest on the security deposit accrues at a rate of "one percent per annum . . . , computed from the first day of the next month following the full payment of the deposit to the last day of the month in which the landlord, in good faith, complies with the requirements of subdivision 3 . . . ."

18. Plaintiffs are due interest for 25 months, for a total of $ 27.60.

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[56] *Id.* at 126 (internal quotations and citations omitted; brackets and emphasis in the original).

[57] *See* Findings of Fact Nos. 14-b (testimony of Ms. Portlas stating that at Move-Out the Carpet was in good condition except for the urine problem); 25 (testimony of Ms. Portlas stating that, but for the urine problem, the Carpet could have lasted for another 15 years); and 22 (determining that, at the beginning of the Tenancy, the Carpet was likely seven years old but had been in use only for five of those seven years).

[58] *See* Finding of Fact No. 22.

[59] Finding of Fact No. 19.

[60] That this amount exactly equals the amount of the Security Deposit is coincidental. The Magistrate did not realize the concordance until his third re-reading of the penultimate version of this decision.

a. "[T]he first day of the next month following the full payment of the deposit" was most likely November 1, 2010.[61]

b. "[T]he last day of the month in which the landlord, in good faith, complie[d] with the requirements of subdivision 3" was November 30, 2012.[62]

c. The Magistrate used

i. this formula to calculates the interest: Amount x Rate x Years; and

ii. 2.083 as the number of years in 25 months.

Defendant's Claim for Attorney's Fees

19. The Lease is a "contract of adhesion"—a form agreement,[63] offered on a take-it or leave-it basis, concerning a necessity.

a. As explained by the Minnesota Court of Appeals:

> Boilerplate language alone does not create an adhesion contract. Instead, the adhesiveness of a contract depends upon factors such as the relative bargaining power of the parties, the opportunity for negotiation, the availability of the service for which the parties contracted, whether the service was a public necessity, and the business sophistication of the parties.

Interfund Corp. v. O'Byrne, 462 N.W.2d 86, 88–89 (Minn. Ct. App. 1990) (citing *Hauenstein & Bermeister, Inc. v. Met-Fab Indus., Inc.*,

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[61] There was no direct testimony as to the date Plaintiffs paid the Security Deposit, and the Lease does not resolve the question. The Lease was "entered into" on October 25, 2010, but the Tenancy did not begin until November 15, 2010. Pl.'s Ex. 8, introductory para. and para. A. Given how the parties approached their relationship, it seems most likely that the Plaintiffs paid the Security Deposit when they signed the Lease. In any event, given the interest rate, the question has *de minimus* effect.

[62] *See* Finding of Fact No. 5; Conclusion of Law No. 10.

[63] Finding of Fact No. 1.

320 N.W.2d 886, 891 (Minn.1982) and *Personalized Mktg. Serv., Inc. v. Stotler & Co.*, 447 N.W.2d 447, 452 (Minn. Ct. App. 1989), *pet. for rev. denied* (Minn. 1990)).

b. The Magistrate has found no Minnesota case directly holding that residential rental housing is a public necessity, although the much-traveled case of *McCaughtry v. City of Red Wing* seems almost to assume so. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 333–34 (Minn. 2011); *McCaughtry v. City of Red Wing*, 816 N.W.2d 636, 639–40 (Minn. Ct. App. 2012), *rev. granted* (No. A10-332) Aug. 21, 2012; *see also Schlobohm v. Spa Petite, Inc.*, 326 N.W.2d 920, 924 (Minn. 1982) (stating that an adhesion contract "is a contract generally not bargained for, but which is imposed on the public for *necessary* service on a 'take it or leave it' basis" (emphasis in original)).

c. There can be no doubt that for much of the population in the Twin Cities rental housing is a necessity. Moreover, although obviously there are multiple sources of rental housing, the Legislature has evidently determined that the market for residential housing warrants detailed regulation.[64] Minnesota Statutes chapter 504B is replete with such regulation.

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[64] The Magistrate sees this regulation as an alternative to the factor that "the services could not be obtained elsewhere." *Schlobohm v. Spa Petite, Inc.*, 326 N.W.2d 920, 925 (Minn. 1982). *See Yang v. Voyagaire Houseboats, Inc.*, 701 N.W.2d 783, 789 (Minn. 2005) ("In examining whether the service being offered is a public or essential service, we 'consider whether it is the type generally thought suitable for public regulation.'" (quoting *Schlobohm*, 326 N.W.2d at 925)).

2. Minnesota courts recognize the concept of unconscionability in leases. *Pickerign v. Pasco Mktg., Inc.*, 228 N.W.2d 562, 563 (Minn. 1975) ("In considering the validity of termination clauses in service station lease agreements and dealer agreements, the court should consider all of the circumstances in determining if the clauses may be unconscionable and unenforceable." (syllabus by the court)); *Gunhus, Grinnell v. Engelstad*, 413 N.W.2d 148, 152–53 (Minn. Ct. App. 1987) (affirming on the merits the trial court's holding *against* a claim of unconscionability, but not doubting that the unconscionability doctrine applies to leases); *Minneapolis Cmty. Dev. Agency v. Powell*, 352 N.W.2d 532, 535 (Minn. Ct. App. 1984) (reversing the trial court's rule that a provision of a residential lease was unconscionable, but not doubting that the unconscionability doctrine applies to leases).
3. Paragraph C of the Lease obligates Plaintiffs to pay Defendant's attorney's fees without regard to the success of legal merit of Defendant's assertions.[65]
4. The Magistrate has not found a Minnesota case on point, but two New York state decisions have held such provisions unconscionable.
    a. In *Weidman v. Tomaselli*, 365 N.Y.S.2d 681, 689 (N.Y. Co. Ct. 1975), the court stated:

> According to the terms of clause 32, there could be a judicial determination that there had been no default, and the attorney's fees would be nonetheless due. This is unconscionable. The effect of such clause is to permit the petitioner to exact tribute from the respondents for the petitioner's legal proceedings, successful or not. This is unconscionable.

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[65] *See* Finding of Fact No. 26.

b. In *McClelland-Metz Mgt., Inc. v. Faulk*, 384 N.Y.S.2d 919, 921 (N.Y. Dist. Ct. 1976), the court stated:

> Paragraph 39th of the lease in question states, inter alia, that summary proceedings shall be deemed commenced under paragraph 18th upon the service of any notice (such as 3 day notice or oral notice).
>
> In other words, if the landlord gives oral notice to vacate, this would commence the proceedings and the landlord would be entitled to legal fees without doing anything further. The landlord would be entitled to legal fees every time he gave notice. Furthermore, under paragraph 39th of the lease in question, the landlord would be entitled to attorneys [sic] fees whether he was successful or not in the proceeding.
>
> This the Court finds unconscionable and in the nature of a penalty.

20. Moreover, Paragraph C is at odds with Minnesota Statutes section 504B.172 (2012), which states:

> If a residential lease specifies an action, circumstances, or an extent to which a landlord, directly, or through additional rent, may recover attorney fees in an action between the landlord and tenant, the tenant is entitled to attorney fees if the tenant prevails in the same type of action, under the same circumstances, and to the same extent as specified in the lease for the landlord.

a. The phrase "if the tenant prevails" seems to presuppose a lease provision entitling the landlord to attorney's fees only if the landlord prevails.

b. Otherwise, the statute could produce absurd results. For example:

   i. The tenant prevails and, per the statute, is entitled to attorney's fees. However, per the lease, the landlord is also entitled to attorney's fees—despite the tenant having prevailed.

   ii. The statute applies to lease provisions that presuppose the landlord prevailing but does not address the far more aggressive provisions

that entitle a landlord to recover attorney's fees even when the tenant prevails.

21. The Magistrate holds that the attorney's fees provision of the Lease is unconscionable and therefore unenforceable.

    a. In this case, Defendant did prevail on the merits,[66] but courts do not determine unconscionability "as applied." The determination is made as of the time the contract is made. RESTATEMENT (SECOND) OF CONTRACTS § 208, Ills. 1, 2, 3, and 5 and cmt. g. *See also* Minn. Stat. § 336.2-302 (2012) (providing a remedy "[i]f the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made").[67]

    b. *614 Co. v. D. H. Overmyer Co., Inc.*, 211 N.W.2d 891, 894 (Minn. 1973) is not to the contrary. In that case, the landlord's legal action was clearly justified, and the Supreme Court so recognized. "The court emphasized that '[t]he deliberate violation of the lease agreement by [the lessee] warrants giving full effect to [the] remedial provisions of the lease.'" *Cheyenne Land Co. v. Wilde*, 463 N.W.2d 539, 540 (Minn. Ct. App. 1990) (brackets in original) (quoting *614 Co. v. D. H. Overmyer Co., Inc.*, 211 N.W.2d at 894).

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[66] Conclusions of Law Nos. 24–25.

[67] The cited section pertains to contracts for the sale of goods, but this part of Uniform Commercial Code "has many times been used either by analogy or because it was felt to embody a generally accepted social attitude of fairness going beyond its statutory application to sales of goods." RESTATEMENT (SECOND) OF CONTRACTS § 208, Reporter's Note to cmt. a.

c. Also, this is not a situation such as in *Cohen v. Conrad*, 124 N.W. 992, 993 (Minn. 1910), where the lessee sought to defend against a claim for rent on the grounds that other provisions of the lease—*not* sought to be enforced by the landlord—were unconscionable. Here, the landlord has invoked and relied on the provisions held unconscionable.

Amounts Due

22. On their Complaint, Plaintiffs are entitled to $ 27.60.

23. On her Counterclaim, Defendant is entitled to no recovery.

Prevailing Party as to Costs and Disbursements

24. For the purposes of Minnesota Statutes sections 491A.02, subdivision 7 and 549.04 (2012), Defendant is the prevailing party.

25. "[I]dentifying the prevailing party" requires a "pragmatic analysis." *Posey v. Fossen*, 707 N.W.2d 712, 715 (Minn. Ct. App. 2006)

a. Although Plaintiffs will have judgment in their favor, the amount of the judgment is minimal compared to the recovery they sought.

b. The two main issues in this case were whether Defendant: (i) gave proper notice of her reasons for withholding the Security Deposit; and (ii) was justified in withholding the Security Deposit. Defendant prevailed on both these issues.

c. Although Defendant did not prevail on her Counterclaim, the amount sought in the Counterclaim was far less than the amount for which Defendant was at risk on account of Plaintiffs' Complaint.

d. Although the Magistrate has declined to enforce the Lease provision on attorney's fees, that issue was collateral to the subject of this dispute.

IT IS THEREFORE ORDERED THAT:

I. On Plaintiffs' claims against Defendant, Plaintiffs are entitled to judgment against Defendant in the amount of Twenty-Seven Dollars and Sixty Cents ($ 27.60).

II. On Defendant's claims against Plaintiffs, Plaintiffs are entitled to judgment against Defendant and Defendant's Counterclaim is dismissed with prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY

Daniel S. Kleinberger
Daniel S. Kleinberger
Consensual Special Magistrate

Date: August 5, 2013

Approved for filing in the District Court

Judge of District Court

8-6-13
Date

2003 WL 23484600
Only the Westlaw citation is currently available.
District Court of Minnesota, Fourth Judicial District.
Hennepin County

Zev Oman and Kristi Oman, Individually and doing business as Oman Properties, Plaintiffs,
v.
Michelle Dunn and Carly Buchler, Defendants.

File No. CT 02-18797
|
October 29, 2003.

Findings of Fact, Conclusions of Law and Order for Judgment

***1** The above-entitled matter came on before the Honorable John L. Holahan for a court trial on September 29, 2003.

Kristin Loedrup Choi, Esq., 2520 University Avenue S.E., Suite 202, Minneapolis, MN 55414, appeared on behalf of Plaintiffs.

Robert Foster, Esq., Suite 201 Anthony Place, 2855 Anthony Lane S., St. Anthony, MN 55418, appeared on behalf of Defendants.

Having heard the arguments and considered the documents, files, and records herein, the Court makes the following as its:

FINDINGS OF FACT

1. Plaintiffs are owners of a rental property at 2916 Grand Avenue in Minneapolis, MN.

2. Defendants leased an apartment at 2916 Grand Avenue from Plaintiffs. Defendants never moved in or paid rent.

3. Plaintiffs bring this action to recover lost rents, expenses for re-renting the apartment and attorney fees. Defendants bring a counterclaim alleging that Plaintiffs made fraudulent misrepresentations which induced them to rent the premises. Defendants also allege that Plaintiffs failed to comply with the security deposit law.

LEASE AGREEMENT

4. Defendants both testified at trial. Ms. Dunn and Ms. Buchler decided they wanted to live in the Uptown area of Minneapolis after they graduated from college in the Spring of 2002. They saw an advertisement for the property at 2916 Grand and were able to look at the apartment in mid-July 2002. Both Defendants are familiar with Minneapolis and its neighborhoods.

5. Mr. and Mrs. Oman both testified at trial. Mr. Oman met the Defendants at the apartment. The Omans own many buildings on the 2900 block of Grand Avenue.

6. Defendants testified that during their first meeting with Mr. Oman they asked whether there were any problems in the neighborhood. Defendants knew that there were possible safety issues in the neighborhood.

7. Mr. Oman is knowledgeable about the neighborhood, since he owns many properties on that block and is frequently there.

8. In response to the question about whether there were any problems in the neighborhood, Mr. Oman said the only thing they had to worry about was “loud music.” There is no evidence that Mr. Oman stated that the neighborhood is crime-free, nor did he guarantee the Defendants’ safety if they rented his apartment.

9. Mr. Oman disputes that Defendants ever

asked about security or safety of the building or neighborhood. He states that had he been asked about security he would have answered honestly.

10. The evidence is disputed on this point. It is apparent that the parties did discuss some safety issues. First, Defendants asked for deadbolt locks to be installed, and Mr. Oman agreed to install them. Second, Ms. Dunn told Mr. Oman she was concerned about coming home late at night after work, and having to find parking on the street and walking home. Mr. Oman agreed that Ms. Dunn could park her car in the driveway next to the building. The parties discussed the security system that Plaintiffs installed in the apartment. Mr. Oman told Defendants that to his knowledge no tenant had ever set up the security system service. These facts show Defendants were concerned about their safety. The facts also show that Mr. Oman tried to reassure Defendants and make them feel safer. But Defendants have not established that in doing so, Mr. Oman engaged in deceptive landlord practices. Nor have they established any fraud, false pretenses, false promises, misrepresentations or misleading statements made by Mr. Oman to them.

***2** 11. There had been two safety-related incidents in the past several years that Plaintiffs had knowledge of. In December of 1999, the prior owner of the building started a fire in the building. In the summer of 2001 there had been a break-in into the apartment.

12. Mr. Oman did not consider these incidents safety concerns, since neither of the incidents were random acts and involved people who lived in the building at the time, but no longer lived there or posed any safety risk in his opinion.

13. However, when another woman came to look at the apartment, Mr. Oman steered her to a suburban "carriage house" he owns because it was a safer property.

14. Defendants decided they liked the apartment and gave Mr. Oman a check for $900 as the security deposit. The written lease was signed on July 23, 2002. The lease agreement provided that the monthly rent was $900 commending September 1, 2002 and the Defendants were to pay an additional $14 per month for water.

15. The lease provides that if the Defendants move out of the apartment before the date the lease ends, Defendants are responsible for the landlord's losses. The lease also provides that "No oral agreements have been made. This lease and its attachments and any other written agreements are the entire agreement between RESIDENT and MANAGEMENT."

16. On August 20, 2002, Defendants obtained keys to the apartment and decided to go back to the apartment to look around and take some measurements in the apartment. They accidentally triggered the security alarm and were very surprised and somewhat frightened. They tried to reach Mr. Oman, but did not get an answer by telephone. They called the security system service provider, who said that they would need a code to turn off the alarm. Finally, they found the phone number of the former tenant, Mike.

17. Through speaking with the former tenant, Defendants learned that there had been a burglary in the apartment. After considering what Mr. Oman had told them, Defendants felt that they would not be safe in the apartment and decided they did not want to live at 2916 Grand Avenue.

18. Defendants contacted the Minneapolis Police and learned that there had been numerous police calls to the unit and to other properties owned by Mr. Oman. Defendants felt Mr. Oman

had not told them the truth about the safety of the apartment building nor the neighborhood.

19. Defendants notified Plaintiffs on August 21, 2002 that they would not be taking possession of the apartment and wanted to rescind the lease agreement.

20. Ms. Dunn called the utilities on August 23, 2002 to take them out of her name.

21. Plaintiffs received no rent for September, October and November 2002. This resulted in a loss of $2,700.

22. Plaintiffs also assert they are owed late fees for September, October and November 2002 in the amount of $150.

EXPENSES FOR RE-ENTING THE UNIT

23. Kristi Oman testified that she received a telephone call from the Defendants around August 21, 2002 stating that they would not be moving into the apartment. Mrs. Oman told them that they were bound by the lease and suggested they should get a sublessor. Mrs. Oman testified that it is "10 times harder" to rent an apartment after September 1 because that is the date most people are looking for a new lease to begin.

***3** 24. Defendants did not attempt to sublease the apartment nor to mitigate Plaintiff's damages.

25. In order to re-rent the apartment, Mrs. Oman placed several rental advertisements in the Star Tribune newspaper. Each advertisement was $40.20. Mrs. Oman testified that the ad ran on September 8, September 22 and September 29. Rather than submitting a copy of the actual advertisement, Plaintiffs submitted bills from the Star Tribune as evidence of her expenditures. The bill from September 8 does not indicate which property the advertisement referenced. Therefore, Plaintiffs have only established that they ran two advertisements for this unit, for a total cost of $80.40.

26. On November 6, 2002 the apartment was rented to new tenants. However Plaintiffs had to lower the rental price to $650 per month.

27. The lower monthly rent resulted in a loss to the Plaintiffs of $2,250 over the course of the Defendant's lease term.

SECURITY DEPOSIT

28. Requirements for the withholding of a security deposit are set forth in Minn. Stat. §504B.178. The landlord must return the security deposit or send a letter with the reasons the security deposit will not be returned to the tenants within three weeks after the termination of the tenancy, provided the landlord has the tenant's new mailing address.

29. Failure to provide the notice regarding the security deposit results in the landlord being responsible to return the security deposit, plus interest and to pay a penalty equal to the amount of the security deposit, plus interest. Minn. Stat. §504B.178, subd. 4.

30. In this case, Plaintiffs had Defendants new address and the address of their attorney within days of the Defendants' notice that they would not be occupying the apartment.

31. Plaintiffs argue that Defendants' lease was still in force until August 30, 2003. Therefore they did not send the security deposit letter until mid-September, 2003. Plaintiffs argue that the new tenants, Mr. Bunnel and Mr. Jalin, are sub-lessees of Defendants. This is clearly not the case. Here, the owners executed a new lease with Mr. Bunnel and Mr. Jalin. When the new lease went into effect, Defendants retained no

rights under their lease to the property, and the lease between Plaintiffs and Defendants was terminated.

32. The security deposit letter was due to be mailed by December 21, 2002. Plaintiffs did not mail the letter until September 2003.

WATER BILL/OTHER UTILITIES

33. The lease agreement provided that Defendants would be responsible to pay $14 per month for water.

34. Defendants did not live in the apartment, used no water and paid for no water.

ATTORNEY FEES

35. Both sides have incurred substantial attorney fees in this matter. Both sides have incurred costs in litigating this matter.

CONCLUSIONS OF LAW

1. Plaintiffs and Defendants entered into a legally enforceable lease on July 23, 2002.

***4** 2. Minn. Stat. §325.68 et seq. provides a cause of action where a person is misled or deceived by a fraudulent or misleading statement regarding the sale of any merchandise. In this instance, because Defendants discovered the alleged fraudulent statement, they argue it voids the lease.

3. The Minnesota Court of Appeals, in *Love v. Amsler*, 441 N.W.2d 555 (1989), held that the Consumer Fraud act does apply to deceptive landlord practices.

4. Defendants have not proven by a preponderance of the evidence that Plaintiff committed a violation of the Prevention of Consumer Fraud Act.

5. Defendants attempted to unilaterally terminate the lease on August 21, 2002.

6. The subsequent lease signed in November 2002 is not a sublease, but a new lease.

7. After the new lease took effect, Defendants no longer had any possessory rights to the property nor any responsibilities under the lease, other than their liability to Plaintiffs for the damages suffered.

8. Defendants are obligated to pay rent for the months of September, October and November, for a total of $2,700, plus late fess of $150. Defendants are also obligated to pay the difference between their rent amount and the amount the new tenants are paying from December 2002 through August 2003, in the amount of $2,250. Plaintiff's damages also include the costs of finding new tenants, in the amount of $80.40.

9. Defendants have paid a $900 security deposit. Since they never lived in the apartment, they cannot have caused any damage to the apartment.

10. Plaintiffs did not provide notice regarding the security deposit as required in Minn. Stat. 504B.178. This notice should have been sent to Defendants by December 21, 2002. Accordingly, the penalty of $900 applies. The $200 punitive damages provision also applies.

ORDER

1. Plaintiffs are entitled to recover $5,030.40.

2. Defendants are entitled to recover $2,000.00.

3. After offsetting their respective recoveries, Plaintiff is entitled to judgment against Defendants in the amount of $3,030.40.

4. Neither party is awarded costs or disbursements incurred in this action.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: *10-29-03*

_, john L. Holahan, Judge of District Court

All Citations

Not Reported in N.W.2d, 2003 WL 23484600

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Ganesh Prashad,

Plaintiff,

vs.

Charles J. Maciosek,

Defendant.

FINDINGS OF FACT AND ORDER

File No. AC 89-13447

The above-entitled matter came on for trial before the undersigned on November 1, 1989.

Dorinda Wider, Esq., appeared on behalf of the plaintiff.

Charles Maciosek, defendant, appeared pro se.

FINDINGS OF FACT

1. That on August 30, 1984, plaintiff entered into a lease agreement with the defendant for the rental of residential property. Said agreement was on a month-to-month basis at a rate of $400.00 per month.

2. That plaintiff gave defendant $400.00 as a security deposit for the premises at the time he rented the property.

3. That the defendant sold the premises on a contract for deed agreement to Crandall-Hansen Real Estate Investments on December 20, 1984.

4. That plaintiff's security deposit was transferred by defendant to Crandall-Hansen Real Estate Investments in December 1984.

5. That the contract for deed agreement was cancelled by defendant in May 1987.

6. That on July 13, 1987, the ownership of the building reverted back to the defendant.

7. That Crandall-Hansen Real Estate Investments did not transfer plaintiff's security deposit back to the defendant at the time the contract for deed was cancelled.

8. That on July 9, 1987, the plaintiff gave notice to defendant's agent that he would vacate his apartment on August 15, 1987.

9. That plaintiff paid rent for the entire month of August 1987.

10 That the notice period is one full month under the terms of the lease agreement.

11. That plaintiff has not shown that he is entitled to a refund for one-half of the August rent pursuant to an oral agreement between the parties.

12. That the defendant notified the plaintiff by letter dated September 14, 1987 that Charles Crandall was in possession of the plaintiff's security deposit and that a claim should be made to him for its return.

CONCLUSIONS OF LAW

1. That defendant is liable to the plaintiff for the return of his security deposit despite the fact that Crandall-Hansen Real Estate Investments did not transfer the security deposit to the plaintiff pursuant to Minn. Stat. 504.20 subd. 5 because the defendant has all of the rights and obligations of Crandall-Hansen Real Estate Investments pursuant to Minn. Stat. 504.20 subd. 6.

2. That defendant thus owes the plaintiff $400.00, plus

interest calculated at the legal rate of 5½% from August 30, 1984.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Sean J. Rice
Judge of District Court

Dated this 6th day of November, 1989.

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF HENNEPIN

89 FEB 21 PM 1:51

FOURTH JUDICIAL DISTRICT

Patricia Schladweiler,

BY DEPUTY
HENN CO DISTRICT
COURT ADMINISTRATOR

Plaintiff,

RECEIVED
FEB 22 89
Legal Aid Society

vs.

Mark Kallenbach,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

File No. AC 88-14279

The above matter came on for trial before the undersigned on October 26, 1988.

Richard Fuller, Esq. appeared as counsel for Plaintiff.

Mark Kallenbach, Esq. appeared representing himself.

Based on all the files, records and proceedings, and on evidence adduced at trial, this Court makes the following Findings of Fact, Conclusions of Law, and Order for Judgment:

FINDINGS OF FACT

1. Plaintiff began her tenancy in October of 1986, paying $250.00 as a security deposit to the then landlord, Martin. She occupied Apt. 6 at 530 Knox Avenue North, Minneapolis.

2. When Plaintiff commenced her tenancy the premises there were a number of repairs needed. Plaintiff left the premises in a condition similar to that in which she found it.

3. When Defendant took over ownership of the premises, Plaintiff was already a tenant. Defendant did not receive from his predecessor security deposits from current tenants.

4. In October 1987 the water to the building was disconnected for about one week.

5. Plaintiff terminated her tenancy in October 1987, shortly after the water was disconnected.

6. Plaintiff notified Defendant of her new address in writing.

7. Defendant did not return Plaintiff's security deposit, nor did he provide her with a written statement as to the reason for withholding her deposit.

CONCLUSIONS OF LAW

1. Defendant is liable to Plaintiff for return of her security deposit, even though the former owner of the property did not comply with §504.20 Subd. 5 by transferring deposits to Defendant. Pursuant to §504.20 Subd. 6, Defendant takes on all the obligations of the landlord with respect to security deposits.

2. Plaintiff shall have and recover of Defendant $250.00 as her security deposit, plus simple interest at 5½ percent from November 1, 1986 to present, plus damages in the amount of $250.00 plus interest.

3. Plaintiff shall have and recover of Defendant $68.75 in rent abatement for the week in October 1987 when her apartment was without water.

ORDER FOR JUDGMENT

Let the attached memorandum be incorporated herein as if fully set forth at this point.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Charles A. Porter, Jr.
Judge of District Court

Dated: Feb 17, 1989

MEMORANDUM

The question on which the resolution of this matter turns is one of statutory construction of Minn. State. §504.20 Subds. 3, 5 and 6. Subd. 3 details requirements for landlords on the return and/or withholding of security deposits. It places on the landlord the burden of proving the reason for any withholding. Subd. 5 requires a landlord, when terminating her or his interest in the property, to transfer security deposits to the new owner or to return them to the tenants. Subd. 6 states that once the property is transferred, "The landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to such deposit."

In this instance, Plaintiff was entitled to a refund of her deposit, or written notice of reasons for withholding pursuant ot §504.20 subd. 3. She brought an action against her landlord for return of her deposit. Certainly she could have brought her action against her former as well as her present landlord, had she known the funds had not been transfered to the new owner. She did not have that knowledge, nor should she be required to assume that one or the other of her landlords had failed to properly discharge their obligations in the transfer of the property.

The ambiguity in the statute exists in Subds. 5 and 6, Subd. 5 placing on the landlord the obligation to transfer the deposits to the new owner or to return them to the tenants, and Subd. 6 placing on the new owner all the rights

and obligations of the landlord. In a situation such as this, where the landlord has not taken it upon himself during the transfer of the property to carry out his obligation under Subd. 5, the new owner, it seems to this Court, should reasonably be expected to foresee the need to comply with Subd. 3 and should ensure that the transfer of the property includes arrangements for the transfer or return of existing security deposits. Subd. 6 places on the new owner all the rights and obligations the former owner had, and indeed, the rest of the statute, drafted for the protection of tenants, uses the word "landlord" without distinguishing between former and current holders of the property.

Defendant is therefore liable to Plaintiff for the return of her security deposit under Minn. Stat. §504.20 Subds. 3 and 6.

CAP

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

APPELLATE PANEL D

Rita Neadeau,

Plaintiff-Appellant,

vs.

Steve Meldahl,

Defendant-Respondent.

ORDER

DC File No. 758638
MC File No. 413945

The above-entitled matter, which is an appeal from a judgment of the Hennepin County Municipal Court, came on for hearing before the undersigned, sitting as an appeal panel of the District Court, on November 1, 1979.

Thomas Vasaly, Esq., appeared on behalf of plaintiff-appellant, Rita Naedeau. Thomas F. Cross, Jr., Esq., appeared on behalf of defendant-respondent, Steve Meldahl.

NOW, THEREFORE, the court having considered the arguments and memoranda of counsel, being fully advised in the premises, and based upon the record of the proceedings below, and all the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

1) The decision of the Municipal Court concluding that defendant is not liable for the statutory penalty provided by Minn. Stat. 504.10, subd. 3, is reversed.

2) The decision of the Municipal Court is in all other respects affirmed.

3) This matter is remanded to the Municipal Court for entry of judgment consistent with this opinion.

4) The attached memorandum be made a part hereof.

Dated: December 13th 1979.

BY THE COURT:

The Honorable Harold Kalina

The Honorable Diana E. Murphy

The Honorable James H. Johnston

MEMORANDUM

Plaintiff has appealed from a judgment in Hennepin County Municipal Court where this matter was tried before the Honorable Peter J. Lindberg, sitting without a jury.[1] Judge Lindberg awarded plaintiff $50.00 with interest, for the balance due her for overpayment of a gas bill, and awarded defendant the amount of a security deposit, $150.00, for his cost of removing debris, cleaning and repairing.

This case involves claims arising out of plaintiff's tenancy in a building owned by defendant. Plaintiff-appellant claims that she is entitled to recovery of her security deposit and statutory penalties pursuant to Minn. Stat. 504.20, subds. 4 and 7, as well as punitive damages for the landlord's role in causing her to pay for gas service for another apartment.

Minn. Stat. 504.20, subd. 4, provides that any landlord who fails to provide a written statement within 3 weeks of ter-

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[1] Plaintiff initially filed a claim against the defendant in Conciliation Court seeking recovery of her security deposit, statutory and punitive damages, and $50.00 deducted from her utility reimbursement. The Conciliation Court referee granted judgment in favor of the defendant, and plaintiff removed the matter to Municipal Court for a trial de novo pursuant to Minn. Stat. 488A.17. Following a hearing on plaintiff's motion for partial summary judgment and defendant's motion to add a counterclaim, the Honorable Henry W. McCarr, Judge of Municipal Court, granted plaintiff partial summary judgment concluding in his Conclusions of Law that:

> Pursuant to Minnesota Statutes, Section 504.20, a landlord's successor in interest is responsible for a security deposit even if he never received the deposit from his predecessor in interest.
>
> Defendant is liable to plaintiff for the return of plaintiff's security deposit in the amount of $150.00 plus interest as provided by Minnesota Statute, Section 504.20, Subdivision 2, subject to such set-offs provided by Minnesota Statute, Section 504.20, Subdivision 3, as defendant is able to prove.

The parties stipulated that plaintiff's motion to amend her complaint and defendant's motion to add a counterclaim be granted. Plaintiff sought a penalty pursuant to Minn. Stat. 504.20, subd. 3 for defendant's failure to provide a written explanation for defendant's retention of plaintiff's security deposit, and defendant counterclaimed for $250.00 in damages, alleging that plaintiff had left an enormous amount of trash and that the premises were left in such a state of disrepair as to render the premises unlivable.

mination of the tenancy and receipt of the tenant's mailing address or delivery instructions, as required by Minn. Stat. 504.20, subd. 3, shall be liable to the tenant for an amount equal to the portion of the deposit withheld and interest thereon as provided in subdivision 2, as a penalty, in addition to the portion of the deposit wrongfully withheld by the landlord and interest thereon. Minn. Stat. 504.20, subd. 7, provides that a landlord shall be subject to punitive damages, not to exceed $200.00 in addition to the damages provided by subdivision 4, for the bad faith retention of the deposit.

The undisputed facts indicate that plaintiff rented the lower portion of a duplex located at 3029 Park Ave. So. and paid the former owner of the building $150.00 as a security deposit on December 1, 1975. During the course of plaintiff's tenancy, the building changed ownership several times and was ultimately purchased by the defendant on August 31, 1977. Defendant did not receive plaintiff's security deposit from his predecessor in interest, and plaintiff was not notified as to the disposition of her deposit as required by Minn. Stat. 504.20, subds. 5 and 6.[2]

Plaintiff rented the premises for $250.00 per month which included the cost of utilities. In December of 1977, defendant informed plaintiff that effective January 1, 1978, plaintiff would pay her own heat and, in compensation therefor, defendant would reduce her rent $40.00 per month. Plaintiff transferred defendant's Minnegasco account to her name, but was not aware that the account covered both the upper and lower duplex units. Plaintiff received a gas bill totalling $107.25 for the period between January 6 and March 10, 1978, after which she contacted Legal Aid Society of Minnesota, Inc. (hereinafter Legal Aid). A Legal Aid legal assis-

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[2] See Judge McCarr's Order for partial summary judgment, Findings of Fact Nos. 4 and 5. Judge Lindberg's Findings of Fact, No. 5.

tant contacted defendant who said that the second meter had been installed in December of 1977, but that if plaintiff was paying for gas beyond her usage, he would reimburse her. The evidence is unclear as to when the second meter was actually installed, but Minnegasco's records reflect that there had been no consumption recorded on the second floor meter until its reading on April 6, 1978.

On May 31, 1978, plaintiff vacated the premises pursuant to a notice to vacate. Plaintiff did not give defendant a mailing address. On June 12, 1978, defendant and plaintiff's agent sent letters to each other which presumably crossed in the mail. Defendant addressed his letter to plaintiff's former address at his rental premises even though he knew she no longer lived there and had been represented by Legal Aid. Defendant's letter informed plaintiff that,

> I never received a transfer of your damage deposit, if indeed you ever paid one. Therefore you will receive no money from me. In fact, I cannot believe the mess that you left behind the building which I will have to haul away at my expense.

Legal Aid's letter to defendant of the same date stated that,

> Pursuant to Minnesota Statutes 504.20, the delivery instructions are as follows. . .

Defendant testified that he received the letter but did not do anything about it because he had already written plaintiff prior to receiving the letter.

Legal Aid wrote defendant on July 12, 1978, regarding plaintiff's utility bill covering the period between January 6 and March 10, 1978. On July 18, 1978, defendant mailed Legal Aid $193.14 as reimbursement for the utility overcharge and in an accompanying letter stated that he deducted $50 from the amount of the overcharge for "rear yard cleanup". Apparently, defendant had agreed that plaintiff could leave some trash at the rear of the premises when moving, but he had not intended to authorize the amount of trash involved.

There are two different standards of review this court must apply in its appellate capacity, depending upon whether factual findings or legal conclusions are involved. The trial court's findings of fact will not be reversed on appeal unless they are manifestly contrary to the evidence. Witzig v. Philips, 274 Minn. 406, 410, 144 N.W.2d 266 (1966). A reviewing court need not defer to legal conclusions drawn by the trial court, however, but must determine whether the trial court's conclusions of law are correct. Durfee v. Rod Baxter Imports, Inc., 262 N.W. 2d 349 (Minn. 1977).

Appellant claims on appeal that defendant failed to prove he was entitled to deduct any money from her security deposit. Minn. Stat. 504.20, subd. 3, provides that a landlord may withhold from the deposit amounts reasonably necessary to "restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted". Judge Lindberg made the following factual finding regarding this issue

> Subsequent to plaintiff's vacation of said premises defendant was required to clean and implement repairs to the premises and to remove rubbish and other discarded property owned by plaintiff, all to defendant's expense.

Judge Lindberg concluded in his Conclusions of Law that "defendant should have judgment against plaintiff in the amount of the security deposit herein, $150.00, as and for his cost for removal of debris, cleaning and repairs done to the premises".

Plaintiff argues that this part of the judgment should be overturned because there were no findings of any specific costs, and there was no evidence that damage to the premises was caused by plaintiff, and defendant had originally only mentioned the backyard trash as an expense. Plaintiff's remedy for any failure to provide complete and proper notice as required by Minn. Stat. 504.20, subd. 3, is the statutory penalty in subd. 4. Judge Lindberg's factual finding is supported by the evidence and is therefore affirmed.

Appellant also claims that she is entitled to the statutory penalty provided by Minn. Stat. 504.20, subd. 4, for defendant's

failure to properly notify her pursuant to Minn. Stat. 504.20, subd. 3. Minn. Stat. 504.20, subd. 3 provides:

> Every landlord shall, within three weeks after termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the deposit to the tenant, with interest thereon as above provided, or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof. It shall be sufficient compliance with the time requirement of this subdivision if the deposit or written statement required by this subdivision is placed in the United States mail as first class mail, postage prepaid, in an envelope with a proper return address, correctly addressed according to the mailing address or delivery instructions furnished by the tenant, within the time required by this subdivision.

The trial court's conclusion that defendant substantially complied with Minn. Stat. 504.20, thus in effect determining that the defendant was not liable to the plaintiff for the statutory penalty in Minn. Stat. 504.20, subd. 4, is erroneous. Although plaintiff did not furnish defendant a mailing address, her agent provided delivery instructions pursuant to Minn. Stat. 504.20, subd. 3. That statute provides a standard for communication of the written statement of withholding or return of the security deposit. It sets forth alternative means. The landlord must return the deposit or mail the withholding statement, correctly addressed according to either 1) the mailing address or 2) the delivery instructions furnished by the tenant within three weeks after termination of the tenancy and receipt of the tenant's mailing address or delivery instructions. Defendant received plaintiff's delivery instructions, but neither defendant's letters to plaintiff or her agent satisfy the statute. Defendant's letter of June 12, 1978, was not correctly addressed. Defendant's letter of July 18, 1976, was outside the three week requirement of Minn. Stat. 504.20, subd. 3, and did not relate to plaintiff's security deposit.

When a tenant supplies delivery instructions pursuant to Minn. Stat. 504.20, subd. 3, a landlord may not ignore them.

The policy behind the legislation would be defeated by this interpretation. The trial court's conclusion that defendant substantially complied with Minn. Stat. 504.20 and that he could avoid the statutory penalty is erroneous as a matter of law and is therefore reversed. Pursuant to Minn. Stat. 504.20, subd. 4, defendant is liable to plaintiff for damages in an amount equal to the portion of the deposit withheld, i.e., $150.00, plus interest as computed in §504.20, subd. 2.

Appellant raises a third issue as to whether she is entitled to punitive damages pursuant to Minn. Stat. 504.20, subd. 7. Minn. Stat. 504.20, subd. 7, provides that if a landlord fails to comply with Minn. Stat. 504.20, subd. 3, his retention of the deposit shall be presumed to be in bad faith, subjecting the landlord to punitive damages not to exceed $200, unless he returns the deposit within two weeks after the commencement of any action to recover the deposit. Although the trial court did not make a finding as to whether defendant's retention of the security deposit was in bad faith, its findings that defendant did not receive plaintiff's security deposit from his successor in interest, that defendant informed plaintiff verbally and by letter that he would incur expenses as a result of her tenancy, and that he did, in fact incur such expenses, together with its conclusion that defendant had substantially complied with the statute, infer a finding of lack of bad faith which is supported by the evidence and should therefore be affirmed.

Plaintiff makes a final claim that she is entitled to punitive damages for defendant's failure to inform her that she was being charged for gas to both the upstairs and downstairs apartments. Minneapolis Code of Ordinance §244.580 provides that:

> Prior to leasing, the owner shall notify the tenant in writing of any metered utility service paid exclusively by said tenant which serves any area not leased and controlled by the tenant.

The trial court found that plaintiff was charged for gas utility service for an area not leased or controlled by her in the sum of

$242.14 and that defendant reimbursed plaintiff only $193.14 of the excess charge. Judge Lindberg concluded that defendant's actions in installing separate gas meters were not done in a fraudulent manner. The factual findings and legal conclusions of the trial court as to plaintiff's utility overcharge claim are supported by the evidence and are not erroneous as a matter of law and are therefore affirmed. Moreover, whether plaintiff should be awarded punitive damates is a matter reserved for the trier of fact [cf, Sweeney v. Meyers, 199 Minn. 21, 24, 270 N.W. 906 (1937)], and the trial court will not be reversed on appeal unless it clearly abused its discretion.

1975 Minn. Laws ch. 411, s. 9 read:

> Subd. 7a. No tenant may withhold payment of all or any portion of rent for the last payment period of a residential rental agreement, except an oral or written month to month residential rental agreement concerning which neither the tenant nor landlord has served a notice to quit, on the grounds that the deposit should serve as payment for the rent. Withholding all or any portion of rent for the last payment period of the residential rental agreement creates a rebuttable presumption that the tenant withheld the last payment on the grounds that the deposit should serve as payment for the rent. Violation of this subdivision after written demand and notice of this subdivision shall subject the tenant to damages of twice the deposit and forfeiture of any interest due on the deposit in addition to actual damages.

The Legislative History of 1977 Minn. Laws ch. 280, s. 5, HF 829 follows.

[1] As introduced: [There was no section 5]

[2] Amended by House Committee on Commerce and Economic Development on April 14, 1977 as follows.

> Add a new section [5] to read:
>
> Subd. 7a. No tenant may withhold payment of all or any portion of rent for the last payment period of a residential rental agreement, except an oral or written month to month residential rental agreement concerning which neither the tenant nor landlord has served a notice to quit, on the grounds that such deposit should serve as payment for the rent. Withholding all or any portion of rent for the last payment period of the residential rental agreement creates a rebuttable presumption that the tenant withheld the last payment on the grounds that such deposit should serve as payment for the rent. ~~Violation of this subdivision after written demand and notice of this subdivision shall subject the tenant to damages of twice the deposit and forfeiture of any interest due on the deposit in addition to actual damages.~~ Any tenant who violates this subdivision after written demand and notice of this subdivision shall be liable to the landlord for damages in an amount equal to the deposit as provided in subdivision 2, as a penalty, in addition to the amount of rent withheld by the tenant in violation of this subdivision.

[3] Further amended by Senate Committee on Judiciary on May 4, 1977 as follows:

Page 4, line 10 after "equal to the" insert "portion of the" and after "deposit" insert "which the landlord is entitled to withhold under section 2 of this act other than to remedy the tenant's default in the payment of rent"

[4] This language survived into the final bill and act with two very minor grammatical changes (changing "such" to "the") and one codification -type change (changing "section 2 of this act" to "subdivision 3 of this act").

[5] So as signed by the governor 1977 Minn. Laws ch. 280, s. 5 read:

Sec. 5. Minnesota Statutes 1976, Section 504.20, Subdivision 7a, is amended to read:

Subd. 7a. No tenant may withhold payment of all or any portion of rent for the last payment period of a residential rental agreement, except an oral or written month to month residential rental agreement concerning which neither the tenant nor landlord has served a notice to quit, on the grounds that ~~such~~ the deposit should serve as payment for the rent. Withholding all or any portion of rent for the last payment period of the residential rental agreement creates a rebuttable presumption that the tenant withheld the last payment on the grounds that ~~such~~ the deposit should serve as payment for the rent. ~~Violation of this subdivision after written demand and notice of this subdivision shall subject the tenant to damages of twice the deposit and forfeiture of any interest due on the deposit in addition to actual damages.~~ Any tenant who violates this subdivision after written demand and notice of this subdivision shall be liable to the landlord for damages in an amount equal to the portion of the deposit which the landlord is entitled to withhold under subdivision 3 of this act other than to remedy the tenant's default in the payment of rent as provided in subdivision 2, as a penalty, in addition to the amount of rent withheld by the tenant in violation of this subdivision.

STATE OF MINNESOTA

COUNTY OF CHISAGO

DISTRICT COURT

TENTH JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

State of Minnesota by its Attorney General, Mike Hatch,

Plaintiff,

vs.

Marge Alden, individually, d/b/a Franconia Associates, and d/b/a Croix Management Company,

Defendant(s).

Court File No. _____

COMPLAINT

The State of Minnesota, by its Attorney General, Mike Hatch, alleges as follows:

INTRODUCTION AND PARTIES

1. Marge Alden, individually, d/b/a Franconia Associates, and d/b/a Croix Management Company (collectively "Alden") has violated Minnesota consumer protection laws by charging elderly and disabled, low income, Minnesota consumers living at Riverfront and Sunrise River Apartments money not owed pursuant to the terms of their leases and prohibited by law. Alden has intentionally deceived and intimidated her tenants by fraudulently representing that additional amounts were owed as contributions to rent, adding late fees and threatening eviction for nonpayment when, in fact, such amounts were not owed. Alden also retained payment for amounts not owed from the security deposits of tenants who moved out. As a result, Alden has violated Minnesota consumer protection statutes, Minn. Stat. §§ 325D.44, 325F.69 and 504B.178.

2. Mike Hatch, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. Chapter 8, including Minn. Stat. §§ 8.01, 8.31, 8.32 and under Minn. Stat. § 325F.70 and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens, to enforce Minnesota's consumer protection laws.

3. Marge Alden is an individual who resides at 19001 Franconia Trail, Shafer, Minnesota 55074. She operates under the assumed names of Franconia Associates and Croix Management Company, both of which are located at 412 Bench Street, Taylors Falls, Minnesota 55084. Franconia Associates was a partnership between Marge Alden and George Vitalis. Ms. Alden was the managing partner. Currently, Franconia Associates is nothing more than an assumed name for Ms. Alden. Mr. Vitalis has passed away and, in fact, his heirs are currently suing to force Ms. Alden to pay them for his interest pursuant to their partnership agreement. Through the partnership, Marge Alden owns a number of apartment buildings including: Riverfront Apartments, located at 521 River Street, Taylors Falls, Minnesota 55084, and Sunrise River Apartments, located at 5250 - 270th Street, Wyoming, Minnesota 55092. Both apartments, along with others in rural Minnesota, are managed by Croix Management Company, a sole proprietorship owned entirely by Marge Alden.

JURISDICTION

4. This Court has personal jurisdiction over the defendants and, pursuant to Minn. Stat. §§ 8.31, 8.32, subd. 2(a), 325D.45, and 325F.70, jurisdiction over the subject matter of this action.

VENUE

5. Venue in Chisago County is proper under Minn. Stat. § 542.09 because the cause of action arose, in part, in Chisago County and Marge Alden resides in Chisago County.

FACTS

6. Riverfront Apartments ("Riverfront") and Sunrise River Apartments ("Sunrise"), the two apartment buildings at the heart of this lawsuit, are home to a number of low income, elderly or disabled individuals. When the tenants entered their leases, the buildings were part of a federal program administered by the Rural Housing Services agency within the Office of Rural Development of the United States Department of Agriculture ("Rural Development") to provide housing for such individuals below a certain income level. At that time, there were thirty six elderly or disabled tenants living in the two buildings, all of whom had incomes substantially below the cutoff amount. In fact, the average annual income at Riverfront was $11,858 and the average at Sunrise was $17,631.

7. Franconia Associates had signed a one year lease with each of the tenants that specified the monthly amount of tenant's contribution to rent. Attached hereto as Exhibit A is an example of the Lease used for both properties. The tenant contribution to rent was calculated based on each tenant's income and the government paid rental assistance to Franconia Associates for the rest of the tenant's rent. *See* Ex. A, ¶ 5 on page 2.

8. The lease also provided that, if the tenant paid for their utilities directly to the utility companies, they would receive a deduction from the gross tenant contribution in the form of a utility allowance. *See* Ex. A, ¶ 2 entitled "Tenant Contribution" and ¶ 7 on page 2. All 20 tenants at Riverfront and all 16 tenants at Sunrise paid their own utilities. Therefore, the net tenant contribution to rent for each tenant was the gross tenant contribution minus the utility allowance. *See id.* (providing "a Utility Allowance of $32 [would] be deducted from [the tenant's] gross monthly contribution," and resulting in a net monthly rent charge to the tenant).

9. While Franconia Associates was in the government program, it was receiving federally subsidized Multi-Family Housing Loans for mortgages on both the rental properties and rental assistance for all thirty six tenants. It required, however, compliance with the federal regulations that mandated management of the properties, including all lease terms. Franconia Associates, acting through Marge Alden, failed to manage the properties as required by the federal regulations. As a result, Rural Development declared Franconia Associates in default on both of the subsidized loans and initiated foreclosure on the mortgages and it lost its federal subsidies.

10. The leases were designed to protect tenants against property owners who left the program and tried to force tenants to pay the amount lost in rental assistance. *See* Ex. A, ¶ 2 on page 1, entitled "Tenant Contribution." In fact, the leases specifically provided that "[n]o increase in Tenant Contribution to rent will take place due to prepayment of the [Multi-Family Housing] loan during the term of this Lease."

11. When the loans accelerated, Alden was allowed to prepay them. This occurred on July 25, 2003, with respect to the loan for Sunrise and in October 20, 2003, with respect to the loan for Riverfront. As a condition to prepayment, Rural Development required Franconia Associates to enter into 180-day lease extensions with all tenants who had leases that expired in less than 180 days from the date of loan repayment to allow the low income, elderly and disabled tenants time to find alternative subsidized housing before Alden increased their contribution to rent.

12. Alden demanded that all of her tenants sign the 180-day lease extensions, even those who had leases that extended beyond the 180 days. The lease extensions referred solely to the "gross tenant contribution," neglecting to mention the utility allowance or the resulting net

tenant contribution - the tenants' sole financial responsibility to Franconia Associates pursuant to their leases. Alden falsely claimed that, upon execution of the 180-day lease extensions, the Riverfront and Sunrise tenants had to pay Alden the gross contribution to rent, rather the net as provided for in their leases. Alden claimed that Rural Development had approved this rental increase. This was not true.

13. Alden yelled at, threatened and intimidated some of the elderly and disabled tenants. The majority of tenants paid the illegal increase. Alden dunned those who did not pay, adding late fees and threatening eviction for nonpayment.

14. When tenants moved out of their homes at Riverfront and Sunrise due to her fraudulent and threatening conduct and provided Alden with mailing or delivery instructions for return of their security deposits, Alden wrongfully withheld the illegal rent increase from their security deposits.

COUNT I: UNIFORM DECEPTIVE TRADE PRACTICES

15. Plaintiff re-alleges all prior paragraphs of this Complaint.

16. Minn. Stat. § 325D.44, subdivision 1 provides, in part, that:

> Subdivision 1. A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:
>
> (3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;

17. Alden, in the course of her business, has caused a likelihood of confusion or of misunderstanding among the tenants at Riverfront and Sunrise River Apartments that the Office of Rural Development of the United States Department of Agriculture ("Rural Development") certified increases to their contribution to rent when Rural Development had not certified any

increase. Alden's conduct constitutes multiple, separate violations of Minn. Stat. § 325D.44, subdivision 1, (3).

18. Minn. Stat. § 325D.44, subdivision 1 provides, in part, that:

> Subdivision 1. A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:
>
> (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

19. By billing, dunning, adding late fees to bills and threatening eviction of tenants for the gross tenant contribution to rent, Alden, in the course of her business, has represented to the tenants at Riverfront and Sunrise River Apartments that the gross tenant contribution to rent was owed, when it was not. Alden's conduct constitutes multiple, separate violations of Minn. Stat. § 325D.44, subdivision 1, (5).

20. Minn. Stat. § 325D.44, subdivision 1 provides, in part, that:

> Subdivision 1. A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:
>
> (13) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

21. By billing, dunning, adding late fees to bills and threatening eviction of tenants for the gross tenant contribution to rent when only the net was owed, Alden, in the course of her business, has engaged in conduct which creates a likelihood of confusion or of misunderstanding as to the amount owed by tenants at Riverfront and Sunrise River Apartments for their contribution to rent. Alden's conduct constitutes multiple, separate violations of Minn. Stat. § 325D.44, subdivision 1, (13).

COUNT II: CONSUMER FRAUD

22. Plaintiff re-alleges all prior paragraphs of this Complaint.

23. Minn. Stat. § 325F.69, subdivision 1 provides that:

> The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoinable as provided herein.

24.. By billing, dunning, adding late fees to bills and threatening eviction of tenants for the gross tenant contribution to rent, Alden has fraudulently represented to tenants at Riverfront and Sunrise River Apartments that an increase to their contribution to rent was owed, when it was not owed. Alden's conduct described above constitutes multiple, separate violations of Minn. Stat. § 325F.69, subdivision 1.

CONSUMER III: UNLAWFUL WITHHOLDING OF SECURITY DEPOSITS

25. Plaintiff re-alleges all prior paragraphs of this Complaint.

26. Minn. Stat. § 504B.178, subdivision 3 provides, in part, that:

(a) Every landlord shall:

(1) within three weeks after termination of the tenancy;

****

and after receipt of the tenant's mailing address or delivery instructions, return the deposit to the tenant, with interest thereon as provided in subdivision 2, or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof.

27. After receipt of tenants' mailing address or delivery instructions, Alden refused to return portions of the security deposits of former tenants of Riverfront and Sunrise River Apartments, claiming such portions as payments for amounts not owed pursuant to their leases. Alden's conduct constitutes multiple, separate violations of Minn. Stat. § 504B.178.

ADDITIONAL CIVIL PENALTIES FOR DECEPTIVE ACTS PERPETRATED AGAINST SENIOR CITIZENS OR HANDICAPPED PERSONS

28. Minn. Stat. § 325F.71, subdivision 2 provides, in part, that:

Subdivision 2. Supplemental civil penalty.

(a) In addition to any liability for a civil penalty pursuant to Minnesota Statutes [§§ 325D.44] regarding deceptive trade practices... and [325F.69], regarding consumer fraud; a person who engages in any conduct prohibited by those statutes, and whose conduct is perpetrated against one or more senior citizens or handicapped persons, is liable for an additional civil penalty not to exceed $10,000 for each violation, if one or more of the factors in paragraph (b) are present.

(b) In determining whether to impose a civil penalty pursuant to paragraph (a), and the amount of the penalty, the court shall consider, in addition to other appropriate factors, the extent to which one or more of the following factors are present:

(1) whether the defendant knew or should have known that the defendant's conduct was directed to one or more senior citizens or handicapped persons;

(2) whether the defendant's conduct caused senior citizens or handicapped persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement or for personal or family care and maintenance; substantial loss of payments received under a pension or retirement plan or a government benefits program; or assets essential to the health or welfare of the senior citizen or handicapped person;

(3) whether one or more senior citizens or handicapped persons are more vulnerable to the defendant's conduct than other members of the public because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually suffered physical, emotional, or economic damage resulting from the defendant's conduct...

29. Minn. Stat. § 325F.71, subdivision 1 defines "Senior citizen" as "a person who is 62 years of age or older."

30. Alden was aware that all of the tenants against whom she was perpetrating her violations of Minn. Stat. §§ 325D.44 and 325F.69 were either elderly or disabled, her actions threatened and may have caused the loss of the tenants' primary residence and governmental benefits. Further, one or more of the tenants was more vulnerable to her conduct than other members of the public because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and one or more of the tenants actually suffered physical, emotional, or economic damage resulting from Alden's conduct. Alden's conduct constitutes multiple, separate violations of Minn. Stat. § 325F.71.

RELIEF

WHEREFORE, Plaintiff, the State of Minnesota, by its Attorney General, Mike Hatch, respectfully asks this Court to award judgment against defendants Marge Alden, individually, d/b/a Franconia Associates, and d/b/a Croix Management Company (collectively "Alden"):

I. Declaring that Alden's acts described in this Complaint constitute multiple, separate violations of Minn. Stat. §§ 325D.44, subd. 1, 325F.69, subd. 1, and 504B.178, subd. 3 and 7.

II. Enjoining Alden, and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert of participation with it, from:

A. representing to tenants of Sunrise River and Riverfront Apartments that amounts not owed pursuant to their leases in place as of the date of prepayment are owed;

B. collecting payment from tenants of Sunrise River and Riverfront Apartments for amounts not owed pursuant to their leases in place as of the date of prepayment until such leases expire;

C. billing, dunning, threatening eviction, retaining portions of tenants' security deposits or reporting to credit or housing reporting agencies that debts are unpaid with respect to any tenant of Sunrise River and Riverfront Apartments who refused to pay or refuses to pay amounts that are not owed pursuant to their leases in place as of the date of prepayment; or

D. violating in any other way Minn. Stat. §§ 325D.44, subd. 1, 325F.69, subd. 1 or 504B.178.

III. Awarding judgment against Alden for civil penalties pursuant to Minn. Stat. § 8.31, subd. 3 for each separate violation of Minn. Stat. §§ 325D.44, subd. 1 and 325F.69, subd. 1.

IV. Awarding judgment against Alden for civil penalties for bad faith retention of a security deposit in violation of Minn. Stat. § 504B.178, subd. 3.

V. Awarding judgment against Alden for additional civil penalties for each separate violation of Minn. Stat. §§ 325D.44 and 325F.69 for perpetrating fraud against elderly and handicapped individuals as provided in Minn. Stat. § 325F.71.

VI. Awarding judgment against Alden for restitution under the *parens patriae* doctrine, Minn. Stat. § 8.31, the general equitable powers of this Court, and any other authority for all persons injured by Alden's acts described in this Complaint.

VII. Awarding plaintiff its costs, including costs of investigation and attorney's fees, as authorized by Minn. Stat. § 8.31, subd. 3a.

VIII. Granting such further relief as the Court deems appropriate and just.

Dated: May 19, 2004

Respectfully submitted,

MIKE HATCH
Attorney General
State of Minnesota

CATHERINE M. POWELL
Assistant Attorney General
Atty. Reg. No. 296430

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ATTORNEYS FOR STATE OF MINNESOTA

MINN. STAT. § 549.211

ACKNOWLEDGMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (2002).

Dated: May 19, 2004

MIKE HATCH
Attorney General
State of Minnesota

Cathy Powell

CATHERINE M. POWELL
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ATTORNEYS FOR STATE OF MINNESOTA

AG: #983265-v1

LEASE

THIS LEASE, made this 29th day of Oct 1993, between Farmers Associates, (hereinafter called the "Landlord"), through his/her/its authorized agent Lake Management Company, (hereinafter called the "Management"), and Caroline Watson (hereinafter called the "Tenant").

1. **Terms of Lease.** In consideration of the Tenant Contribution (rent) and covenant herein, said Landlord does hereby lease unto the Tenant, and then Tenant does hereby hire and take from the Landlord the following described premises, situated in the County of Otter Tail, State of Minnesota, to-wit:

Apartment Number 207 of 521 Lake Front for the term of one year to commence on the 1st day of November, 1993, and to end on the 31st day of October, 19____. Notice Period (The Notice Period is One Full Month Unless Noted Here.): _____.

2. **Tenant Contribution.** Tenant agrees to pay as Tenant Contribution the sum of $ 355 as follows: $ 355 on the 1st day of September 1993, and $ 355 on or before the first day of each month thereafter. This Tenant Contribution amount includes any applicable Occupancy Surcharge as described in Number 41 of this Lease. An Occupancy Surcharge is collected on occupied units in projects where a loan was made or insured pursuant to a Contract entered into on or after June 16, 1990. Tenant will move into apartment 8/29/93 but will pay basic rent of $ 355 -

Utilities included in rent: Heat _____ Electric _____ Water and Sewer X Garbage X Other _____
Utilities paid by Tenant: Heat X Electric: X Telephone X TV X Other _____

Tenant agrees to pay utility charges promptly when due.

The amount of Tenant Contribution is subject to Landlord's right to increase Tenant Contribution in accordance with Rural Housing & Community Development Service (RHCDS) regulations and provisions of this Lease. Changes in Basic and/or Note Rate rents, such as shelter cost change, contribution changes, or notice of ineligibility approved by RHCDS in accordance with 1930-C may be implemented upon giving Tenant written notice equal to the Notice Period. No increase in Tenant Contribution to rent will take place due to prepayment of the RHCDS loan during the term of this Lease.

The person authorized to manage these premises (Project) is: Lake Management Co., whose address is: P.O. Box 230 - Detroit Lakes, MN 56501

The Landlord of the premises or Management authorized to accept service of process and receive and give receipts for notices and demands is: Farmers Associates, whose address is: P.O. Box 230 - Detroit Lakes, MN 56501

"I understand the project (premises) is financed by Rural Housing & Community Development Service (RHCDS) and is subject to Title VI of the Civil Rights Act of 1964, Title VIII of the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975; and that all complaints are to be directed to the Administrator, RHCDS, USDA, Washington, D.C., 20250. However, complaints of Fair Housing violations may be sent directly to the Secretary of Housing and Urban Development, Washington, D.C., 20410."

TERMS AND PROVISIONS OF LEASE.

1. "I understand that I will no longer be eligible for occupancy in this project if my income exceeds the maximum allowable adjusted income as defined periodically by the Rural Housing & Community Development Service (RHCDS) for the State of Minnesota."

2. "I agree I must immediately notify the Landlord when there is a change in my gross income or adjustment to income, or when there is a change in the number of persons living in the household. I understand my rent or benefits may be affected as a result of this information. I also understand that failure to report such changes may result in my losing benefits to which I may be entitled or may result in the Landlord taking corrective action if benefits were mistakenly received. I understand the corrective action the Landlord may take includes the initiation of a demand for repayment of any benefits or rental subsidies improperly received, initiation of a notice to cancel any rental assistance or Section 8 assistance being received for the balance of my certification period, initiation of a notice to increase my monthly rent to $ 355 per month (Note Rate rent for Plan II projects or 125 percent of rent in Plan I projects), or initiation of a Notice of Termination. I understand that one or more of these remedies may be initiated at the option of the Landlord."

EXHIBIT
tabbies
A

3. "I understand that I must promp. .otify the Landlord of any extended absences and t... if I do not personally reside in the unit for a period exceeding 60 consecutive days, for reasons other than health or emergency, my net monthly Tenant Contribution shall be raised to $ 355 /per month (Note Rate rent for Plan II projects or 125 percent of rent in Plan I projects) for the period of my absence exceeding 60 consecutive days. I also understand that should any rental assistance be suspended or reassigned to other eligible Tenants, I am not assured that it will still be available to me upon my return. I also understand that if my absence continues, that, as Landlord, you may take the appropriate steps to terminate my tenancy."

4. "I understand that should I receive occupancy benefits to which I am not entitled due to my/our failure to provide information or due to incorrect information provided by me or on my behalf by others, or for any other household member, I may be required to make restitution and I agree to repay any amount of benefits to which I was not entitled."

5. "I understand that income certification is a requirement of occupancy, and I agree to promptly provide any certifications and income verifications required by the Landlord to permit determination of eligibility and, when applicable, the monthly Tenant Contribution to be charged. I understand that upon failure to provide the necessary information I will be required to pay Note Rate rent and eviction proceedings may be started as of the due date for the certification since an annual certification is required for continued occupancy." Tenant Contribution an eligibility determination will be made by the Management at least every 12 months, or whenever Management is aware of significant changes in Tenant's income and/or household and as required by RHCDS regulations. Tenant may request re-determination of Tenant Contribution if significant changes occur in income and/or household. The Tenant will provide all necessary income verifications, names and ages of household members and in congregate facilities, essential information that would enable Management to determine whether the project provides the services requested by the Applicant/Tenant and/or to determine how to best serve the Applicant's/Tenant's /Member's request with reasonable accommodations, referral service, etc.

6. **For Operations Under RHCDS Rental Assistance (RA) (Deleted for non-RA).**

A. "I understand and agree that as long as I receive rental assistance, my gross monthly Tenant Contribution (as determined on the latest Form FmHA 1944-8, which must be attached to this Lease) for rent and utilities will be $_____. If I pay any or all utilities directly (not including telephone or cable TV), a Utility Allowance of $_____ will be deducted from my gross monthly contribution and my resulting net monthly contribution will be $_____. If my net monthly contribution would be less than zero, the Landlord will pay me $_____."

B. "I also understand and agree that my monthly contribution under this Lease may be raised or lowered, based on changes in the household income or adjustments to income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this Contract. Should I no longer receive rental assistance as a result of these changes, or the rental assistance agreement executed by the Landlord and RHCDS expires, I understand and agree that my monthly Tenant Contribution may be adjusted to no less than $_____ (Basic), nor more than $_____(Note Rate) during the remaining term of this Lease, except that based on the escalation clause of this Contract, these rates may be changed by a Rural Housing & Community Development Service (RHCDS) approved rent change."

C. "I understand that every effort will be made to provide rental assistance so long as I remain eligible and the rental assistance agreement between the Landlord and RHCDS remains in effect. However, should this assistance be terminated, I may arrange to terminate this Lease, giving proper notice as set forth elsewhere in this Lease."

7. **For Operations Under Plan II Interest Credit Only (Delete for other than Plan II Interest Credit).**

A. "I understand and agree that my gross monthly contribution as determined on the latest Form FmHA 1944-8, which must be attached to this Contract, for rent and utilities will be $ 387."

B. "If I pay any or all utilities directly (not including telephone or cable TV), a Utility Allowance of $ 32 will be deducted from my gross monthly rent charge, except that I will pay not less than the Basic Rent nor more than the Note Rate rent charge stated below. My net monthly rent charge will be $ 355. I understand that should I receive rental subsidy benefits (interest credit) to which I am not entitled, I may be required to make restitution and I agree to repay any amount of benefits to which I was not entitled. I also understand and agree that my monthly Tenant rent charge under this Lease may be raised or lowered based on changes in the household income, failure to submit information necessary to certify income, changes in the number and ages of persons living in the household, and on the escalation clause in this Lease. My rent charge will not, however, be less than $ 260 (Basic), nor more than $ 355 (Note Rate) during the term of this Contract, except that based on the escalation clause in this Lease, these rental rates may be changed by a Rural Housing & Community Development Service (RHCDS) approved rent change.

8. **Occupancy and Use.** Continued occupancy and use shall be subject to eligibility according to RHCDS regulation 1930-C, Exhibit B, the terms of this Lease, and the approved occupancy policy for this project. No person other than those listed here as resident(s) may occupy the Apartment without the written approval of Management. The Apartment and utilities may be used only for ordinary residential purposes.
Resident(s): 0

"I understand that Project Occupancy Standards have been established by the Landlord and are available upon request. I must make a request in writing if I choose to review the Project Occupancy Standards. I understand that if my unit becomes overcrowded or underutilized, or I no longer meet the eligibility requirements of the project during the term of the Lease, I/we will be required to vacate the unit at the end of the Lease term unless eligibility can be established following specified steps, such as moving to an appropriate size unit, or an exception is granted by the Management."

9. **Tenant Contributions.** Tenant agrees to pay Management, at the place or in the method designated by Management, the monthly contribution in full on or before the first day of every month in advance, during the duration of this Lease and any extensions or renewals of this Lease.

10. **Service Charge and Returned Check Fee.** Tenant agrees to pay a late fee of $10.00 for each Tenant Contribution that has not been paid by the 10th (not to exceed 10 days) day of any month. Tenant also agrees to pay a fee of $20.00 for each check returned because it was not paid by Tenant's bank for any reason.

11. **All Tenants Responsible for All Debts.** Tenant is responsible for paying the Tenant Contribution and any other money due to Management under this Lease or as a result of any breach of this Lease, and each and every Tenant is individually responsible for paying the full amount of such debts, not just a proportionate share.

12. **Management Promises.**
    A. To maintain the buildings and any common areas in a decent, safe and sanitary condition in accordance with local housing codes and RHCDS regulations;
    B. To keep the premises in reasonable repair and make necessary repairs within a reasonable time after written notice by Tenant except when a disrepair has been caused by the willful or negligent conduct of the Tenant or his guests;
    C. To maintain the premises in compliance with applicable health and safety codes except when a violation of the health and safety codes has been caused by the willful or negligent conduct of the Tenant or his guests; and
    D. To maintain the common areas in a state of repair and cleanliness.

13. **Tenant Promises.**
    A. Not to damage or misuse the premises or waste the utilities provided by Management or allow a guest to do so;
    B. Not to make any alteration or additions or remove any fixtures or to paint the premises without the written consent of Management;
    C. To keep the Apartment clean and tidy;
    D. Not to conduct himself/herself in a loud, boisterous, unruly or thoughtless manner so as to disturb the rights of the other Tenants to peace and quiet, or to allow guests to do so;
    E. To use these premises only as a private residence, and not in any way that is unlawful or dangerous or which would cause a cancellation, restriction or increase in premium in Management's insurance;
    F. Not to use or store on or near the premises any inflammable or explosive substance;
    G. To give written notice to Management of any necessary repairs to be made; and
    H. To abide with and comply to the following covenant pertaining to controlled substances as defined in Chapter 152 of Minnesota Statutes:

"It is understood that the use, attempted use, or possession, manufacture, sale or distribution of an illegal controlled substance (as defined by local, State, or Federal law) while in or on any part of this Apartment complex or cooperative is an illegal act. It is further understood that such action is a Material Lease Violation. Such violations (hereafter called a "drug violation") may be evidenced upon the admission to or conviction of a drug violation.

The Landlord may require any Tenant or other adult member of the Tenant household occupying the unit (or other adult or non-adult person outside the Tenant household who is using the unit) who commits a drug violation to vacate the leased unit permanently, within time frames set by the Landlord, and not thereafter enter upon the Landlord's premises or the Tenant unit without the Landlord's prior consent as a condition for continued occupancy by members of the Tenant household. The Landlord may deny consent for entry unless the person agrees to not commit a drug violation in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation, or completed a counseling or recovery program.

The Landlord may require any Tenant to show evidence that any non-adult member of the Tenant household occupying the unit, who committed a drug violation, agrees to not commit a drug violation in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation, completed a counseling or recovery program within the time frames specified by the Landlord as a condition for continued occupancy in the unit. Should a further drug violation be committed by any non-adult person occupying the unit, the Landlord may require the person to be severed from tenancy as a condition for continued occupancy by the Tenant.

If a person vacating the unit, as a . .lt of the above policies, is one of the Tenants, the pe. .n shall be severed from the tenancy and the Lease shall continue among any other remaining Tenants and the Landlord. The Landlord may also, at the option of the Landlord, permit another adult member of the household to be a Tenant.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land, the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of Tenants afforded by law."

14. **Apartment Checklist.** Management and Tenant will complete a checklist of the conditions of the Apartment. This checklist will note conditions prior to initial occupancy and upon vacating the Apartment. The Management will provide a copy of the completed checklist to the Tenant. Management should schedule the final inspection with the Tenant.

15. **Waterbeds and Pets.** Tenant agrees to not keep or permit waterbeds nor any other water-filled furniture on the premises, unless agreed to in writing by Management. Tenant(s) may not have animals or pets of any kind on the premises unless permitted by attachment to this Lease and applicable pet policy.

16. **Management Right to Enter.** Management and its authorized agents may enter the Apartment at any reasonable time to inspect the Apartment or make repairs or to show the Apartment to prospective new residents or purchasers

17. **Damage or Injury to Tenant or His/Her Property.** Management is not responsible for any damage or injury that is done to Tenant or his/her property or to Tenant's guest or their property that was not caused by a willful or negligent act of Management or failure of Management to act. Management recommends that Tenant obtain Renter's Insurance to protect himself/herself against any injuries or damage he/she may suffer.

18. **Act of Third Parties.** Management is not responsible for the actions, or for any damages, injury or harm caused by such actions, of third parties (such as other residents, guests, intruders, or trespassers) who are not in Management's control.

19. **Failure to Give Possession.** If due to causes beyond his/her control including, but not limited to, the holding over of a previous Tenant, Management is unable to give possession of the unit to Tenant on the date promised, Management shall not be subject to any liability for this failure to give possession. In this event, Tenant does not have to start paying rent until he/she has possession of the Apartment unit.

20. **Notice of Dangerous Conditions.** Tenant agrees to promptly notify Management of any conditions in the Apartment unit that are dangerous to health or safety of Tenant or other residents, or which may do damage to the premises or waste utilities provided by the Management.

21. **Subletting.** Tenant will not sublet the Apartment or any part of it, nor assign this Lease, nor substitute occupants without the written consent of the Management.

22. **Abandonment or Surrender of the Apartment Before the Termination of this Lease.** Tenant understands that he/she is responsible for paying the full rent each and every month during the duration of this Agreement and any extensions or renewals. Tenant is responsible for all loss of rent or any other losses or costs caused by Tenant's premature abandonment or surrender of the Apartment. No surrender of the Apartment will be considered accepted by Management without the written consent of Management.

23. **Reimbursement by Tenant.** Tenant agrees to reimburse Management promptly for any loss, property damage, or cost of repairs or service (including plumbing trouble) caused by negligence or improper use by Tenant, his agents, family or guests. Tenant shall be responsible for damages from windows or doors left open. Tenant agrees to pay all costs incurred by Management incidental to any abandonment of the premises or other breach of Lease by the Tenant, such as costs incurred in attempting to re-rent Tenant's apartment, including advertising and other costs. If Management prevails in any suit for eviction, or for unpaid rents, or any other debt or charges, Tenant agrees to pay all court costs and attorney's fees incurred by Management. These reimbursements are due when Management or its representative makes demands upon Tenant. Management's failure or delay in demanding any of these reimbursements, late payment charges, returned check charges, or other sums due by Tenant shall not be deemed a waiver; and Management may demand them at any time, whether before or after Tenant vacates the Apartment. If Management sues for eviction, incurs legal costs in the process, and the Tenant cures the reason for Non-Compliance, the Tenant agrees to reimburse the Management for all court costs and attorney's fees incurred by Management.

24. **Termination of Lease by Tenant.** If Tenant wishes to terminate this Lease at the end of its initial term, Tenant must give Management written notice of his/her intent to vacate at least equal to the Notice Period indicated in the heading of this Lease, prior to the termination date. The Lease may be terminated by the Tenant with thirty (30) days notice, prior to expiration of its term for "good cause" such as moving to another location for employment, loss of job, severe illness, death of spouse, or other reasons customary or mandatory in the community, or after notification by Landlord of intent to prepay. Notice to Terminate must be given so as to be effective on the last day of a month. If Tenant fails to give timely notice to Management, Management has the right, at its option, to extend the duration of the Lease for a period equal to one Notice Period at the Management's then prevailing monthly rental rate. If Tenant continues to occupy the Apartment after the Ending Date of the Lease with the permission of Management, and this Lease has not been renewed nor a new Lease made between resident and Management, this Lease shall be considered renewed under its original conditions and agreements.

25. **Vacating.** Tenant agrees to vacate _ _ Apartment before 12:00 noon on the termination dau of this Lease or any renewal or extension as provided in this Lease. If Tenant fails to vacate on or before the required date, he/she shall be liable to Management for any and all losses incurred by Management, such as loss of Tenant Contribution, court costs and attorney's fees. Upon vacating, Tenant agrees to leave the premises in their condition at the commencement of the tenancy except for ordinary wear and tear. Tenant understands that tenancy still exists during the time that the Tenant household's personal possessions remain in the Apartment unit after the Tenant household has personally ceased occupancy with the intent to vacate and leave the project, until after such time, the personal possessions have been removed voluntarily or by legal means, subject to provisions of State or local law in such matters.

26. **Destroyed or Untenantable Premises.** If the premises are destroyed or so damaged as to be unfit for occupancy due to fire, the elements or any other cause, Management may elect to terminate this Lease immediately and may elect not to rebuild or restore the destroyed or damaged premises by giving Tenant written notice. If the destruction or damage was not caused by Tenant's fault or negligence, upon termination of this Lease pursuant to this section, Tenant Contribution shall be prorated and the balance, if any, refunded to Tenant.

27. **Abandoned Personal Property.** Abandoned personal property will be handled in accordance with State laws.

28. **Notice of Termination and/or Eviction.** Tenant's entitlement to continued occupancy. In the process for termination of tenancy and eviction, the Tenant has certain entitlements to continue occupancy. These entitlements are, but are not limited to, the following and are in accordance with RHCDS's policies and procedures. **General:** The Landlord may not terminate or refuse to renew any tenancy except upon Material Noncompliance with the Lease or for "Other Good Cause". Any termination or refusal to renew tenancy may be grounded upon Material Noncompliance with the Lease, non eligibility for tenancy, or action or conduct of the Tenant which disrupts the livability of the project by being a direct threat to the health or safety of any person, or the right to any Tenant to the quiet enjoyment of the leased premises and related project facilities or that results in substantial physical damage causing an adverse financial effect on the project, or the property, EXCEPT when such threat can be removed by applying a Reasonable Accommodation. Expiration of the Lease period is not sufficient grounds for eviction of a Tenant. **Material Noncompliance:** Material Noncompliance with the Lease includes: (a) one or more substantial violations of the Lease; or (b) repeated minor violations of the Lease which disrupts the livability of the project by adversely affecting the health or safety of any person, or the right of any Tenant to the quiet enjoyment of the leased premises and related project or have an adverse financial effect on the project. Non-payment or repeated nonpayment of rent, utilities, or any other financial obligation due under the Lease (including any portion thereof) beyond any grace period constitutes substantial violation; or (c) admission to or conviction for use, attempted use, possession, manufacture, selling, or distribution of an illegal controlled substance that: (i) is conducted in or on the premises by the Tenant or someone under the Tenant's control; or (ii) is allowed to happen by a household member or guest because the Tenant has not taken reasonable steps to prevent or control such illegal activity, or because the Tenant has not taken steps to remove the household member or guest who is conducting the illegal activity. **Other Good Causes:** Conduct cannot be considered "Other Good Cause" unless the Landlord has given the Tenant prior notice that the conduct will constitute a basis for termination of tenancy.

A. **If a Material Violation Occurs,** the Management will issue to the Tenant a *Notice of Lease Violation.* Any Notice of Lease Violation by Management must be based on "Material Violation "of the Lease terms or for "Other Good Cause" as determined by the Landlord or the project Management. The Tenant will be given prior Notice of Lease Violation in accordance with State and local laws. The Notice must:
   1. Refer to relevant provisions in the Lease.
   2. State the violations with enough information describing the nature and frequency of the problem to enable the Tenant to understand and correct the problem. In those cases where the Lease Violation is due to the Tenant's failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of such computation shall satisfy this requirement.
   3. State that the Tenant will be expected to correct the Lease Violation by a specified date.
   4. State that the Tenant may informally meet with the Landlord or Landlord's representative to attempt to resolve the stated violation before the date of corrective action specified in the notice.
   5. Advise the Tenant that if he or she has not corrected the stated violation by the date specified, the Landlord may seek to terminate the Lease by bringing forth a judicial action, at which time the Tenant may present a defense.
   6. The notice shall be accomplished by:
      a. Sending a letter by first class mail to the Tenant or member at his/her address at the project; OR
      b. Serving a copy of the notice on any adult person answering the door at the dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or by affixing the notice to the door.

Service shall not be deemed effective until either method of notice as described herein has been accomplished. The date on which the notice shall be deemed to be received by the Tenant or member shall be the date on which the required first class letter is mailed, or the date on which the notice provided for in this paragraph is properly given, whichever method of service is used.

B. **Notice of Termination:**

1. Upon failure by the Tenant to meet the condition(s) or correct the violation(s) stated in the Notice of Lease Violation by the date specifie the Tenant will be notified that the occupancy is terminated and that eviction is being sought through the appropriate judicial process according to State or local laws.
2. The Notice of Termination is prepared and issued by the Landlord or its authorized representative in accordance with the prior notice requirements and provisions of State or local laws.
3. The notice must state the reason and basis for the termination of occupancy (i.e., "Material" or "Other Good Cause" Violation, or both).
4. The Notice of Termination must include the location and regular office hours during which the Tenant or member (or counsel) may view its file and copy any information it contains to aid in the Tenant's or member's defense.
5. The notice will be accomplished in the same manner as described in paragraph 28 A 6 (a) and (b) of this Lease.
6. A copy of the Notice of Termination will simultaneously be forwarded to the RECD Regional Office.

C. **Servicing Official Review:** Upon receipt of a copy of Notice of Termination, RHCDS will review the notice for technical compliance with FmHA 1930-C, Exhibit B, XIV C, and any applicable State Supplements. The Servicing Official will not review the notice for the merits of the action, nor express any opinion on the merits of the action (this responsibility resides with the State or local court).

D. **Notice of Eviction:** A Notice of Eviction is prepared and issued by a court of law, not the Landlord or its authorized representative. Eviction will be carried out as specified by the terms of the eviction notice and court order.

29. **Duty to Pay Tenant Contribution after Eviction.** If Tenant is evicted due to Tenant's breach of this Lease, Tenant agrees to continue paying the full amount of the Tenant Contribution for the full remaining term of this Lease, or until the Apartment is re-rented, whichever comes sooner.

30. **Subordination.** This Lease is subject to all present or future mortgages or trust deeds affecting the premises and Tenant hereby appoints Management as Attorney-in-Fact to execute and deliver any and all necessary documents to subordinate this Lease to any present or future mortgage or trust deed affecting the premises.

31. **Project Sale and/or Prepayment of RHCDS Loan.** If this project is sold to a buyer approved by RHCDS, this Lease will be transferred with all of its provisions to the new Landlord. In the event of Landlord's prepayment of the RHCDS loan, all Leases will be handled in accordance with Paragraph VIII A of 1930-C, Exhibit B of 7 CFR, and all procedures specified in Section 1965.90 of Subpart B of Part 1965 of 7 CFR will be followed. No Tenant Contribution to rent may be increased by reason of prepayment for the term of the Lease. An escalation clause for the rent changes approved by RHCDS for budgetary reasons will continue to be applicable.

32. **Management's Exercise of Legal Rights and Remedies.** Management may exercise any or all of its legal rights and remedies in any combination at its option. The use of one or more of these rights or remedies shall not exclude or waive the use of any other. Management agrees to accept a Tenant Contribution without regard to any other charges owed by Tenant to Management and to seek separate legal remedy for the collection of any other charges which may accrue to Management from Tenant(s).

33. **Reference of Terms.** Where appropriate, singular terms include the plural, and pronouns of one gender include both genders.

34. **False or Misleading Rental Application.** This Lease is entered into by Management based on oral and/or written statements made by Tenant in his/her rental application or otherwise. In the event it is determined that Tenant's statements or any part of them are not true or complete in any material way, then this Lease shall be considered breached and Management shall have the right, in its discretion, to terminate the Lease and seek to evict the Tenant immediately and without prior notice and shall have the right to collect improperly granted rental benefits.

35. **Form FmHA 1944-8, *Tenant Certification*; Approved Exhibit A-5, Subpart E of Part 1944 (When the Tenant Will Pay Utilities) and a Copy of the Established Rules and Regulations (Occupancy Policy) are Part of Lease; NO ORAL AGREEMENTS.** Attachments to this Lease, if any, are hereby made a part of this Lease. Management's building rules are also made a part of this Lease. The Management can make reasonable changes in the building rules at any time by giving written notice to Tenant. No oral agreements have been entered into. This Lease with its attachments and any other written agreements made constitute the entire agreement between Management and Tenant.

36. **Security Deposit.** Tenant agrees, before this Lease becomes operative, to deposit with Landlord $ 260 dollars as security for surrender, at the expiration of the term or terms thereunder, of the premises in the same condition as received, reasonable wear and tear excepted, provisions of Minnesota Statutes, and terms of this Lease.

37. "I agree that it is my responsibility to notify the Apartment Management any time I plan to be absent from the Apartment for any extended period. Extended Period' shall be defined as any absence of two (2) weeks or more."

38. **Handicapped Accessible Units O[illegible]pied by Those Not Needing Specially Designed F[illegible]res:**

A. I understand that Management [illegible] temporarily assign a non-handicapped household to occupy a handicap accessible unit specially designed for handicapped households under the conditions of FmHA Instruction 1930-C, Exhibit B, Paragraph VI D 2 g.

B. The unit as described in Part I of this Lease (is) (is not) a handicapped accessible unit specially designed for handicapped households.

C. If the leased unit is specially equipped for the handicapped and the Tenants or family members do not need these special features, the Tenant then agrees to the following:

"I/we acknowledge that I/we am/are occupying a designated handicapped accessible unit. I/we acknowledge that priority for such units is given to those needing special physical design features. I/we acknowledge that I/we am/are permitted to occupy the unit until Management issues a notice that a priority applicant is on the waiting list and that I/we must move to another suitably sized vacant unit in the project. Upon receiving this notice, I/we agree to move at [my/our own] [shared (as agreed)] [project] expense within thirty (30) calendar days to the suitably sized vacant unit within the project, if one is available. I/we further understand my/our rental rate will change, when appropriate, to the rental rate for the unit I/we move to and this Lease will be modified accordingly.

If I/we do move to a different unit under this clause, I understand that the move does not change the length or any terms of the Tenant's Lease except the Apartment location and number as needed and any difference in rent that has been agreed to. If I/we have done any damage that exceeds ordinary wear and tear to the leased unit, I/we agree to immediately pay Management the full cost of repairing the damage and the Landlord may bring a court action to evict the Tenant from the leased unit, if necessary, but this action does not in any way release the Tenant from this Lease or any duty to pay rent during the entire term of the Lease. If Management takes any action to evict the Tenant, the Tenant agrees to pay all costs, including any attorney's fees, of the eviction action in the event Management prevails in court. If the Tenant fails to move out as required by this section, the Tenant is liable to Management for any and all resulting losses, including loss of rent if a handicapped person is not given possession of the leased unit as required, and any loss suffered as a result of any legal action brought by a handicapped person who was denied access to the leased unit."

_______________________(TENANT) X_______________________(TENANT)

39. **Grievance and Appeal.** Any grievance or appeal from a Management's decision shall be resolved in accordance with procedures consistent with FmHA Instruction 1944-L, which is available to Tenants and posted in the rental office.

40. **Notices.** All Tenants agree that notices and demands delivered by Management to the Apartment constitute proper notice to all Tenants. Management (acting as agent for the Landlord of the premises) and Tenant agree to the terms of this Lease as written above these signatures, and on any attachments that may be made part of this Lease.

41. **Occupancy Surcharge.** Tenant understands and agrees to pay any applicable Occupancy Surcharge in accordance with FmHA Instruction 1951-K, Exhibit B.

A. That Occupancy Surcharges are mandated by law, therefore, they must be paid by the Tenant in addition to regular rent. If they are not paid, these unpaid surcharges constitute good cause for possible termination of occupancy.

B. That the current Occupancy Surcharge unit rate is $____________ per unit and will increase annually on the surcharge anniversary date by $2.00 per month for each unit, not to exceed a total of $40.00 per month per unit.

C. That the portion of the unit surcharge assessment, which the Tenant pays, will be based upon the Tenant's household income and will not cause the Tenant's Contribution for rent and occupancy charge, plus utility allowance, to exceed 30 percent of the adjusted income.

D. That Tenant households may experience increases or decreases in the amount of Occupancy Surcharge they pay prior to the expiration of the Lease.

42. **Should any Federal Subsidies** paid to the Landlord on behalf of Tenants be suspended or canceled, due to a monetary or non-monetary default by the Landlord, the monetary payment made by the Tenant to the Landlord (or, when applicable, the monetary payment received by the Tenant from the Landlord) shall not change over that which would have been required had the subsidy remained in place.

43. "**The Landlord and Management** are forbidden by law from making a judgment as to whether tenants with a handicap or disability are capable of independent living. By execution of this lease, the tenant(s) acknowledges that no representations have been made, in any form - written or verbal - of any assistance, supervision, physical services, social services, medical services or care that will be given to the tenant(s) as a condition of residency. Tenant(s) in accordance with 7 CFR ~1930-C, Exhibit B, VI D 1 i (1) assumes the risk and responsibility of living within and upon the project premises."

Croix Management Co.
(MANAGEMENT)

[signature]

Date Signed 5-27-03

X
(TENANT)

(TENANT)

Date Signed____________________