

**APPENDIX 1 -**

**Court Documents in Mungall v. Garry**

	<u>PDF Page(s)</u>
Conciliation court complaint .....	1
Conciliation court counterclaim.....	2
Conciliation court order for judgment.....	3-4
District court Findings of Fact, Conclusions of Law, Order for Judgment .....	5-13
District court's order (in letter form) denying request for reconsideration .....	14
Tenant's brief to the Court of Appeals.....	15-35

Plaintiff #1	Jill Mungall
Address	14354 Wilson Dr.
City/State/Zip	Eden Prairie mn 55347
Date of Birth:	10-09-1968

Plaintiff #2	
Address	
City/State/Zip	
Date of Birth:	

**VERSUS**

Defendant #1	Daniel Garry
Address	9269 Shetland Rd
City/State/Zip	Eden Prairie
Date of Birth:	unknown

Defendant #2	Olga Garry
Address	9269 Shetland Rd
City/State/Zip	Eden Prairie
Date of Birth:	unknown

Defendant #3	
Address	
City/State/Zip	
Date of Birth:	

<b>Office use only – SPECIAL SERVICE</b>	
<input type="checkbox"/>	Certified
<input type="checkbox"/>	Secretary of State
<input type="checkbox"/>	Personal Service
<input type="checkbox"/>	Other _____

**STATEMENT OF CLAIM AND SUMMONS**  
**STATE OF MINNESOTA      FOURTH JUDICIAL DISTRICT**  
**COUNTY OF HENNEPIN      CONCILIATION COURT**  
**Case Number: 27-CO-**

The defendant(s) owe plaintiff(s) \$ 1479.95, plus a  
 \$ 75 filing fee, for a total of \$ 2534.95, plus costs,  
 because on or about (month / year) Sept 6, 2017,  
 the following event occurred. **Briefly describe the event below.**

My previous landlord and I did a walkthrough in the home I rented on Sept 6<sup>th</sup>. We agreed that I would return the following weekend to do a few things in the house in order to get my full deposit returned. Shortly after leaving the residence he called and told me not to worry about the repairs, that he would do them. He assured me I would receive my refund, and could expect it within a couple of days. He did not return it and is now claiming \$4,417.53 in damage. I feel his claims are either irrelevant, unfounded or unreasonable. After several e-mail correspondences we have failed to reach an agreement.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116. The person(s) being sued are at least 18 years old and are not in the military service.

Signed: Jill Mungall  
 Date signed: Nov. 20, 2017

County where signed: Hennepin  
 State where signed: MN  
 Title of representative (if applicable): \_\_\_\_\_  
 Daytime telephone: (828) 461-2524

**SUMMONS: IMPORTANT NOTICE TO THE PARTIES**

You are hereby summoned to appear at the hearing of the above-entitled case. See the attached *Notice of Hearing* for time and location. If not attached, please call Conciliation Court at (612)348-2713.

Failure of defendant to appear at the hearing may result in a default judgment being entered for the plaintiff. Failure of the plaintiff to appear may result in dismissal of the action or a default judgment being entered in favor of the defendant on any counterclaim that has been asserted.

The Defendant may bring a counterclaim against the Plaintiff. See *Information About Conciliation Court* (#CCT101) available on the court's website at [www.mncourts.gov/forms](http://www.mncourts.gov/forms).

**Notice of Settlement**

The above-entitled case having been settled, the same may be and hereby is dismissed with my consent.

Date: \_\_\_\_\_

\_\_\_\_\_  
 Plaintiff's signature

Plaintiff #1
Jill Mungall
Address 14354 Wilson Drive
City/State/Zip Eden Prairie / MN / 55347
Date of Birth: 10-09-1968

Plaintiff #2
Address
City/State/Zip
Date of Birth:

**VERSUS**

Defendant #1
Daniel Garry
Address 9269 Shetland Rd
City/State/Zip Eden Prairie / MN / 55347
Date of Birth: 01/15/1977

Defendant #2
Olga Garry
Address 9269 Shetland Rd
City/State/Zip Eden Prairie / MN / 55347
Date of Birth: 11/20/1977

Defendant #3
Address
City/State/Zip
Date of Birth:

<b>Office use only – SPECIAL SERVICE</b>
<input type="checkbox"/> Certified
<input type="checkbox"/> Secretary of State
<input type="checkbox"/> Personal Service
<input type="checkbox"/> Other _____

**STATEMENT OF COUNTERCLAIM**  
**STATE OF MINNESOTA      FOURTH JUDICIAL DISTRICT**  
**COUNTY OF HENNEPIN      CONCILIATION COURT**  
**Case Number: 27-CO-17 - 9882**

The plaintiff(s) owe defendant(s) \$ 3613.04 \_\_\_\_\_, plus a \$ 70 \_\_\_\_\_ filing fee, for a total of \$ 3683.04 \_\_\_\_\_, plus costs, because on or about (month / year) 9/06/2017 \_\_\_\_\_, the following event occurred. **Briefly describe the event below.**

We are requesting the court to award damages incurred at our property plus filing fees. According to our agreement with tenant, any damages incurred during the rental period would be assessed and deducted from the deposit. According to our agreement \$1,450 was set as deposit.

1. \$1,452.43: Excessive holes & wall/ceiling damage
2. \$500.00: Bleached bedroom carpet/stains in carpet
3. \$500.00: Major scratches vertically on Fridge doors beyond repair.
4. \$400.00: Dishwasher. Broken door & tub. Leaks due to misuse.
5. \$80.61: Unpaid water bill.
6. \$450.00: Damage in the yard, grass destroyed after not collecting piles of leaves prior to snowfall leaving most of yard dead.
7. \$200: Raking and leaf removal. Not done by tenant as stated in lease.
8. \$30: Shower curtain.

The renter continuously made claims she would address these issues and fix them or she would outright deny there were issues. The house was often very messy and almost uninhabitable. We never made statements that we would return refund and perform repairs without cost. These are false statements. We had an agreement house would be kept in good shape. Items that are listed follow the lease agreement.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116. The person(s) being sued are at least 18 years old and are not in the military service.

Signed: \_\_\_\_\_

Date signed: 1-11-18

County where signed: Hennepin

State where signed: MN

Title of representative (if applicable): \_\_\_\_\_

Daytime telephone: (952) 261 4863

**SUMMONS: IMPORTANT NOTICE TO THE PARTIES**

You are hereby summoned to appear at the hearing of the above-entitled case. See the attached *Notice of Hearing* for time and location. If not attached, please call Conciliation Court at (612)348-2713.

Failure of defendant to appear at the hearing may result in a default judgment being entered for the plaintiff. Failure of the plaintiff to appear may result in dismissal of the action or a default judgment being entered in favor of the defendant on any counterclaim that has been asserted.

See *Information About Conciliation Court* (#CCT101) available on the court's website at [www.mncourts.gov/forms](http://www.mncourts.gov/forms).

**Notice of Settlement**

The above-entitled case having been settled, the same may be and hereby is dismissed with my consent.

Date: \_\_\_\_\_

Plaintiff's signature

**FILED**

Case Number: 27-CO-17-9882

Case Type: Conciliation

Jill Mungall vs Daniel Garry, Olga Garry

FEB 21 2018

**Order for Judgment on Claim and/or  
Counterclaim**

CONCILIATION COURT  
CLERK

Appearances: <input checked="" type="checkbox"/> Plaintiff 1 <u>Jill mungall</u>	<input checked="" type="checkbox"/> Defendant 1 <u>Daniel Garry</u>	<input checked="" type="checkbox"/> Contested	<input type="checkbox"/> Default
Appearances: <input type="checkbox"/> Plaintiff 2	<input checked="" type="checkbox"/> Defendant 2 <u>Olga Garry</u>	<input checked="" type="checkbox"/> Contested	<input type="checkbox"/> Default

Upon evidence received, IT IS ORDERED:

**CLAIM:**  Plaintiff has not demonstrated an entitlement to relief and recovers zero.

**CLAIM:**  Plaintiff # \_\_\_\_\_ is entitled to judgment against defendant # \_\_\_\_\_ for \$ \_\_\_\_\_ plus fees of \$ \_\_\_\_\_, plus service fees of \$ \_\_\_\_\_, for a JUDGMENT OF \$ \_\_\_\_\_.

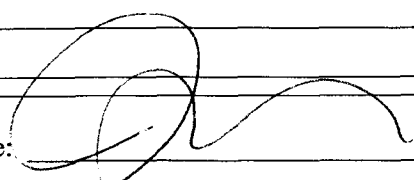
**COUNTERCLAIM:**  Defendant # 102 is entitled to judgment against plaintiff # 1 for \$ 3613.04 plus fees of \$ 70, plus service fees of \$ \_\_\_\_\_, for a JUDGMENT OF \$ 3683.04.

**OFFSET:** \$ \_\_\_\_\_ awarded to Plaintiff / Defendant

**REPLEVIN:** \_\_\_\_\_ 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 \_\_\_\_\_.

- \_\_\_\_\_'s claim is dismissed without prejudice as to \_\_\_\_\_.
- \_\_\_\_\_'s claim is dismissed with prejudice as to \_\_\_\_\_.
- \_\_\_\_\_'s counterclaim is dismissed without prejudice as to \_\_\_\_\_.
- \_\_\_\_\_'s counterclaim is dismissed with prejudice as to \_\_\_\_\_.

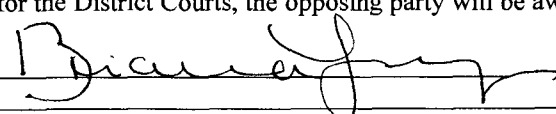
OTHER \_\_\_\_\_

Dated: 2/21/18 . Referee: 

**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.

**NOTICE:** THE PARTIES ARE NOTIFIED that Judgment has been entered as indicated above, but the Judgment is stayed by law until **MAR 16 2018** (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: 2-21-18 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. The judgment is good for 10 years and may be renewed for another 10 years. 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  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Jill Mungall,

Plaintiff,

v.

Daniel Garry and Olga Garry,

Defendants.

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

Judge Susan M. Robiner  
Court File No. 27-CV-18-4209

The above-captioned matter came on for a court trial on July 6, 2018, before the Honorable Susan M. Robiner. Amy Jo Roterer, Esq., appeared on behalf of and with Plaintiff Jill Mungall (“**Tenant**”). Defendants/Counterclaimants Daniel and Olga Garry (“**Landlord**”) appeared self-represented. Based on all of the files, records, and proceedings herein, including arguments of counsel, the Court makes the following:

**FINDINGS OF FACT**

1. Landlord owned the premises at 8280 Tamarack Trail, Eden Prairie, Minnesota during the period of the tenancy.
2. Landlord and Tenant entered into two lease agreements, one commencing August 8, 2015 and one commencing August 2, 2016 and expiring August 2, 2017. The relevant terms of both leases are identical; hence, they will be referred to in the singular as the “Lease.”
3. The Lease was received into evidence as Exhibits B, 1, and 1A. The terms of the Lease are incorporated herein by reference.

4. Tenant agreed to pay \$1,450.00 per month to rent the premises during the first lease period and \$1,500.00 per month during the second lease period. Tenant also provided a \$1,450.00 security deposit prior to occupancy.

5. Even though the Lease was to expire on August 2, 2017, Landlord gave Tenant 60 days' notice on June 30, 2017. The move-out date became August 31, 2017.

6. Tenant moved out by the end of the notice period.

7. On September 6, 2017, after moving out, Tenant and Landlord met at the premises for a walk-through inspection. At that time Tenant gave Landlord her mailing address so her security deposit could be returned. There were some minor repairs requested by Landlord which Tenant was willing to conduct: i.e. patching and painting certain ceiling and wall holes, buffing out scratches on the refrigerator door, and steam-cleaning the carpet.

8. However, Landlord never returned Tenant's security deposit. Instead, by email dated September 27, 2017, the Landlord took a different position regarding the deposit and remaining repairs. They identified certain repairs that would be necessary and that they considered beyond normal wear and tear and stated that Tenant would not receive her security deposit.

9. According to the email, the damages included patching holes in the walls and ceiling, new carpet in a bedroom, a new refrigerator door, a new dishwasher, an unpaid water bill, damages to the yard due to uncollected leaves, and a missing bathroom curtain. The costs equaled \$3,910.00.

10. Tenant brought suit for her security deposit and statutory damages pursuant to Minn. Stat. § 504B.178, Subd. 9. Landlord counterclaimed for their claimed property damages.

11. Findings related to each item of damages are set forth below.

12. **Tenant/Plaintiff's claimed damages - Security Deposit:** There is no dispute that Landlord did not return Tenant's \$1,450.00 security deposit or interest thereon.

13. A written statement to support the withholding of the security deposit was provided to Tenant on September 27, 2017, 27 days after Tenant left the premises and 21 days after Landlord received mailing address information.

14. **Defendant/Counterclaimant Landlord's claimed damages – Holes on walls and ceiling:** There were minor holes in the ceiling of the master bedroom, on the walls or ceiling of the second bedroom, and in the living room.<sup>1</sup> Tenant patched at least some of them but repainted with a non-matching color. At the walk-through, she offered to repaint the patches.

15. Landlord did not accept Tenant's offer noting at the hearing that they felt her work had been unprofessional in violation of the Lease which they interpreted as requiring professional level repair work.

16. However, they themselves, after obtaining one professional bid, chose to save money and hire a non-professional to patch and paint. They hired "George" – a person whose last name they do not know, who provided no estimate, no bill, and who they claim they paid \$1,100.00 in cash, although there was no documentary evidence of any such payment or pictures of completed work.

17. The Court concludes as a matter of law that the Lease was not breached with regard to the holes. The Lease does not require Tenant to only use professional level repairpersons for patching holes. The only reference to requiring professional work relates to the painting of walls. The patching and touch-up painting of holes due to mounting items on walls and ceilings does not constitute the painting of walls. Additionally, although the Lease requires

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<sup>1</sup> There were pictures of some minor dents and scratches in hallways but these were not the subject of testimony and constitute normal wear and tear over a two year tenancy.



that Tenant not use large nails or large screws,<sup>2</sup> the credible testimony of Tenant, coupled with the photographic evidence, establishes that she did not use large nails or large screws.

18. Additionally, Landlord failed to meet its burden of proof that it incurred \$1,100.00 in costs to repair the minor and limited holes that needed to be patched and touched-up. The amount claimed far exceeds any reasonable cost to fix a handful of superficial holes caused by the normal and predictable activity of mounting items on walls.

19. **Defendant/Counterclaimant Landlord's claimed damages – Yard repair:** Tenant raked the yard leaves in to piles but failed to collect and dispose of the leaves prior to snowfall in April 2017. Consequently, when the snow melted, Landlord discovered the leaf piles and asked Tenant to remove the leaves. She failed to do so timely.

20. Landlord's emails state that he paid \$100 to have leaves raked and \$10 per bag to have them bagged and removed.

21. Additionally, there were several brown patches that spring that had to be reseeded and fertilized. Landlord obtained an estimate from a nursery that appears to have included reseeding and fertilizing the entire lawn. Landlord did not accept the estimate.

22. Whatever yard work was done was done by "George" as a cash transaction without any estimate, or receipt. There were no pictures provided of the yard after work was done.

23. The Court concludes that there was no cost incurred for reseeding and fertilizing separate from the \$200 incurred to rake and remove leaves.

24. The Lease states that Tenant is responsible "to rake and dispose of leaves prior to snowfall." Tenant failed to dispose of leaves prior to snowfall, causing damages of \$200.00.

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<sup>2</sup> The Lease is ambiguous as to whether the term "large" modifies both the words "nails" and "screws". The ambiguity is properly being construed against the Landlord drafter.

25. **Defendant/Counterclaimant Landlord's claimed damages – Refrigerator**

**Scratches:** Tenant scratched the refrigerator door so that there were noticeable scratches on the door. She asserts that they could be buffed out and that she offered to do so. Landlord asserted that the scratches were too deep to buff out and the door needed to be replaced.

26. The scratches appear to be significant and beyond normal wear and tear warranting replacement of the door.

27. Landlord produced a receipt for a May 8, 2018 purchase of a refrigerator door at a cost of \$450.21. Apparently, the door was purchased once the house was sold in 2018.

28. **Defendant/Counterclaimant Landlord's claimed damages – Dishwasher**

**replacement:** The dishwasher was a 2007 model and was purchased in approximately 2008. It had several operating problems during the lease periods requiring multiple service calls. Additionally, the door would not close properly. Landlord and Tenant communicated in the past regarding problems with the dishwasher. Landlord did not appear to believe that the dishwasher's problems were the fault of Tenant and had servicemen come to the premises more than once to work on the dishwasher at Landlord's expense.

29. In May 2018, upon sale of the house, the dishwasher was replaced. By this time, it was over ten years old.

30. **Defendant/Counterclaimant Landlord's claimed damages – Carpet stains:**

The carpet had several stains when Tenant moved in. Tenant also caused additional stains during her tenancy. She offered to have them steam-cleaned when her spot cleaning was unsuccessful. Landlord did not accept the offer. Landlord presented no evidence regarding costs associated with either carpet cleaning or carpet replacement.

31. **Defendant/Counterclaimant Landlord's claimed damages – Unpaid water bill, broken exhaust fan, shower curtain, loss of sale opportunities:**

- a. Tenant testified credibly that she paid the last water bill and provided documentary evidence to support her testimony.
- b. The broken bathroom exhaust fan was not raised by Landlord in their initial letter to Tenant in September 2017. In fact, it was not raised as an issue until the house was inspected in March 2018 in connection with its sale. By that time, Tenant had been out of the premises for seven months. Landlord failed to establish that the bathroom exhaust fan was broken by tenant.
- c. Tenant testified credibly that there was no shower curtain at the beginning of the tenancy. Even if there had been, it would be normal for a shower curtain to be replaced after a two-year tenancy as part of routine maintenance.
- d. Landlord presented evidence that Tenant failed to keep the premises in show condition in alleged violation of paragraph 36 of the Lease which required Tenant to cooperate with marketing the house. However, the Landlord produced no evidence of any losses stemming from this claimed lack of cooperation.

**CONCLUSIONS OF LAW**

32. All conclusions of law set forth in the findings of fact are incorporated herein by reference.

33. Tenant's Claims: Landlord violated Minn. Stat. § 504B.178 as follows:

- a. Minn. Stat. § 504B.178, Subd. 3 requires that Landlord return the security deposit (or provide a written statement to support withholding the deposit)

within 3 weeks of the Tenant's leaving the premises and after a forwarding address has been provided. Minn. Stat. § 504B.178, Subds. 3-4. A forwarding address was provided at the September 6<sup>th</sup> walk-through, well within the 3-week period, which would have expired on September 21, 2017. The written statement supporting the holding back of the deposit was not provided until September 27, 2017, outside the statutory three-week period. Landlord violated Minn. Stat. § 504B.178, Subd. 4 entitling Tenant to a penalty in the amount of the security deposit plus interest thereon at the statutory rate of one percent per annum. Minn. Stat. § 504B.178, Subd. 4.

- b. As discussed below, the damages incurred by Landlord to their premises due to Tenant's failure to return the premises to proper condition equals \$650.21. Hence, the held-back security deposit exceeded actual damages by \$799.79.

34. The Lease, whose contents is incorporated in the Findings of Fact, provides that "if legal action is taken by the Owner or Resident to enforce this agreement, prevailing party shall be entitled to all costs incurred in connection with such action, including but not limited to personal service fees, late charges, filing fees, and reasonable attorney's fees." Lease, ¶ 28.

35. Tenant is entitled to attorney's fees pursuant to Minn. Stat. § 504B.172, 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.

36. Landlord's Counterclaims. Tenant returned the premises to the condition they were in at the beginning of the lease with some normal wear and tear, except as follows:

- a. The refrigerator door was badly scratched requiring its replacement at a cost of \$450.21;
  - b. Leaves were left on the yard uncollected causing damages to the yard in the approximate amount of \$200.00.
37. Tenant committed no other violations of the Lease or of Minn. Stat. Chap. 504B.
38. In summary, Tenant is entitled to the return of her security deposit of \$1,450.00, minus the damages to the refrigerator door and the yard in the amount of \$650.21, plus interest in the amount of \$23.99,<sup>3</sup> and Tenant is also entitled to a penalty in the amount of \$1,450.00, plus interest in the amount of \$43.50, for a total amount of \$2,317.28 plus costs and disbursements. Additionally, Tenant is entitled to her reasonable attorney's fees.

### **ORDER FOR JUDGMENT**

1. Judgment shall be entered against Defendant/Counterclaimants Dan and Olga Garry and in favor of Plaintiff Jill Mungall as follows:
  - a. As damages pursuant to Minn. Stat. § 504B.178, Subd. 4 for non-prompt written notice, the principal amount of \$1,450.00, plus simple interest at one percent per annum from August 1, 2015 to July 31, 2018 equaling \$43.50; and,
  - b. As damages for failure to return the security deposit funds after Landlord receives credit for damages to the premises beyond normal wear and tear, the principal amount of \$799.79, plus simple interest at one percent per annum from August 1, 2015 to July 31, 2018 equaling \$23.99,
  - c. For a total judgment in the amount of \$2,317.28 plus costs and disbursements.

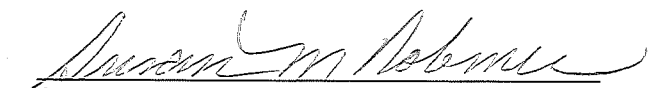
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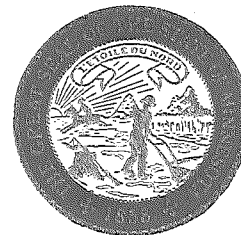
<sup>3</sup> Interest is calculated at 1% per annum from the first day of the month following payment of the security deposit to the date of judgment. Minn. Stat. § 504B.178, Subd. 2.

2. Plaintiff is also entitled to recovery of her reasonable attorney's fees.
  - a. Plaintiff shall file and serve an affidavit in support of her attorney's fees pursuant to Minn. Gen. R. Prac. 119.02 by **August 17, 2018**. Plaintiff shall waive her right to attorney's fees if the affidavit is not filed and served by this date.
  - b. Defendants may file and serve a brief opposing the amount of the attorney's fees by **August 31, 2018**.
  - c. The Court will take the matter under advisement at that time.
3. The Court Administer shall stay entry of judgment until the Court issues an Amended Order for Judgment that includes attorney's fees.

BY THE COURT:

Dated: 7/24/18

  
Susan M. Robiner  
Judge of District Court

STATE OF MINNESOTA  
FOURTH JUDICIAL DISTRICT COURT

SUSAN M. ROBINER  
JUDGE  
HENNEPIN COUNTY GOVERNMENT CENTER  
MINNEAPOLIS, MINNESOTA 55487-0422  
(612) 348-8284  
FAX (612) 348-2131

September 5, 2018

Daniel & Olga Garry  
9269 Shetland Rd.  
Eden Prairie, MN 55347

RE: *Jill Mungall v. Daniel Garry and Olga Garry*  
Court File No. 27-CV-18-4209

Dear Mr. and Mrs. Garry,

The Court received your letter seeking the Court's permission to move to reconsider the July 26, 2018 Findings of Fact, Conclusions of Law, and Order for Judgment following a bench trial that took place on July 6, 2018.

Minnesota Rule of General Practice 115.11 governs motions to reconsider. It states that "[m]otions to reconsider are prohibited except by the express permission of the court which will be granted only upon a showing of compelling circumstances." Minn. R. Gen. Prac. 115.11.

Motions to reconsider are sparingly granted and typically only where there have been relevant legal developments or compelling and new factual developments. Minn. R. Gen. Prac. 115.11, cmt. Motions to reconsider are not an opportunity to expand or supplement the record. *Id.*

Defendants cite no new legal developments in their letter; instead, they express disagreement with the Court's fact findings and legal analysis of Minn. Stat. § 504B.178. The Court stands by its factual findings based on the record provided on July 6, 2018. As for the legal analysis, the Court construed Minn. Stat. § 504B.178 as allowing landlords three weeks from a tenant's departure as long as a forwarding address was provided by the tenant within that period. The Garrys construe the same language to allow the Landlord three weeks from the later of the two events – i.e. tenant's departure or the tenant providing a forwarding address. The Court's construction of this consumer protection statute is supported by its language and public policy. If the Court is indeed mistaken in its treatment of the facts and law in this case, those arguments are more properly explored and addressed through the appellate process.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Susan M. Robiner'.

Susan M. Robiner  
Judge of District Court

cc: Amy J. Rotering, Esq.; via e-Service

**FILED**

February 7, 2019

**OFFICE OF  
APPELLATE COURTS**

**No. A18-2020**

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**State of Minnesota  
In Court of Appeals**

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Daniel J Garry and Olga Garry,

Appellants,

vs.

Jill Mungall,

Respondent.

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**BRIEF OF RESPONDENT JILL MUNGALL**

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Daniel and Olga Garry  
Pro Se Appellants  
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## TABLE OF CONTENTS

	Page
Table of Authorities	4
Legal Issues	6
Statement of Facts	10
Standard of Review	13
Argument	14
I.    The District Court Did Not Err by Refunding Tenant a Portion of her Security Deposit	14
A. Standard of Review	14
B. The District Court Did Not Abuse its Discretion by Awarding Respondent a Majority of Her Security Deposit	14
II.   The District Court Did Not Err in Awarding Respondent Damages for Appellant's Untimely Notice	15
A. Standard of Review	15
B. Appellants gave Respondent Untimely Notice of Their Intent to Retain Respondent's Security Deposit	15
C. Respondent Is Entitled To Penalty Damages of \$1,450	16
III.  The District Court Did Not Err in Awarding Respondent Tenant Her Entire Attorney's Fees and Court Costs	18
A. Standard of Review	18
B. Respondent is Entitled to Her Attorney's Fees and Court Costs as Contracted by the Parties and as a Matter of Law	18
1.    The Parties Contracted an Award of Attorney's Fees	18

2. Respondent Prevailed in District Court	18
C. Respondent's Attorney's Fees are Reasonable.	19
	15
Conclusion	20
Addendum	21

**TABLE OF AUTHORITIES**

**Statutes**

Minn. Stat. §504B.172.....  
Minn. Stat. §504B.178.....5, 15, 16,  
Minn. Stat. §645.16

**Cases**

*301 Clifton Place LLC v. 301 Clifton Place Condominium Assoc.*, 783 N.W.2d 551  
(Minn. Ct. App. 2010).....8

*Amerman v. Lakeland Dev. Corp.*, 203 N.W.2d 400 (Minn. 1973).....17

*Barr/Nelson, Inc. v. Tonto's, Inc.*, 336 N.W.2d 46 (Minn. 1983).....17

*Becker v. Alloy Hardfacing Engineering Co.*, 401 N.W.2d 655 (Minn. 1987).....17

*Duluth Herald & News Tribune v. Plymouth Optical Co.*, 176 N.W.2d 552, 555  
(Minn. 1970).....13

*Ellis v. Thompson*, A-14-1991 (Minn. Ct. App. Jun 22, 2015)(unpublished).....5, 15

*Hensley v. Eckhart*, 461 U.S. 424 (1983).....18

*Kaeding v. Auleciems*, 886 N.W. 2d 658 (Minn. Ct. App. 2016).....5, 14, 15

*Kelbro Co. v. Vinny's on the River, LLC*, 893 N.W.2d 390 (Minn. Ct. App. 2017).....8

*Material Movers, Inc. v. Hill*, 316 N.W.2d 13 (Minn. 1982).....8,

*Maxfield v. Maxfield*, 452 N.W.2d 219 (Minn. 1990).....5, 14

*Noltimier v. Noltimier*, 157 N.W.2d 530 (Minn. 1968).....12

*Northfield Care Ctr., Inc. v. Anderson*, 707 N.W.2d 731 (Minn. Ct. App. 2006).....8

*Porch v. Gen'l Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) .....5, 13

*Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).....5, 13

**Rules**

Minn. Gen. R. Prac. 524.....17,18

Minn. R. Civ. P. 52.01.....5, 13

Minn. R. Civ. P. 110.02.....12

## LEGAL ISSUES

### **I. Did the District Court err in awarding Respondent-tenant a majority of Respondent's security deposit?**

No. The District Court correctly concluded that many of Appellant-landlords' claimed damages to the rental residence were pre-existing, caused by normal wear and tear, or that there was insufficient evidence to prove Appellants' claim.

On September 27, 2017, Appellants informed Respondent that they were not returning Respondent's \$1,450 security deposit, and alleged additional damages beyond the security deposit. (Doc Index<sup>1</sup> No. 31 e-App. 7) Appellants claimed that Respondent caused extensive damage to the residence beyond normal wear and tear. *Id.* Respondent commenced an action in Hennepin County Conciliation Court to recover her security deposit. (Doc Index No. 31 e-App. 4). Appellants filed a counterclaim for alleged damages. (Doc Index No. 31 e-App. 5). Respondent lost on both the claim and counterclaim, and removed the case to the District Court. (Doc Index No. 31 e-App. 6) (Doc Index Nos. 1 and 2) The District Court found that the extent of actual damages to Appellant were \$200 in damages for leaf removal and \$450.21 for a new freezer door, for which Respondent was responsible. (R.<sup>2</sup> Add. ¶36.) (District Court's Order for Judgment dtd. July 25, 2018). The Court found that the Appellant's remaining claimed damages pre-existed the leased, were the result of normal wear and tear, or did not contain sufficient evidence in the record. *Id.* The District Court issued an order judgment on July

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<sup>1</sup> The Appeals Record Document Index is hereinafter referred to as "Doc. Index"

<sup>2</sup> The term "Respondent" is hereinafter referred to as "R.", and Addendum is hereinafter referred to as "Add."

25, 2018, but stayed entry pending the determination of awarded attorney's fees. *Id.* A judgment and notice of entry of judgment was filed on November 08, 2018. (Doc. Index 22, e-App. 15-16), and Appellants filed a Notice of Appeal on December 10, 2018. (Doc. Index 24, e-App. 17)

Apposite Authority

Cases: *Porch v. Gen'l Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002)  
*Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999)

Rules: Minn. R. Civ. P. 52.01

**II. Did the District Court err by concluding that Appellant violated Minn. Stat. §504B.178 subd. 3 and awarding Respondent a penalty of \$1,450?**

No. The District Court correctly concluded that Appellants did not timely return Respondent's security deposit or inform Respondent of their reasons for withholding Respondent's security deposit. Consequently, the District Court applied the penalty as mandated under Minnesota Statute §504B.178 subd. 4.

On June 30, 2017, Respondent provided timely notice to Appellants of her notice to terminate the lease, and tenant subsequently moved out of the residence August 31, 2017. (R. Add. ¶¶ 5-6). On September 6, 2017, the parties conducted a walkthrough of the residence to assess damage and discuss remediation. (*Id.* ¶7). Respondent also provided Appellants her forwarding address. (*Id.*) On September 27, 2017, Appellants informed Respondent that they were not returning Respondent's \$1,450 security deposit, and

alleged additional damages beyond the security deposit. (Doc Index No. 31 e-App. 7)

Appellants claimed that Respondent caused extensive damage to the residence beyond normal wear and tear. *Id.* Respondent commenced an action in Hennepin County Conciliation Court to recover her security deposit. (Doc Index No. 31 e-App. 4).

Appellants filed a counterclaim for alleged damages. (Doc Index No. 31 e-App. 5).

Respondent lost on both the claim and counterclaim, and removed the case to the District Court. (Doc Index No. 31 e-App. 6) (Doc. Index Nos. 1 and 2). The District Court concluded that as a matter of law Appellants violated Minn. Stat. 504B.178, subd. 3 (requiring a landlord to return tenant's security deposit or to inform tenant in writing of landlord's reasons for withholding all or a part of it). (R. Add. ¶33) The District Court issued an Order for Judgment on July 25, 2018, but stayed entry pending the determination of awarded attorney's fees. *Id.* A Notice of Entry of Judgment was filed on November 08, 2018. (Doc. Index 22, e-App. 15-16), and Appellants filed a Notice of Appeal on December 10, 2018. (Doc. Index 24, e-App. 17)

#### Apposite Authority

Statutes: Minn. Stat. §504B.178, subd. 3 and 4  
Minn. Stat. §645.16

Cases: *Kaeding v. Auleciems*, 886 N.W.2d 658 (Minn. Ct. App. 2016)  
*Ellis v. Thompson*, A-14-1991 (Minn. Ct. App. Jun. 22, 2015)  
(unpublished)  
*Maxfield v. Maxfield*, 452 N.W.2d 219 (Min. 1990)

### **III. Did the District Court err in awarding Respondent her attorney's fees?**

No. The parties signed two consecutive leases, both of which contained the following clause:

If legal action is taken by the Owner or Resident to enforce this agreement, prevailing party shall be entitled to all costs incurred in connection with such action, including but not limited to personal service fees, late charges, court fees, filing fees, and reasonable attorney's fees.

(Doc. Index 31, e-App. No 2 at ¶28 and 3 at ¶29)

The District Court held that the parties effectively contracted an award of fees to a prevailing party. (R. Add. ¶34) The District Court also held that as a matter of law if a lease contains that entitles a landlord to attorney's fees, that the tenant is also entitled to attorney's fees in the same action. (R. Add. ¶35)

On June 30, 2017, Respondent provided timely notice to Appellants of her notice to terminate the lease, and tenant subsequently moved out of the residence August 31, 2017. (Doc. Index No. 12 ¶¶ 5-6). On September 6, 2017, the parties conducted a walkthrough of the residence to assess damage and discuss remediation. (Id. ¶7). Respondent also provided Appellants her forwarding address. (Id). On September 27, 2017, Appellants informed Respondent that they were not returning Respondent's \$1,450 security deposit, and alleged additional damages beyond the security deposit. (Doc Index No. 31 e-App. 7) Appellants claimed that Respondent caused extensive damage to the residence beyond normal wear and tear. *Id.* Respondent commenced an action in Hennepin County Conciliation Court to recover her security deposit. (Doc Index No. 31 e-App. 4). Appellants filed a counterclaim for alleged damages. (Doc Index No. 31 e-App. 5). Respondent lost on both the claim and counterclaim, and removed the case to the District Court. (Doc Index No. 31 e-App. 6) (Doc. Index Nos. 1 and 2). The District Court concluded that as a matter of law Appellants violated Minn. Stat. 504B.178, subd. 3



(requiring a landlord to return tenant's security deposit or to inform tenant in writing of landlord's reasons for withholding all or a part of it). (R. Add., ¶33) and that Respondent was entitled to reasonable attorney's fees. (R. Add., Order ¶2) The District Court issued an Order of Judgment on July 25, 2018, but stayed entry pending the determination of awarded attorney's fees. *Id.* The District Court ordered a briefing schedule to determine reasonable attorney's fees. *Id.* An Order Granting Attorney's Fees and Order for Judgment were filed on October 8, 2018. (Pet.<sup>3</sup> Add.). A Notice of Entry of Judgment was filed on November 08, 2018. (Doc. Index 22, e-App. 15-16), and Appellants filed a Notice of Appeal on December 10, 2018. (Doc. Index 24, e-App. 17)

#### Apposite Authority

Cases: *Material Movers, Inc. v. Hill*, 316 N.W.2d 13 (Minn. 1982)  
*301 Clifton Place LLC v. 301 Clifton Place Condominium Assoc.*, 783 N.W.2d 551 (Minn. Ct. App. 2010)  
*Northfield Care Ctr., Inc. v. Anderson*, 707 N.W.2d 731 (Minn. Ct. App. 2006)  
*Kelbro Co. v. Vinny's on the River, LLC*, 893 N.W.2d 390 (Minn. Ct. App. 2017)

Statutes: Minn. Stat. §504B.172

### STATEMENT OF FACTS

Respondent-tenant Jill Mungall leased a single-family residence from appellant landlords Daniel and Olga Garry for just over two years. (R. Add. ¶2) The parties signed two leases; the first running from August 5, 2015, to August 1, 2016 with monthly rent of \$1,450; the second from August 2, 2016 through

August 2, 2017 with monthly rent of \$1,500. *Id.* Index Respondent paid Appellants a security deposit of \$1,450. *Id.* at ¶4. Both leases contained a provision that, should either party commence legal action to enforce the lease, that “[the] prevailing party shall be entitled to all costs incurred in connection with such action, including but not limited to . . . court fees, filing fees, and reasonable attorney’s fees.” (Doc. Index 31, e-App. No 2 at ¶28 and 3 at ¶29) Prior to Respondent moving into the residence, Appellants acknowledged existing damage to a number of areas in the house, including stains in the carpet in the second bedroom. (Doc. Id. 31, e-App. 9)(letter from Appellants welcoming Respondent to the property).

For the duration of the tenancy, the parties coexisted peacefully. On June 30, 2017, Respondent tendered to Appellants a 60-day notice to vacate the residence by August 31, 2017, and the parties do not dispute that as of the date of the notice, the new tenancy end date became August 31, 2017. (R. Add. ¶¶ 5-6)

On August 30, 2017, Respondent informed Appellants that she was ready for a final walkthrough of the residence (Doc. Index 31 e-App 24, CRT 010 Texts), which the parties conducted after Respondent vacated the residence on September 6, 2017. ( Doc. Index 31 e-App 25, CRT 011 Texts)(R. Add. ¶7). During the walkthrough, parties noted minor damage on some of the walls from small nail holes; scratch marks on the refrigerator; and stains on the carpet in the second bedroom. (R. Add. ¶7). Respondent offered to re the holes; buff out the refrigerator scratches; and steam clean the carpet. *Id.* At that time, Respondent also provided a forwarding address so Appellants could return

her security deposit. *Id.* After the walkthrough, Respondent left with the impression that she would receive a full refund of her security deposit based on her conversation with Appellant. (Doc. Index 31 e-App 8, CRT 008 Letter Re Deposit Return).

Appellants did not return Respondent's security deposit or any portion thereof. (R. Add. ¶8). Instead, on September 27, 2017, over three weeks after Respondent vacated the residence, Appellants informed Respondent that Appellants assessed significant costs above and beyond Respondent's security deposit due to what Appellants considered excessive damage to the residence. (*Id.* at ¶8) Appellants claimed that Respondent negligently placed large holes in some of the walls and ceiling, stained the carpet beyond repair, broke the dishwasher, caused damage to the yard by failure to rake leaves, damaged a shower curtain, and failed to pay the water bill. (*Id.* at ¶9)

Respondent commenced an action in Hennepin County Conciliation Court to recover her security deposit. (*Id.* at ¶10) Appellants counterclaimed for their alleged damages. (*Id.*) Respondent lost on both her claim and Appellant's counterclaim, and removed the action to Hennepin County District Court. (Doc. Index 31 e-App. 6) (Doc Index 1). On July 6, 2018, the District Court held a half-day bench trial. (R. Add.) On July 24, 2018, the District Court issued an Order for Judgment. (*Id.*) Although the District Court found that Respondent was responsible for some of Appellants' claimed damages, it concluded that Appellants did not provide sufficient evidence to prove most of their claims. (*Id.*) Specifically, the court found in favor of Respondent on three issues: (1) the court awarded Respondent \$799.79 of her security deposit plus \$23.00 in interest; (2) the court found that Appellants did not timely return Respondent's remaining security

deposit and awarded Respondent a statutory penalty of \$1,450 plus interest of \$43.50 under Minn. Stat. §504B.178, subd. 4; and (3) the court awarded Respondent her reasonable attorney's fees pursuant to the parties' contractual agreement. (Id.) Deferring a final entry of judgment, the District Court ordered a briefing schedule regarding attorney's fees. (Id.) Respondent filed an Affidavit in Support of Attorney's Fees on July 10, 2018. (Doc. Index 13) Appellants did not submit a responsive brief. (Pet. Add.)

On October 24, 2018, the District Court issued an Order Granting Attorney's Fees and an Order for Judgment. (Pet. Add.) The District Court awarded Respondent the above referenced damages, plus Respondent's court filing fees and reasonable attorney's fees. (Id.) The District Court filed a Notice of Entry of Judgment. (Doc. Index 22) On December 10, 2018, Appellants filed a Notice of Appeal. (Doc. Index 24)

### **STANDARD OF REVIEW**

Appellants carry the burden of ensuring a proper preservation of the record on appeal. *See* Minn. R. Civ. App. P. 110.02, subd. 1(a) ("Within ten days after filing the notice of appeal, the appellant shall . . . order from the reporter a transcript of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record . . ."); *Noltimier v. Noltimier*, 157 N.W.2d 530 (Minn. 1968)(stating that a pro se appellant is not exempt from the requirement of providing an adequate record). When an appellant fails to provide a transcript, an appellate court cannot challenge a District Court's findings of fact, and review is limited to whether the

District Court's findings of fact support its conclusions of law. *Duluth Herald & News Tribune v. Plymouth Optical Co.*, 176 N.W.2d 552, 555 (1970).

## ARGUMENT

### **I. The District Court did not err by refunding tenant a portion of her security deposit.**

#### **A. Standard of Review.**

The standard of review of a District Court's conclusions of law is an abuse of discretion. *Porch v. Gen'l Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), review denied (Minn. June 26, 2002). The District Court's trial record is reviewed in the light most favorable to the District Court's decision and deference is given to the District Court's credibility determinations. Minn. R. Civ. P. 52.01; *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

#### **B. The District Court did not abuse its discretion by awarding Respondent a majority of her security deposit.**

Appellants claim that the District Court erred in its conclusions that Respondent was not responsible for several of Appellant's claims of alleged damages; namely, the dishwasher, lawn, ceiling and walls, carpet, bathroom fan, and alleged damages from loss on sale of property. (Pet. Brief at 11-16) However, Appellants' arguments do not cite to the record, and offer allegations not found in the record. (Pet. Brief at 14, subd. VI) Additionally, as aggrieved as Appellants claim to be, they did not consider these alleged missteps significant enough to order a transcript of the trial and preserve the record for this Court.

The District Court addressed each and every one of Appellants' claims in its findings of fact, conclusions of law, and order. (R. Add.). Each finding of fact amply supports the District Court's conclusions of law. The fact that Appellants happen to disagree with the District Court's findings does not render the District Court's findings invalid.

**II. The District Court did not err in awarding Respondent damages for Appellants' untimely notice under Minn. Stat. §504B.178, subs. 3 and 4.**

**A. Standard of Review.**

Interpretation of a statute requires a *de novo* review. *Kaeding v. Auleciems*, 886 N.W.2d 658, 663 (Minn. Ct. App. 2016). The purpose of statutory review is to "ascertain and effectuate the intention of the legislature." Minn. Stat. §645.16. When interpreting a statute, appellate courts assign the words and phrases "their plain and ordinary meaning." *Kaeding*, 886 N.W.2d at 663. An appellate court interprets a statute as a whole so that each section does not conflict with surrounding sections. *Id.* at 106.

When there are mixed questions of fact and law, "an appellate court may correct erroneous applications of the law." *Maxfield v. Maxfield*, 452 N.W.2d 219, 221 (Minn. 1990). However, the District Court's conclusions of law are reviewed under an abuse of discretion standard. *Id.*

**B. Appellants gave Respondent untimely notice of their intent to retain Respondent's security deposit.**

Appellants cite a truncated version of Minn.Stat. 504B.178, subd. 3(a). Pet. Br. 8. The subdivision in its entirety holds that:

(a) Every landlord shall:

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

(2) within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant,

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.

The statute clearly states that a landlord must return a tenant's security deposit within three weeks of the end of the tenancy. Although a tenant must also provide a landlord with a mailing address, the legislature did not assign a specific timeline to this requirement. *See, e.g., Kaeding*, 886 N.W.2d at 665 (stating that the three week return requirement dependent only on the termination of the tenancy); *Ellis v. Thompson*, A14-1991 \*at 5 (Minn. Ct. App. Jun. 22, 2015)(unpublished). The only requirement with regard to tenant's mailing address is that the tenant furnish landlord with the address within the three week period after the tenancy ends.

**C. Respondent is entitled to penalty damages of \$1,450.**

Minn. Stat. §504B.178, subd. 4 mandates that a landlord who violates Minn. Stat. 504B.178, subd. 3 "is liable to the tenant for damages in an amount equal to the portion of the deposit withheld by the landlord 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." (emphasis added). The penalty is a punitive remedy against landlords who retain a tenant's security deposit in bad faith. *See* Minn. Stat. 504B.178,

subd. 7 (stating that a landlord who violates subdivision 3 of the statute is “presumed to be [acting] in bad faith unless the landlord returns the deposit within two weeks after the commencement of any action for the recovery of the deposit.”)

The District Court found that Respondent vacated the residence by August 31, 2017. (R. Add.) Because Appellants did not contact Respondent until 27 days after August 31, Appellants violated Minn. Stat. §504B.178, subd. 3., and Respondent is entitled to the statutory penalty of \$1,450 as a matter of law.

Appellants make two disparate arguments. First, in its Statement of the Case, Appellants allege that the District Court erred in its interpretation of Minn. Stat. §504B.178, subd. 3, and its award of a \$1,450 penalty to Respondent. Subsequently, Appellants mistakenly attempted to bring a new argument into the appellate process that was not raised in District Court, and claim that Respondent extended the lease until September 6, 2017. (Pet. Br. At 8)

Appellants’ argument fails in three aspects. First, the Appellants have not previously claimed that the parties agreed to extend the lease. Second, there is no basis in the record proving that there was a meeting of the minds and a writing to reflect the parties’ alleged intentions to extend the lease past August 31, 2017. Third, Respondent was ready to conduct the final walkthrough on August 30, 2017, a day before her tenancy was scheduled to end. Respondent was unable to engage in the walkthrough because Appellants were out of town. (Doc. Index 31, e-App 24). Appellants instructed Respondent to “take [her] time”, as Appellants would be out of town until September 3.



**III. The District Court did not err in awarding Respondent Tenant her entire attorney's fees and court costs.**

**A. Standard of Review.**

An appellate court reviews an award of attorney's fees under an abuse of discretion standard. *Becker v. Alloy Hardfacing Engineering Co.*, 401 N.W.2d 655, 661 (Minn. 1987). "[T]he reasonable value of attorneys' fees is a question of fact, and the findings of the [district] court must be upheld by a reviewing court unless clearly erroneous." *Amerman v. Lakeland Dev. Corp.*, 203 N.W.2d 400, 400-01 (Minn. 1973). Parties typically may not recover attorney's fees unless allowed under an applicable statute, or parties to a contract expressly consent to the award of fees. *Barr/Nelson, Inc. v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983).

**B. Respondent is entitled to her attorney's fees and court costs as contracted by the parties and as a matter of law.**

**1. The parties contracted an award of attorney's fees.**

Both leases contain a clause expressly stating that a prevailing party is entitled to its attorney's fees and court filing fees when legal action is taken to enforce the lease. (cite). Respondent paid a \$70 conciliation court filing fee, a \$297 District Court filing fee, and retained counsel at a cost of \$2,198.51, all for the sole purpose of enforcing the leases' security deposit provision. (Doc. Index 13 Ex. A, B, and C)

**2. Respondent prevailed in District Court.**

Minnesota General Rule of Practice 524(b) and (c) sets forth the definition of a prevailing party in a District Court.

(b) If the removing party prevails in District Court, the removing party may recover costs from the opposing party as though the action were commenced in District Court. . .

(c) For purposes of this rule, the removing party prevails in District Court if:

(1) the removing party recovers at least \$500 or 50 percent of the amount or value of property that the removing party requested on removal, whichever is less, when the removing party was denied any recovery in conciliation court . . .

The District Court awarded Respondent a total judgment of \$4,884.79, well over the \$1,549.95<sup>4</sup> Respondent requested on removal<sup>5</sup>, and over 50 percent more than what Respondent requested at trial. Appellants prevailed in conciliation court; however, Respondent's removal to District Court vacated the conciliation court's order. Minn. Gen. R. Prac. 521(d).

In conclusion, Respondent was the prevailing party in the District Court matter and is entitled to her attorney's fees and court filing fees as a matter of law.

**C. Respondent's attorney's fees are reasonable.**

Respondent's counsel provided a detailed, itemized statement of Respondent's attorney's fees under penalty of perjury, and The District Court conducted a thorough analysis of its determination of Respondent's attorney's fees using applicable case law. Conversely, Appellant cites to *Hensley v. Eckhart*, which applies the award of attorney's fees specifically to civil rights cases. 461 U.S. 424 (1983). Because the present action does not address a civil rights issue, Appellants' reference to *Hensley* is misplaced.

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<sup>4</sup> Respondent's request of \$1,479.95 is comprised of the \$1,450 security deposit plus \$29.95 in statutory interest.

<sup>5</sup> Respondent's requested total of \$2,534.95 was an unintentional error; the correct total is \$1,549.95 (\$1,479.95 plus filing fee of \$70).

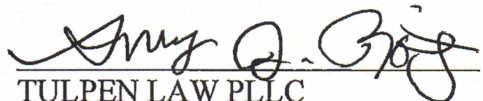
Appellants misinterpret the District Court's determination of reasonableness by focusing on the specific dollar amount Respondent requested before retaining counsel (rather than the amount obtained), and then applying a formula that Appellants do not cite to any basis in law to conclude that Respondent's counsel's fees were "excessive". The District Court provided a thorough analysis of the reasons for its conclusions. Additionally, a judicial officer, who is a member of the legal community and interacts with litigation counsel on a regular basis, would have a far superior understanding of what constitutes "reasonable" attorney's fees than a party whose profession lies outside the legal community.

#### CONCLUSION

For the reasons stated above, Respondent respectfully requests that the Court uphold the District Court's Order for Judgment filed on July 25, 2018, Order for Attorney's Fees and Order for Judgment filed on October 8, 2018, and Notice of Entry of Judgment filed on November 8, 2018.

Respectfully submitted,

Dated: 02/07/2019

  
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No. A18-2020

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**State of Minnesota  
In Court of Appeals**

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Daniel and Olga Garry, Appellants, v. Jill Mungall, Respondent

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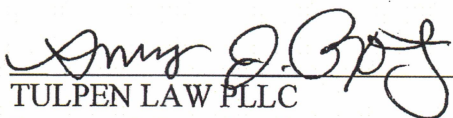
**CERTIFICATION OF BRIEF LENGTH**

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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3(b), for a brief produced with a 13-point, Times New Roman font. The length of this brief is 330 lines and 3866 words. This brief was prepared using Microsoft Word 2011.

Respectfully submitted,

Dated: 02/07/2019

  
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