

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

MICHAEL CONROY, ET. AL)	CASE NO. LACV072840
<i>Plaintiffs,</i>)	
)	
vs.)	CONSENT DECREE
)	
APTS. DOWNTOWN, INC., ET. AL,)	
<i>Defendants.</i>)	
)	

I. INTRODUCTION

This consent decree is made and entered into by the Plaintiffs and Plaintiffs' Class and Defendants in the above captioned matter in order to fully and finally resolve this case. Plaintiffs Michael Conroy, Molly Burke, Dara Eifler, Kirsten Jacobsen, Jessica Jones, Dan Ambrisco and Kathryn Kelly Olin ("Named Plaintiffs") were all tenants of Defendant Apts. Downtown ("Landlord"). On July 8, 2015 this Court rendered partial summary and declaratory judgment finding that a number of provisions in Landlord's standard 2010-11 lease violated the Iowa Uniform Residential Landlord Tenant Act, ("IURLTA") codified at Iowa Code Chapter 562A. On July 8, 2015 this Court also certified the instant case as a class action. Defendant appealed the partial summary & declaratory judgment and class certification. Pursuant to the stipulation of the Plaintiffs and Defendant, the appeal was dismissed on February 16, 2016.

II. JURISDICTION

The Iowa District Court for Johnson County ("Court") has jurisdiction over the parties and subject matter of the instant action. The claims asserted in the petition, if proved, would authorize the Court to grant the relief set forth in this Decree. Venue is

proper in the Court. The Court shall maintain jurisdiction of this action for the duration of the Decree in order to enter all orders and judgments authorized under this Decree which may be necessary to implement the relief provided by this Decree. This Court shall resolve all disputes arising under this Decree. This Decree resolves all claims for the inclusion, use and enforcement of lease provisions illegal under the IURLTA, including actual and punitive damages and attorney fees.

III. DEFINITIONS

"Class" "Class of tenants" or "Settlement Class" as defined in §IV.

"Court" means the Iowa District Court for Johnson County.

"IURLTA" is the Iowa Uniform Residential Landlord Tenant Act, codified at Iowa Code §562A.

"Landlord" means Apts. Downtown, Inc. whether under the names Apts. Downtown, Apartments Downtown, Apts. Near Campus or Apartments Near Campus.

"Standard Lease" means Landlord's 2010-11, 2011-12, 2012-13 and 2013-14 standard leases.

"Named Plaintiffs" mean Michael Conroy, Molly Burke, Dara Eifler, Kirsten Jacobsen, Jessica Jones, Dan Ambrisco and Kathryn Kelly Olin.

"Tenants' Counsel" is Christopher Warnock (lead counsel) and Christine Boyer (co-counsel).

IV. SETTLEMENT CLASS

"Class" "Class of tenants" or "Settlement Class" are tenants or subtenants of Landlord, whether under the names Apts. Downtown, Apartments Downtown, Apts. Near Campus or Apartments Near Campus whose tenancy or sub-tenancy was governed by

Landlord's Standard Lease, i.e. tenants or subtenants under Landlord's 2010-11, 2011-12, 2012-13 and 2013-14 Standard Leases. Landlord, upon diligent search of its records, believes that the Settlement Class contains approximately 14,000 tenants and sub-tenants.

V. RELEASE OF CLAIMS

A. Named Plaintiffs' Release

Upon entry of the Decree, Landlord, its owner, manager, employees, agents, attorneys, insurers, as well as the owners of properties it manages, and their respective heirs, successors and assigns, shall be fully and forever discharged by Named Plaintiffs, their heirs, assigns and successors from any and all claims, demands, charges, complaints, rights and causes of action of any kind, known or unknown, including, but not limited to those arising from Landlord's inclusion, use and enforcement of lease provisions prohibited under the IURLTA in its Standard Lease, including actual and punitive damages and attorney fees, whether seeking legal, including monetary or equitable relief. This Release is final and shall survive the expiration of the Term of this Decree.

B. Settlement Class Release

Upon entry of the Decree, Landlord, its owner, manager, employees, agents, attorneys, insurers, as well as the owners of properties it manages, and their respective heirs, successors and assigns, shall be fully and forever discharged by Settlement Class, their heirs, assigns and successors from any and all claims, demands, charges, complaints, rights and causes of action of any kind, known or unknown, arising from Landlord's inclusion, use and enforcement of lease provisions illegal under the IURLTA in its Standard Lease, including actual and punitive damages and attorney fees, whether

seeking legal, including monetary or equitable relief. This Release is final and shall survive the expiration of the Term of this Decree. This Release only includes claims for the use, inclusion or enforcement of illegal lease provisions, and does not include claims for the wrongful retention of tenant's security deposit that would be determined on a case by case basis, on the individual facts of each case.

C. Landlord's Release

Upon entry of the Decree, Tenant, his heirs, assigns and successors, shall be fully and forever discharged by Landlord, its owner, manager, employees, agents, attorneys, insurers, as well as the owners of properties it manages, and their respective heirs, successors and assigns, from any and all claims, demands, charges, complaints, rights and causes of action of any kind, known or unknown, arising prior to the date of the execution of this Decree. This Release is final and shall survive the expiration of the Term of this Decree.

D. No Bar to Future Claims

Nothing in this Decree shall be construed to bar any claims of Landlord, Named Plaintiffs, or Settlement Class based on or arising out of events after the entry of this Decree. Nothing in this Decree shall bar any claims of past, current or future tenants other than Named Plaintiffs and Settlement Class.

E. Termination & Return of Security Deposit

Landlord agrees to return the security deposits of Named Plaintiffs.

VI. MISCELLANEOUS PROVISIONS

A. No Admission of Liability

This Consent Decree does not constitute and shall not be deemed a finding or determination by the Court, nor an admission by any party, regarding the merits, validity or accuracy of any of the allegations, claims or defenses in the Petition. This Consent Decree represents the compromise of disputed claims that the parties recognize would require protracted and costly litigation to determine. Landlord in its Answer denies its Standard Lease violates IURLTA in any way. Landlord's entry into this Consent Decree is not and may not be used by any person or entity in any proceeding as an admission or evidence that Landlord, its owner, manager, employees or owners whose property it manages have on any occasion violated the IURLTA, which Landlord, for itself and on behalf of any and all owners of the properties managed by Landlord, expressly denies. The parties have voluntarily entered into this Consent Decree for the express purpose of avoiding costly and protracted litigation, the outcome of which is uncertain.

B. Landlord's Mission and Intent

Landlord is in the business of managing residential properties. As such, Landlord recognizes that its relationship with its tenants is an important aspect of its business and is committed to continually striving to improve those relationships. Therefore, Landlord desires to work cooperatively and respectfully with tenants generally to remove unnecessary barriers to strong, positive, mutually-beneficial relationships with its tenants.

C. Duty to Defend and Support the Decree

Named Plaintiffs, Tenants' Counsel and Landlord, each agree to abide by the terms of this Consent Decree in good faith and to support it fully and to use their best

efforts to defend this Consent Decree from any legal challenge by appeal or collateral attack.

D. Duty not to Evade Decree

Landlord, Named Plaintiffs, and Tenants' Counsel agree not to evade or attempt to evade this Consent Decree. The rights and obligations established by this Consent Decree may not be assigned or otherwise transferred by Landlord without the express written consent of Tenants' Counsel, which shall not unreasonably be withheld; provided however, that Landlord may, without such consent, assign its rights and obligations hereunder to an affiliate or to a purchaser of all or substantially all of Landlord's assets. Any purported in assignment in violation of this section shall be void and of no effect. Any permitted assignee shall assume all assigned obligations of Landlord under this Consent Decree.

E. Modification & Enforcement

Only Named Plaintiffs, Tenants' Counsel or Landlord may request that this Court modify, apply or enforce this Consent Decree but Named Plaintiffs, Tenants' Counsel and Landlord may request Court modification of this Consent Decree.

F. Unenforceability & Voidness

If a provision of this Consent Decree is found to be unenforceable or void, if Named Plaintiffs, Tenants' Counsel or Landlord did not seek to find the provision unenforceable or void, they may void the entire Consent Decree.

G. Term of the Consent Decree

This Consent Decree terminates when all payments required by Landlord under this Consent Decree have been made and all timely claims have been resolved. Upon

such payments being made in full, the parties will file a joint motion with the court to dissolve this Consent Decree.

H. No Conflict of Interest or Disqualification

Named Plaintiffs and the Settlement Class agree that Tenants' Counsel does not have a conflict of interest in this representation as a result of Landlord's agreement as part of the settlement process to pay Tenants' Counsel's reasonable attorney fees under this Consent Decree. Landlord will not attempt to influence Tenants' Counsel's representation of Named Plaintiffs or the Settlement Class, or interfere with Tenants' Counsel's independent professional judgment or loyalty to Named Plaintiffs or the Settlement Class. Tenants' Counsel agrees not to compromise its independent professional judgment or loyalty to Named Plaintiffs or the Settlement Class to accommodate Landlord. The parties agree that no attorney-client relationship or other fiduciary relationship will exist between Landlord and Tenants' Counsel as a result of this Consent Decree or Landlord's agreement to pay Tenants' Counsel's reasonable attorney fees, as outlined in this Consent Decree. Landlord will not seek to have Tenants' Counsel disqualified from any representation, either under this Consent Decree or independent of this Consent Decree, due to Tenants' Counsel's representation of Named Plaintiffs or the Settlement Class under the Consent Decree or Landlord's payment of Tenants' Counsel's reasonable attorney fees under this Consent Decree.

I. Global Settlement

It is the intention of Named Plaintiffs, Tenants' Counsel and Landlord that this Consent Decree be one part of a larger settlement, including the consent decree establishing an agreed upon, internal complaint process in *Migliore v. Apts. Downtown*,

CVCV077514, attached as Appendix A and a complaint process agreement with regard to Apartments at Iowa, a separate corporate entity associated with Landlord, a copy of which is attached as Appendix B.

VII. ATTORNEY FEES AND COSTS

Landlord and Named Plaintiffs agree that Tenants' Counsel, Christopher Warnock and Christine Boyer, are entitled to attorney fees incurred in the prosecution and settlement of this case and for representation of Named Plaintiffs and Settlement Class in the amount of \$250 per hour to be paid by Landlord. Tenants' Counsel will submit initial attorney fee affidavits, including all hours billed in the prosecution of this case and hours billed to date for settlement to the Court for its approval, along with this Consent Decree. If the Court approves the initial attorney fee award Landlord will pay the initial fee award within 30 days after approval. Tenants' Counsel may submit for the Court's approval an additional attorney fee request for hours billed for settlement including class notification, verification and class award payment in this case incurred after the initial attorney fee award after all timely claims have been resolved. Landlord agrees to support Attorneys' reasonable fee requests and agrees that 375 hours for Mr. Warnock and 41.5 hours for Ms. Boyer are reasonable for the initial fee award.

VIII. PAYMENTS BY LANDLORD

A. Costs of Notification, Verification, Class Award Payment & Court Costs

Landlord agrees to pay the costs of notification of the Settlement Class, as required under the Iowa Rules of Civil Procedure, and for all costs incurred for the verification and payment of class awards to the Settlement Class. Landlord agrees to pay all court costs.

B. Class Award

For each year that a member of the Settlement Class was a tenant or sub-tenant of Landlord under the terms of its Standard Lease, that Settlement Class member is entitled to an award of \$65 (sixty five dollars). For example, if a class member was a tenant for the 2010-11 term and the 2011-12 term, that class member is entitled to \$130 (one hundred and thirty dollars). If a class member was both a tenant and a sub-tenant for the same yearly lease term, or was a tenant under leases for two different units for the same yearly lease term, they would only receive one award of \$65 (sixty five dollars).

IX. NOTICE PROCEDURE

A. Within 21 days after this Consent Decree is agreed upon by all parties, Tenant's Counsel and Counsel for Landlord will jointly request that this Court approve notification of the Settlement Class pursuant to Iowa R. Civ. P 1.271(2) with notification to be paid for by Landlord pursuant to §VII.A.

B. Claim Administrator for Notification, Verification and Payment

Landlord and Tenants' Counsel will arrange for a Claim Administrator to provide support for class notification, verification and payment ("Claim Administrator"). Landlord will pay the costs of the Claim Administrator. The initial choice of the parties for Claim Administrator is Rust Consulting, Inc.

C. Settlement Notification

The mailed notification will be paid for by Landlord, be mutually agreed upon by the parties and contain the notice required by Iowa R. Civ. P. 1.271(3). The notification will include the web address of the registration and claims website to be created by the Claim Administrator under §VIII.D, as well as notification information.

1. Notification Information

The notification information is as follows:

- a. a statement that there is a proposed settlement of this class action;
- b. a description of this action and a description of the terms of the settlement.
- c. a statement that the Court will hold a hearing to determine the fairness, adequacy and reasonableness of the proposed settlement, including the date and location of that hearing;
- d. a statement that a Settlement Class member may elect to opt-out of the Settlement;
- e. a statement that Settlement Class members who do not opt-out may object by submitting written objections regarding the settlement and appearing at the fairness hearing;
- f. the address of Class Action informational web pages maintained by the Tenants' Counsel at the Tenants Project website
- g. instructions on how to make a claim by registering online with the Claim Administrator as well as an explanation of the claims procedure.

2. Mailed Notification

Landlord will provide the last known addresses of Settlement Class members that it can determine through diligent search of its records and will pay for the notification information to be mailed to these Settlement Class members.

3. Media, Website and Social Media Notification

Tenants' Counsel and Landlord, at its discretion, will individually and cooperatively seek to notify Settlement Class members through the use of media, including press releases and press conferences, website and social media notification.

Media, social media and website notification will direct class members to a webpage containing the notification information.

D. Registration & Informational Websites

As soon as the parties execute this agreement and before Settlement Notification the Claim Administrator will create a web site for Settlement Class member to register and to make class award claims. Claim Administrator will maintain the registration website and the registration information which will be used for verification and payment of Class awards. Landlord will pay the cost of creating and maintaining the website and registration information by the Claim Administrator. Prospective class members will be informed that verification is necessary before a Class award can be authorized for payment. Tenants' Counsel will create and maintain informational web pages for this class action settlement on the Tenants' Project website.

X. CLAIMS PROCEDURE

A. Opt Out

Members of the Settlement Class may exclude themselves, that is, opt out of the class award payment of the proposed settlement by registering with the Claim Administrator and using the online opt-out procedure. In order to opt out, Settlement Class members may need to provide additional information as requested by Class Administrator in order to verify their eligibility and identity. Settlement Class members wishing to opt out must also submit a scan of a government issued ID to Class Administrator.

B. Online Registration & Claims Procedure

Settlement Class members will first register online with the Claim Administrator to begin the claims process. In order to receive an award, in addition to online registration Settlement Class members may need to provide additional information as requested by Class Administrator in order to verify their eligibility and identity. Settlement Class members must also submit a scan of a government issued ID to Class Administrator. Once the Court approves this Decree and the claim period begins and the Class Member's eligibility and identity are verified, Class Administrator will issue the appropriate class award to them.

C. Registration and Response to Request Deadlines

The deadline for online registration will be 120 days after the Court's approval of this Decree and registration will no longer be accepted after this time. Settlement Class members failing to timely register will be ineligible for the class award.

If a purported Settlement Class member timely registers, they have 60 days to respond to any requests by Claim Administrator, including requests for eligibility or identifying information and ID scans. Purported Settlement Class members failing to timely respond to requests by Claim Administrator will be ineligible for the class award.

D. Opt outs or claims may be filed on behalf of deceased Settlement Class members by the legal representatives of their estate if appropriate documentation is provided.

E. The Claim Administrator, under the direction of Landlord and Tenants' Counsel shall determine the identity, eligibility and amount of class award for each Settlement Class member who timely registers and within the time limit after being

requested, provides appropriate proof of identity and any other information necessary to verify eligibility and identity. The determination of the Claim Administrator may be appealed to this Court whose decision will be binding.

F. Settlement Class members will register online. In order to make any claim Settlement Class members must accurately provide their (1) their name; (2) years of tenancy; (3) building address for each year of tenancy. Settlement Class members may not make a claim unless this information is provided.

a. Expedited Claim

In order to make an expedited claim Settlement Class members must submit: (1) their name; (2) years of tenancy; (3) building address for each year of tenancy and (4) unit number in the specified building for each year of tenancy. Settlement Class members that provide all four of these pieces of information accurately will have their claims expedited.

b. Unexpedited Claim

If Settlement class members provide (1)-(3) but are unable to provide their unit number they will be requested to provide the following additional information, for each year: (5) the names of each roommate; (6) the floor level in the building; (7) the size in bedrooms of their unit. This additional information is provided for purposes of verification. The more additional information the better, but at a minimum Settlement Class members must provide at least two additional pieces of information, for example, two full names of roommates, or one full name of roommate plus the floor level of their building or one full name of roommate plus the size in bedrooms of their unit or the floor

level of their unit plus the size in bedrooms of their unit. Unexpedited claims will be delayed for verification.

XI. FAIRNESS HEARING

A. A fairness hearing, pursuant to Iowa R. Civ. P. 1.271(4), to determine the overall fairness, reasonableness and adequacy of the proposed settlement will be held on July 18, 2016.

B. Any Settlement Class member who wishes to be heard in opposition to the overall or individual fairness, reasonableness and adequacy of the settlement, including the Class Award, may appear at the fairness hearing after e-mailing Tenants' Counsel a pdf notice of intention to appear and objections. The notice of intention to appear and objections must be received by Tenants' Counsel within 21 days before the fairness hearing. Tenants' Counsel will file all notices of intention to appear and objections with the Court within 10 days before the fairness hearing.

XII. SETTLEMENT TIMETABLE

Below are target dates, contingent upon Court approval, subject to change by mutual agreement of the parties:

(A) Reach final agreement in global settlement, no later than February 15, 2016

(B) Get Court approval via order hour of *Conroy* notification, join *Migliore* for purposes of settlement, and set fairness hearing no later than February 26, 2016.

(C) Publicly announce settlement and begin notification of class in *Conroy*, contingent on court approval, website readiness, beginning on March 21, 2016.

(D) Fairness hearing in *Conroy*, obtain Court approval of *Migliore* consent decree, by the end of April, 2016..

(E) Contingent on Court approval, claim payments begin on June 15, 2016

(F) *Migliore/Apts.* at Iowa Complaint Process Agreement implemented no later than July 1, 2016.

(G) On or about September 15, 2016, (120 days after payment start date) claims registration ends.

(H) All timely claims paid.

DATED this 12th day of February, 2016.

Agreed to as to form and substance:

 CHRISTOPHER WARNOCK AT0009679 <i>Iowa Tenants' Project</i> 532 Center Street Iowa City, IA 52245 (319) 358-9213 chriswarnock@gmail.com TENANT'S COUNSEL	<u>/s/ Stephen J. Holtman</u> Stephen J. Holtman AT0003594 Lisa A. Stephenson AT0007560 Simmons Perrine Moyer Bergman, PLC 115 3 rd Street SE, Suite 1200 Cedar Rapids, IA 52401 Telephone: 319-366-7641 Facsimile: 319-366-1917 Email: sholtman@simmonsperrine.com lstephenson@simmonsperrine.com ATTORNEYS FOR DEFENDANT/LANDLORD
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State of Iowa Courts

Type: OTHER ORDER

Case Number LACV072840
Case Title MICHAEL CONROY VS APARTMENTS DOWNTOWN INC

So Ordered

A handwritten signature in black ink that reads "Chad A. Kepros".

Chad Kepros, District Court Judge,
Sixth Judicial District of Iowa