IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ANGELA MURRAY, **Plaintiff,** **vs.** **GARY OETH,** **Defendant.**	**CASE NO. LACL131501** **RULING ON MOTIONS FOR SUMMARY JUDGMENT**

INTRODUCTION

Defendant's Motion for Summary Judgment came before the Court for oral argument and submission on September 16, 2015. The Court, hearing the arguments of counsel and reviewing the court file, including the briefs filed by both parties, now enters the following ruling and order:

BACKGROUND FACTS AND PROCEDURAL HISTORY

On January 1, 2013, Plaintiff Angela Murray ("Murray") visited her friend, Felicia West ("West"), at her residence located at 911 Walker Street, Des Moines, IA. West was leasing a single family home from Defendant, Gary Oeth ("Oeth"). Due to snow and cold temperatures, snow and ice accumulated on the steps leading up to West's residence. Upon arriving at the home, Murray slipped and fell as she ascended the stairway. As a result, Murray fractured her ankle.

Oeth owns the property and leases the home to West pursuant to a written lease agreement. The lease agreement provides that lawn care and snow removal are the tenant's responsibility. Additionally, Murray has rented from Oeth in the past. While a tenant, Murray was responsible for completing snow and ice removal on the property. Following Murray's injury, she sought medical attention and was notified that she had fractured her ankle. Murray filed her Petition at Law and Jury Demand on November 13, 2014.

STANDARD OF REVIEW

Summary judgment is appropriate only when the record shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." IOWA R. CIV. P. 1.981(3); *Sallee v. Stewart*, 827 N.W.2d 128, 132 (Iowa 2013). In deciding summary judgment, the Court shall examine "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any." IOWA R. CIV. P. 1.981(3); *Bagelmann v. First Nat'l Bank*, 823 N.W.2d 18, 23 (Iowa 2012). When the facts are undisputed and only questions of law remain, summary judgment is appropriate. *Smith v. CRST Int'l, Inc.*, 553 N.W.2d 890, 893 (Iowa 1996). Summary judgment is not appropriate if reasonable minds may differ on how the issue should be resolved. *Id*.

A genuine issue of fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The burden lies on the moving party to show the nonexistence of a material fact and the record must be viewed in the light most favorable to the nonmoving party. *Varnum v. Brien*, 763 N.W.2d 862, 874 (Iowa 2009). To resist the motion, the nonmoving party must set forth specific facts that constitute competent evidence showing a prima facie claim. *Hoefer v. Wisconsin Educ. Ass'n Ins. Trust*, 470 N.W.2d 336, 339 (Iowa 1991).

ANALYSIS

A. *Duty to Maintain Premises*

In 1978, the general assembly enacted the Iowa Uniform Residential Landlord and Tenant Act ("IURLTA"). *Crawford v. Yotty*, 828 N.W.2d 295, 299 (Iowa 2013). The IURLTA, codified in Iowa Code section 562A, provides in relevant part:

> 2. The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in subsection 1, paragraph "a", subparagraphs (5) and (6), and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.

Iowa Code § 562A.15(2).

In general, the landlord shall make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. Iowa Code § 562A.15(1)(a)(2). In addition, the landlord shall keep all common areas of the premises in a clean and safe condition. *Id*. § 562A.15(1)(a)(3). However, as mentioned above, a landlord and tenant may agree in writing that the tenant is responsible for maintenance tasks. *Id*. § 562A.15(2). "The evidence conclusively indicates that for a period of approximately ten years, the landlord through a lease had surrendered control of the premises to a tenant who in turn was responsible for all repairs and maintenance." *Shill v. Careage Corp.*, 353 N.W.2d 416, 420 (Iowa 1984).

Murray argues that the Iowa Code limits the instances where a landlord can delegate responsibility for maintenance to the tenant to units other than single family residences. Iowa Code § 562.15(3). Murray is not incorrect; however, Murray overlooks subsection (2) which specifically states that landlords and tenants of single family residences may agree that the tenant perform maintenance tasks. In this particular case, Oeth and West had a lease that outlined maintenance duties. The lease indicated that "[a]ll lawn care/snow removal is the tenant's

responsibility…." (Lease p. 2). "Generally, to create the relationship of landlord and tenant, it is only necessary to identify the parties, provide a definite description of the property, and include a statement of the term and the amount of rent agreed to be paid. This may be done orally or by writing…." *McCarter v. Uban*, 166 N.W.2d 910, 914 (Iowa 1969). The validity of the lease is not at issue here, therefore, West was bound by the terms of the lease. Through this provision of the lease, Oeth delegates the duty to exercise ordinary care for the safety of a third party like Murray to the tenant, West. As a result, Oeth did not owe a duty to Murray and Murray must look to West for her negligence claim.

Murray further argues that Oeth attempted to distance himself from liability by claiming Murray assumed the risk or had knowledge that tenants are responsible for maintenance. Murray formerly rented property from Oeth and therefore, was familiar with lease provisions Oeth used. Additionally, Murray indicated that she performed maintenance on snow and ice when she rented from Oeth. Oeth does not offer this evidence for the purpose of proving Murray assumed the risk as she entered onto Oeth's property. Instead, he offers the evidence to prove that he uses leases to delegate certain duties to tenants, including maintenance for snow and ice, pursuant to section 562A.15(2).

Oeth puts forth the terms of the lease agreement signed by him and West as evidence proving the nonexistence of a material fact. Since the lease clearly states that the tenant is responsible for snow and ice removal, the tenant is responsible for maintaining the property. Therefore, no genuine issue of material fact exists, and Oeth is entitled to summary judgment.

B. *Common Area*

Oeth argues that the particular stairway where Murray was injured is not a common area that he is responsible to maintain. Murray contends that the individual stairway is a public access

area that is required to be maintained by the landlord under both the Iowa Code and the City of Des Moines municipal code.

Landlords must keep all common areas of the premises in a clean and safe condition. Iowa Code § 562A.15(1)(a)(3). "Common area" is defined as the "realty that all tenants may use though the landlord retains control and responsibility over it." Black's Law Dictionary 291 (8th ed.2004). Under the common area exception to liability, where the landlord retains control or the landlord and tenant have joint control over the premises, the landlord can be held liable for injuries sustained. *Fouts v. Mason*, 592 N.W.2d 33, 38 (Iowa 1999).

Oeth does not dispute that landlords have a general duty to maintain common areas. He does dispute that the stairs and walkway leading to West's residence were common areas. The stairs and walkway were leading to a single family dwelling. West leased the residence pursuant to a lease with Oeth. Within the lease, West was responsible for maintaining the stairs and the walkway from snow and ice. Des Moines, IA., Code of Ordinances 102–42 requires an owner of property abutting a public sidewalk to maintain the sidewalk in a safe condition. Despite Murray's claim that the City of Des Moines requires the landlord to maintain "public access ways" that abut his property, the particular injury occurred on the walkway and stairs leading up to West's single family dwelling, on private property. Thus, the stairs and walkway are not common areas. Since the Iowa Code allows the landlord to delegate maintenance responsibility to the tenant, and the injury occurred on the walkway and stairs of the home, Murray has failed to generate a genuine issue of material fact as to whether the stairs and walkway were common areas and whether Oeth can delegate maintenance responsibilities.

RULING AND ORDER

IT IS THEREFORE THE ORDER OF THIS COURT that Defendant, Gary Oeth's Motion for Summary Judgment is GRANTED. Plaintiff's Petition is dismissed. Plaintiff shall pay the court costs.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
LACL131501	ANGELA MURRAY VS GARY OETH

So Ordered

Arthur E. Gamble, Chief District Judge,
Fifth Judicial District of Iowa