Better Landlording through Education

JOIN US FOR OUR NOVEMBER 22ND, 2016 MEMBER LUNCHEON FEATURING:

Rochelle Dietiker from Cook Appraisal

Cook Appraisal
COMMERCIAL VALUATION
RESEARCH GROUP

Our speaker this month is Rochelle Dietiker from Cook Appraisal. Dietiker will discuss the results of Cook's multi-family residential survey of units in the Iowa City/Coralville area.

Dietiker is an Iowa native. She grew up on a small farm in Iowa County straight west of Iowa City. After graduating from the University of Northern Iowa in 1994 and from the University of Iowa in 1999, she found herself interested in the real estate industry. She started with Cook Appraisal in September of 1999. Rochelle obtained her general appraisal certification from the State of Iowa in August 2002 and her MAI designation in November 2011. She is an active member of the Appraisal Institute and served as the Iowa Chapter President in 2012. Over the last 17 years, she has appraised a variety of property types; including multi-family residential, general and medical office buildings, retail properties, and industrial warehouse and manufacturing facilities.

Over the last 20 years, Cook Appraisal has been completing a multi-family residential survey of units in the Iowa City/Coralville area. The individual property information remains anonymous, however the data is compiled and general results are shared with survey participants and interested parties throughout the local market. This year, additional information was collected on recently completed multi-family projects and those in the pipeline. Given the activity in the market as of recent, this information is compelling and something of which local property owners and developers should be aware.

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Membership Meeting at Flannigan's in the IOWA RIVER POWER COMPANY

Our next General Membership meeting will be held Tuesday, November 22nd, 2016, at 11:30 am at Flannigan's in the Iowa River Power Company, 501 – 1st Ave, Coralville. The lunch menu is chicken salad, chips, fruit, dessert and drink.

Any interested member of the Association is welcome to attend starting at 12 noon. If you wish to have lunch, please arrive at 11:30.

Please RSVP by email (apartmentassoc@gmail.com) or phone to Mark Ruggeberg at (319)338-0435 with the number of individuals from your office or home who will be attending. **Cost is $12.00 per person**. It is important to let us know if you will be attending and having lunch. If you do not RSVP and intend to have lunch, you may be asked to wait to serve yourself until we are sure that we can provide food for those who have RSVP'd.
The speaker will have the floor from noon to 1pm.

LUNCH IS $12.00 AT THE DOOR.

3 Tips for Setting Your Monthly Rent Price

From Zillow.com by Lindsey Schober

Whether you have a duplex in the city or a single-family home in the suburbs, setting a competitive rental price for your investment property is key to your success as a landlord. If you price it too high, your place could sit unoccupied. Too low, you run the risk of losing money on your investment.

Here are 3 tips to help you determine if the rent price is right on your rental property.

RESEARCH YOUR COMPETITION

Take a look at your neighborhood and understand how it fits into your larger town or city: Are you in an up-and-coming area where people will pay a premium to live? Within walking distance to nightlife and entertainment? Near the area's best schools? Once you know how your location fits into the larger picture and what amenities are nearby, research similarly sized rentals within comparable distances to neighborhood features. It's important to know how your property stacks up against other area properties with similar amenities and the same number of beds and baths. Using your competitors as a baseline, you can decide how much more you can charge in rent for the extras your property offers, such as an in-unit washer and dryer, covered parking or fenced backyard.

KNOW YOUR LOCAL MARKET

Before setting your price, research your local market. Some cities, such as San Francisco and Seattle, are hard to pin down because rents are rising so fast, which can make market research feel daunting. But it doesn't have to be! Start by taking a look at local market reports on Zillow, which show the median rent in your area and in nearby towns and cities. You can see if rents are rising or falling, by how much, and if rents are projected to increase or decrease. Remember that your rental price is typically a dynamic number that changes in relation to your local market conditions and your competition. It is ultimately up to you to decide what to charge and whether to increase (or decrease) rates come renewal time.

UNDERSTAND YOUR "RENT RANGE"

While market-level information is helpful, you also need to dig down to the property and amenity level to be sure you're setting a competitive price relative to the prevailing rents in your area.
Zillow's Rent Zestimate® tool can help with this. It is an estimate of a property's monthly rent price, and it can help you determine if the price you want to charge for your rental is within the "Rent Range" for the size and location of the home.
Zillow's Rent Zestimate is available for 90+ million homes in the country. It uses a proprietary formula to calculate the estimated monthly rental price and takes into account several pieces of publicly available data, such as a home's square footage, amenities like air conditioning or a fireplace, the last sales price, comparable rents in the area and any owner-updated home facts. It's a helpful starting point for landlords who want to determine a monthly rental price.

Service Animal and Emotional Support/Therapy Animal Information

The City of Iowa City Human Rights Office recently issued a memo that provides general guidance to area landlords and housing providers regarding assistance animals in the leasing and renting of housing. To view the memo, visit www.icgov.org/city-government/departments-and-divisions/human-rights/resources-and-training. Additional questions may be directed to the City of Iowa City Human Rights Office at 319-356-5015 or humanrights@iowa-city.org.

Memorandum:

Recently, this office has received multiple inquiries regarding assistance animals in the leasing /renting of housing in Iowa City. This memorandum is meant to provide general guidance regarding these animals.
What are assistance animals?

There are two types of assistance animals, governed by two different federal laws, with corresponding state and local versions. The first is a "service animal," which is governed by the Americans with Disabilities Act (ADA). The second is governed by the Fair Housing Act (FHA) and can be either a traditional "service animal" or an "emotional support / therapy animal."

Definition of a service animal:
The ADA narrowly defines a service animal as one that has been trained to do work or perform tasks for the benefit of a person with a disability. A disability is a condition that substantially limits one or more of a person's major life activities. Disabilities may be physical, mental, sensory, or intellectual. Many disabilities are not obvious to a casual observer, for example, a seizure disorder.

Under the ADA, a service animal may only be a dog or a miniature horse. The ADA specifically excludes emotional support / therapy animals from qualifying as service animals.

Definition of assistance animal:
The FHA defines an assistance animal as one that is "necessary to afford the individual [who has a disability] equal opportunity to use and enjoy a dwelling" and includes both service animals and emotional support / therapy animals. Under the FHA, the assistance animal may be any animal.

What if I have a "no pet allowed policy" or impose a higher security deposit for tenants with a pet?
An assistance animal is not a pet. Therefore, no pet-associated rules or fees apply to them. A landlord cannot reserve "no pet" apartments, charge extra deposits or surcharges, impose weight limits or breed restrictions, designate special stairways or elevators for the animal's use, exclude the animal from common areas, or impose any other restrictions that might be allowable if the animal were a pet. 1 What proof can I require from a potential or current tenant who expresses a need for a service animal or emotional support / therapy animal?

When a tenant or prospective tenant expresses a need for an assistance animal, the housing provider may ask only two questions: (1) Do you have a disability, i.e. "a physical or mental impairment that substantially limits one or more major life activities?" and (2) Do you have a disability-related need for the assistance animal, i.e. does the animal "work, provide assistance, perform tasks or services, … or provide emotional support that alleviates one or more of the identified symptoms of [the] existing disability?"2 If the answer to both is yes, the housing provider must allow the animal.

Continued on next page ….

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However, the housing provider may verify the tenant's responses. If the disability is not readily apparent or previously known to the housing provider, the provider may ask the person to provide documentation regarding the existence of the disability. The housing provider may not ask for medical records or specific detailed information regarding the disability, but may require that the existence of an actual disability is confirmed by a licensed medical professional. (This can include a physician, psychiatrist, social worker or other mental health professional.)

The housing provider may also ask for documentation establishing that the animal alleviates one or more symptoms of the existing disability. Again, the provider may require that the need for the animal is acknowledged by a licensed medical professional. Typically, this will be contained in the same document that confirms the existence of the disability.

Must a service animal or emotional support / therapy animal receive special training?

A service animal is not required to be professionally trained, and is not required to wear a vest, harness, or collar identifying it as an assistance animal. Some service animals are highly trained; guide dogs for the vision-impaired undergo extensive, verifiable training. However, many service animals are trained by their owners to do the tasks the owners require. Mobility-impaired owners, for example, are capable of training their service animals to fetch dropped objects themselves. Emotional support / therapy animals may perform their function simply by their presence without the need for training. Similarly, no certification is required. In some circumstances, the same animal may provide assistance to more than one person. For example, the same dog might alert both members of a deaf couple to knocks on the door or morning alarms.

Housing providers are not required to accept online "club membership" or "certification" documents that claim the animal is an assistance animal. Sham assistance animal certification services are prevalent on the internet; a housing provider is not required to accept this "documentation." The provider may ask a tenant to obtain a letter from the tenant's treating medical professional (or ask the medical professional to complete a housing provider's form) confirming the existence of a disability and the need for the assistance animal to alleviate the
symptoms of that disability.

Housing providers are not required to accept an animal that poses a genuine threat to the health and safety of others that cannot be alleviated (such as by requiring that the animal be muzzled when it is out of the tenant's unit). This threat must be based upon actual evidence related to the specific animal; it cannot be based upon generalizations regarding breeds or other ambiguous fears. Similarly, housing providers are not required to accept an animal that causes substantial physical damage to the property of others that cannot be alleviated by other means.

Again, this must be based upon objective evidence related to the specific animal's actual conduct, not speculation. Tenants may be required to pay for any damage their assistance animals cause. However, they cannot be required to pay additional deposits or fees in advance of actual damage.
If you have questions regarding topics addressed in this memorandum or the obligations of housing providers to tenants with a service or support / therapy animal in general, please call the office at 319-356-5015 or 319-356-5022. Quarterly, the Iowa City Human Rights Office will provide guidance memos to local landlords on fair housing to assist in providing good outcomes for both landlords and tenants in this community. Please send fair housing topics you would like to receive guidance on to humanrights@iowa-city.com.

1 Iowa City's Code of Ordinances makes an exception for owner-occupied housing. If (1) the owner resides on the property, and (2) the owner rents four or fewer rooms within a single dwelling, or the owner occupies a unit in a dwelling with four or fewer independent units, the owner is exempt from the provisions of Title 2, the Human Rights Ordinance. (However, the owner still may not discriminate in advertising.) See § 2-3-5: Housing; Exceptions.

2 Quotations from HUD Guidance Memo "Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs," FHEO-2013-01.

Calendar

Greater Iowa City Area Apartment Association meetings are held on the **4th Tuesday of each month at Iowa River Power Company.**

Tuesday, November 22: GICAA Member lunch meeting

Thursday, November 24: Thanksgiving Day

Friday, November 25: Iowa football home game vs. Nebraska (Time TBA)

December 2016: NO GICAA LUNCH MEETING

2016 in Review: The Year in Which the Supreme Court Entered Decisions in Two Landlord-Tenant Cases, with More to Come

Jodie McDougal, Real Estate and Construction Attorney, Davis Brown Law Firm (October 1, 2016)

As most landlords are aware, in 2013, the Iowa Court of Appeals entered a decision in the Staley v Barkalow case, which involved a group of tenants who sued their landlord over the content of their lease agreements. Ultimately, the Court of Appeals entered a ruling in favor of the tenants and, among other things, concluded that under the Uniform Residential Landlord and Tenant Law set forth in Iowa Code Chapter 562A, "a landlord is liable for the inclusion of prohibited provisions in a rental agreement, *even without enforcement*, if the landlord's inclusion was willful and knowing," and in such event, the tenant may recover from landlord the "actual damages sustained by the tenant and not more than three months' periodic rent and reasonable attorney fees." Thereafter, in 2014 and 2015, the Iowa Court of Appeals (in Amor v. Houser), as well as several district courts, rendered similar decisions. Such courts ruled that certain landlords had violated Iowa law by their mere inclusion of various unenforceable provisions within their leases, and in those cases, the district courts ruled that several commonly used lease provisions were unlawful for various reasons. Then, in May of 2016, the Iowa Supreme Court entered its first two decisions addressing some, but not all, of the landlord-tenant issues raised in these prior cases.

On May 6, 2016, the Iowa Supreme Court issued its decision in the case of Elyse De Stefano v. Apts. Downtown, Inc., and similar case of Lenora Caruso v. Apts. Downtown, Inc. Below is a summary of the Court's conclusions in these cases, but landlords should review these two decisions in their entirety. In the De Stefano case, a tenant sued her landlord in small claims court over the content of her lease agreement and based upon her claim that the landlord had improperly withheld certain portions of her rental deposit, thereby allegedly entitling her to money damages, plus attorney's fees. This case was eventually appealed to, and was heard by, the Iowa Supreme Court.

Importantly, the Iowa Supreme Court concluded that multiple lease provisions and actions by the landlord were unlawful based upon various points, including the following legal principles and conclusions set forth within the decision:

(1) Generally, a landlord owes tenants the duty to keep the leased premises in a fit and habitable condition and to otherwise maintain in good and safe working order all major facilities/appliances therein, including through the landlord's making of all necessary repairs at the landlord's expense.
(2) Generally, a lease provision cannot extinguish or limit any statutory duties imposed upon landlords (except under a very limited statutory exception for single-family residences in which the parties may agree that the tenant shall perform certain repairs/work, *but* a landlord still cannot charge the tenant for such repairs/work).
(3) Based upon principles (1) and (2) above, a landlord generally cannot include any provision in its lease that limits those landlord duties or otherwise forces a tenant to pay for repairs for which the landlord is responsible.
(4) A landlord can only charge a tenant for damages to the premises if the landlord proves such damages are "beyond normal wear and tear" resulting from a deliberate or negligent act of a tenant, or tenant knowingly permitting it.
(5) Even when a landlord may have a legal right to pass along certain costs/fees to a tenant, a landlord cannot simply withhold from the tenant's rental deposit an automatically-imposed charge, even if pursuant to an explicit lease provision.

It should be noted that the Supreme Court's conclusions in this case were otherwise consistent, or at a minimum were not inconsistent, with the principle from some of the earlier cases that, even when a landlord may have a right to charge a tenant certain amounts, a landlord may only charge the tenant amounts supported by evidence from the landlord as to its actual damages sustained, i.e., actual out-of-pocket costs incurred. (See also Iowa Supreme Court decision in D.R. Mobile Home Rentals v. Frost.) Notably, the Iowa Supreme Court may further clarify this principle or otherwise address this issue in its decisions to be entered later this year or thereafter in the two cases still pending before the Supreme Court.

Also, in De Stefano, the Court struck down a lease provision that stated as follows and under which the landlord had charged the tenant for repair of a damaged door (due to third-party vandalism): "Unless the Landlord is negligent, Tenants are responsible for the costs of all damages/repairs to windows, doors, carpet, and walls, regardless of whether such damages is caused by residents, guests, or others." (De Stefano at p. 4.) The Court concluded that such provision was unlawful because it was inconsistent with the landlord's unwaivable duty to "make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition." (Id. at p. 41.) Further, the Court ruled that the landlord had unlawfully charged to the tenant, and deducted from the rental deposit, certain fees pursuant to an automatic carpet cleaning fee provision within the lease. (Id. at p. 5.) Specifically, the Court reasoned that the landlord had unlawfully charged fees pursuant to such provision because a cleaning charge is lawful if, and only if, the landlord proves that such cleaning was necessary to restore the premises to the condition at the outset of the tenancy *beyond ordinary wear and tear*, and, further, the Court expressly noted that the "rental deposit is not designed to serve as an advance payment of amounts that will always be due under the lease," such as amounts due under an automatic carpet cleaning fee provision.

The Iowa Supreme Court set forth similar conclusions in the accompanying decision of Lenora Caruso v. Apts. Downtown, Inc. Therein, the Court confirmed, among other things, that "a landlord cannot shift the financial costs of repairs necessary to comply with its duty of fitness and habitability to the tenant." (Caruso, at p. 12).

In addition, in the De Stefano case, the tenant raised arguments surrounding her request to sublease the premises. In this regard, the Court held that, even when a landlord reserves in its lease agreement the right to pre-approve subleases, the landlord can only refuse a requested subleasing when such refusal is reasonable. Moreover, the Court concluded that in this specific situation, the landlord's refusal to allow the requested subleasing was unreasonable and, thus, unlawful, because the basis for such refusal was the tenant's failure to abide by an otherwise unlawful lease provision.

Lastly, there were a few upsides to these two decisions for Iowa landlords. First, the Iowa Supreme Court, in Caruso, reversed the lower court's finding that the tenant was entitled to certain additional damages and attorney's fees for the landlord's "knowing" inclusion of unlawful provisions in its lease agreement, concluding that the tenant had not submitted sufficient proof of the landlord's actual knowledge and noting that "actual knowledge is a very high standard." (Caruso, at p. 15). Though, the Court went on to note that actual knowledge may be established through circumstantial evidence and made the following statements, which appear to be a word of warning to landlords:

> We have now unambiguously held in De Stefano and in this case that such [unlawful repair and carpet cleaning] lease provisions violated Iowa Code section 562A.12(3). The existence of our precedent alone, however, will not prove actual knowledge of illegality in a future case, *but it will be a circumstance to be considered by the fact finder making that determination.* (Caruso, at p. 13, 15).

Second, the Court in De Stefano held that a tenant is only allowed to recover punitive damages from the landlord for improper retention of deposit amounts when the landlord's actions were "dishonest," and not merely intentional or deliberate and, therefore, reversed the lower court's finding in this regard. (De Stefano at p. 58, 63.) Finally, the Court ruled upon a question regarding recovery of attorney's fees in small claims matters, which works to benefit both landlords and tenants who prevail in small claims matters. The Court held that the $5,000 maximum recovery cap in small claims matters does not apply to attorney's fees, thereby meaning that a landlord (or a tenant) can recover from the other party up to $5,000 in damages, plus its incurred reasonable attorney's fees, as awarded by the Court.

Iowa landlords must take note of these two precedential decisions, and, among other things, carefully review their leases and other written policies to ensure such documents contain no unlawful provisions. Finally, and as noted, there are at least two more landlord-tenant cases still pending before the Iowa Supreme Court that address some of the issues set forth within this article. The *Walton v. Gaffey* case has been set for non-oral submission October, 19, 2016, and the *Kline v. Southgate* case has been set for oral argument on this same date. Please feel free to contact me if you have any questions.

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