

2016

**Danielle Sprague, Defendant/Counter Claim Plaintiff/Appellant v.  
Jeff Price and Ann Price, Plaintiffs/Counter Claim Defendant/  
Appellees**

Utah Court of Appeals

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# In The Utah Court of Appeals

Danielle Sprague

Defendant / Counter Claim

Plaintiff / Appellant

V.

Jeff Price and Ann Price

Plaintiffs / Counter Claim

Defendant / Appelles

Case No. 20150663-CA  
District Case No. 120701157

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## REPLY BRIEF OF APPELLANT

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Appeal from the Second Judicial District Court, Davis County for the  
Judgment in a Landlord/Tenant Case  
before the Judge David R. Hamilton

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- Both Three Day Eviction of Pay or Quit and Committing a Criminal Act are justified under the terms of Lease Agreement and Rental Law.
- Plaintiffs Prices did not prove that water softener and other leaking damages was pre-existing before they moved in.
- Mrs. Sprague was not in breach of the contract as she sent out the security deposit statement within deadline agreed upon under the Lease Agreement.
- The Prices did materially breach the contract by not paying rent, nor acted upon the renter's responsibilities, and repeatedly committed wrongful, and criminal actions toward the Defendant Mrs. Sprague
- Defendant Mrs. Sprague's counter claim for Violation of Implied Covenant of Good Faith and Fair Dealing is one of the main counterclaims throughout the trial and was preserved for appeal.

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### **CASES:**

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*Century 21 All Western Real Estate and Inv., Inc. v. Webb*, 645 P.2d 52, 55-56 (Utah 1982).

*Eggett v. Wasatch Energy Corp.*, 2004 UT 28, ¶ 22, 94 P.3d 193, 199.

### Summary of Arguments

The frivolous lawsuit had been filed by the Plaintiffs Prices on December 7, 2012 **two days before** they actually moved out, and returned the premises to Ms. Sprague on December 9, 2012 as showed by emails and check out list (*see Exhibits A3-4*). The purpose of the lawsuit filed by the Prices while they were still living on the property was to extort a big amount of money from Ms. Sprague without any valid ground by abusing the process. Plaintiffs also could not produce any evidence of any damages to them from this rental relationship. They had no interest to fulfill the contract.

The Three Day Notice to Pay or Quit and Three Day Notice to Vacate for Committing Criminal Act were justified under the contract and law, and was voluntary act but compelled by the acts of omissions commissions of the Plaintiffs Prices and hence don't amount to the waiver of the rights of the Appellant Mrs. Sprague.

It is not the fact that Mrs. Sprague failed to prove that Plaintiffs Prices had caused damages to the water softener and other appliances. In fact, it was the Plaintiffs Prices duty to prove and establish beyond reasonable doubt that the premises were in damaged conditions before they moved in. The lawsuit was brought by Plaintiffs to against Mrs. Sprague for unfit premises before moved in. The plaintiffs only tried to prove it by presenting defective and uncertified evidence, false and biased hearsay statements.

According to the contract Mrs. Sprague was supposed to process the security deposit within three weeks after the Plaintiffs Prices moved out. And a deposit statement was processed and sent accordingly to the Plaintiffs within the deadline.

The Plaintiffs Prices were in material breach by not paying full rent, and the rent on December 2012, not performing renter's responsibilities under the law and the contract, and frequently committing wrongful criminal acts, creating nuisance and mischief. On the other hand, Defendant Mrs. Sprague executed the lease agreement accordingly and timely, responded to all Plaintiffs Prices' demanded, every time, spent thousands of dollars to remedy the damages after Prices had moved in as the evidence has showed. But the Prices only interest is to spend thousands of dollars on damage reports, and not spend a single dollar to remedy any damages during their entire time of occupancy.

Mrs. Sprague has raised the claim for Violation of Implied Covenant of Good Faith and Fair Dealing against Plaintiffs Prices which had been one of the main counterclaims through out of the trial and was preserved legally for this appeal.

### **Detail Arguments**

#### **I. Both Three Day Eviction of Pay and Quit and Committing a Criminal Act are Justified Under the Terms of Lease Agreement and Rental Laws**

The purpose of Three Day Notice of Eviction of Committing a Criminal Act on Premises was not different from the Three Day Notice of Eviction of Pay or Quit that was served to

the Plaintiffs simultaneously (*See Exhibits B1-2*). Plaintiffs breached the contract from the very first day they moved in by refusing to pay full rent, and at the end refused to pay any rent on December, 2012. The District court found the Plaintiffs Prices “not in material breach of contract”. In fact, up to this day, Plaintiffs still have not paid any rent for December of 2012, cable, internet and any extra utilities that they had used the amenities therein before they moved out. Plaintiffs Prices denied Mrs. Sprague access to remedy any damages, and also refused to remedy them by themselves after receiving “Notice to Repair in Three Days” from Defendant Mrs. Sprague (*see Exhibit B-3*). Plaintiffs also had a choice to stay and dispute the Evictions, but they chose to move out, and did not excuse them from the obligation arising from the contract and arising from the breaches of the contract under the laws. Plaintiffs did not and cannot point to any provisions in the Lease agreement which did not allow renters to be excused off the obligation of remaining rent if they were evicted. Eviction Notices clearly stated that if renters were found guilty and was evicted by the court, the renter would still be liable for the remainder of the rent with such undisputable provisions described in the Notices “you will be liable for (1) any rent due and unpaid through the end of their rental agreement....” (*see Exhibits B1-2*). Both Eviction Notices also clearly stated that the evictions were to be enforced by the court if renter refused to leave and not to dispute the accusations. The court would give renter’s chance to dispute if they intended to contest the accusations and also gave renters a chance to choose to stay for the remaining term under the contract. If tenant chose not to dispute in court but also chose to leave, that means the tenant admitted the accusations and knew that the court would enforce the eviction to remove him or her from the

property; thus landlord cannot be accused of breach contract without court's rulings on the evictions. On the other hand, to be accused of breach contract, only if the property owner did not fulfill the Lease Agreement, removed any renter's property out of the house, changed the locks to lock out the renters, or physically blocked or removed renters from the premises... etc. But Mrs. Sprague had done none of that. No proof that She called any one names, said angry words, post any aggressive act, did not call police on Plaintiffs Prices not even once as Plaintiffs Prices did many times on Mrs. Sprague without reason. What crime did Mrs. Sprague ever commit and deserve to have the police called for more than five times? Each time she was accompanied by Rufus Sprague, contractor and other people at the site. Beside Plaintiffs Prices slandering, no one ever witnesses Mrs. Sprague committing a crime. Plaintiffs treated Mrs. Sprague like a criminal without giving accusation of any criminal statue to justify the calling and involving the police again and again (*see Appellant's Brief Exhibits 16-19*), even when Mrs. Sprague happened to visit the premises as a part of her job or in compliance with the demand of the Plaintiff Prices with reference to any matter. Plaintiffs misused the police and used them as a tool to humiliate, harass and embarrass Mrs. Sprague which was a crime of public nuisance. The Eviction Notice has provision of nuisance status as in the description of the Eviction the item (4) "damages as provided in Utah Code Ann.78B-6-1107 through 1114 **for the abatement of nuisance, if any**, caused by you. (Abatement of nuisance means to stop a nuisance)" (*Exhibits B1-2*). For the renter, it is also a crime besides the breach of the contract when the renter knowingly let the property be damaged and chose not to do anything to protect the premises and remedy the problem. The



grossest action in this case is that, in the end, the Plaintiffs Prices even refused the property owner or other people to remedy the damages. Both Eviction Notices of Pay or Quit, and Committing a Crime on the premises have clear procedure and were served legally and properly with all the proof and evidence by Mrs. Sprague under the law. This lawsuit was brought by the Prices not to fight for evictions notices but only for extortion against Mrs. Sprague. Therefore, the case *Meadow Valley Contractors v. State*, 266 P.3d 671, 682 (Utah 2011) cited by Plaintiffs Prices on this brief actually does not apply to their claims, but more against themselves for the filing of wrong legal actions including this lawsuit after themselves had committed a minimum 9-months contract with a detailed five page check in list. Plaintiffs Prices breached the contract again and again from the beginning to the end as all the evidence shows. Plaintiffs had already lost all of their rights from the lease agreement and is responsible for any damages to Mrs. Sprague (*see Exhibits A1-2*).

**II. Plaintiffs Prices did not Prove that Water Softener and other Leaking Damages were Pre-existing Before They moved in**

The burden of proof was laid on the Plaintiff Prices to prove that Mrs. Sprague rented the damaged and unfit premises to the Plaintiffs. It was the Plaintiff who initiated this lawsuit to abuse this justice system without ground. During this more than three years long lawsuit, Plaintiffs had never been able to prove that there was water leaking, dark substance “mold” found and water softener was damaged and existed before they moved in, but now focus and rely on the testimonies from the unreliable hearsay of their life-

long friends, the Walkers. Plaintiffs Prices continued to claim and described that the water softener was damaged and the premises had been unfit living before they moved in. In fact, Prices surely were satisfied with this home which they had already visited, and then preferred to rent it but not the others in the vicinity. Initially they wanted to have this premises for four months, but changed their mind later and requested a 9-month lease concerning their daughter's school play reason (*see Exhibit H-1*). Plaintiffs Prices claimed their life-long friends Walkers who they had lived in the same neighborhood with, their children grew up together and went to the same church in Bountiful City. Walkers testimonies and pictures cannot be considered as evidence by the following reasons:

- David Walker has a permanent criminal record as Registered Sex Offender. He is not a reliable witness and was unable to understand the sanctity of the oath. He lied to the court under oath with contradicting stories.
- Walkers had personal grudge against Mrs. Sprague due to the fact that they lost their own legal dispute to Mrs. Sprague in North Salt Lake small court (*see Exhibit I*).
- Walkers had also lived in the same premises for over 18 months from November 1, 2010 to June 16, 2012, and moved out only three months before Prices moved in. In the same way, they had also damaged and trashed the same house, frequently defaulted rent during their occupancy, and refused to pay rent in the end as well.
- Both Walkers and Plaintiffs worked together dishonestly, twisting the facts and lying about the whole matter repeatedly to help each other in their disputes with Mrs. Sprague, whom they had viewed to be a soft-target.

- Walkers' pictures were outdated, unrelated and unverified.
- No proofs that the Walkers ever addressed any concern about the water softener, water manifold or "mold" to Mrs. Sprague prior to this lawsuit.
- Walkers never showed Spragues those pictures that were taken from the premises prior to this lawsuit. It was a totally surprise by Walkers with all those pictures and hearsay in the court.
- The Walkers' old and unverified pictures taken in 2010 are unreliable and unrelated to this case. The Picture shows dark substance that could have been already cleaned up long ago by Walkers themselves, or cleaning crews hired by Spragues, or by anyone who had been lived there before Price moved in if it was taken from the premises.

Therefore, Walkers testimonies and pictures should be considered a shame and be disregarded as failing to create a genuine issue of material fact. On the other hand, Mrs. Sprague has presented sufficient evidence, and proof beyond reasonable doubt that Water Softener and other leaking damages were not pre-exist before Prices moved in.

- After Walkers moved out on June 16, 2012, Defendant Mrs. Sprague had hired several contractors to clean up and remedy all the damages. No one reported any leaking or "mold". On June 26, 2012 Mrs. Sprague also had a licensed home inspector, Joe Reid, from Bountiful Action Inspections Company, inspect the whole house before renting it out again. Mr. Joe Reid's email, was submitted to the court with "Reply Memorandum In Support of Motion For Summary Judgment", proofs no leaking damages, "mold" or "mildew" in the furnace room (*see Exhibit F9*).

- Walkers' testimonies actually contradicted the plaintiffs claims, and helped Mrs. Sprague prove that water leaking was not from the water manifold or any other source but only from water softener hose which did not sit correctly in the drain, which was corrected immediately by themselves and had no further leaking concerns as they testified (*see Plaintiffs' brief Exhibits E*).
- No any words by Walkers' testimonies indicate they ever found other leaking concern besides from water softener in the premises.
- Walkers also never claimed that they had seen a hole which had been cut out of the wall in the furnace room, nor had they have any pictures to prove it.
- Plaintiffs had toured the premises before moving in, and also given three weeks time to create the five pages check-in list that also shows no leaking, hole on the wall or any dark substance "mold" found. (*see Exhibit A2*).
- The wood hole was newly made and still looked like a fresh cut (*See Exhibit E2*).
- Plaintiffs Prices were aware of the wetness on top of the manifold panel when they moved in but never addressed any concern for it as well. Mrs. Sprague even asked Prices to report to her in case it became a problem at the meeting on 9/20/12.
- The pictures of Appellee's brief also show that the old manifold on the wall looked fairly clean and in good condition (*see Appellee's brief Exhibit F 0302 Top*). Those rusty manifold pictures cannot be verified to be the same manifold from the premises. Even if it was the same manifold, the pictures show no sign or trace of a big amount of leaking water had washed through the panel.

- Every time upon visiting the premises, the Spragues, technicians, police and many others witnessed a big pool of water all over around the furnace room floor but couldn't locate where the leaking water was actually coming from. Only few drops a second could be easily generated by the bucket, and impossible to cause flooding on the floor as pictures show (*see Exhibit F6, Appellee's brief Exhibit F*)
- Moreover, the manifold was attached to the wall way up high from the floor, it is impossible to claim that Plaintiffs could not see the water leaking down from the manifold and travelling through the wall to the floor, while they had been in and out of the furnace room for over five weeks and using the water softener for at least over three weeks (*See Exhibits F1*).
- The Prices' pictures also show that the wood wall behind the old manifold board was clean, dry and in excellent condition with no trace or sign of water had been leaking down through it (*see Appellee's brief Exhibit F 0305 Top*).
- In the Prices' pictures, the wood wall below of the manifold panel shows large amounts of water flashed down from the bottom of the manifold, which shows that a dirty hand may have been involved. (*see Appellee's brief Exhibit F 0306*).
- The Plaintiff Jeff Price also emailed and confirmed Mrs. Sprague that no more leaks were coming from the water softener, the manifold only had a small leak and was not a concern when they excused themselves by going on a vacation on October 17, 2012, more than six weeks after they moved in (*see Exhibit F6*).

- All Pictures show the condition of the furnace room and the freshness of wood hole proved that the room had not been exposed to years of leaking as Plaintiffs Prices had claimed.
- Prices picture taken on September 9, 2012 shows no leaking water on the floor (*see Exhibit E1*).
- Prices Picture shows that they stored personal items in the furnace room there is also no sign of leaking before they moved in (*see Exhibit E1*).
- Plaintiff Ann Price also signed the agreement on the September 20, 2012 during the meeting; and a hand written note from her indicates only dishwasher and garage door needed to be repaired, no sign of water softener damage or any water leaking were brought to Mrs. Sprague's attention. (*see Exhibit F11*).

After October 13, 2012, leaking water on the furnace room floor became a repetitive subject and had been stopped many times by Mrs. Sprague since then, and each time no one actually could see or locate where the water was actually leaking from. On arrival, all the could be seen, was the floor which was badly flooded. On November 13, 2012, if the Plaintiffs would have cleaned the area, from the water heater, immediately upon finding it, by the time Mrs. Sprague and the technician arrived the next day the floor should have been dried out and clean next day which was on November 14, 2012 (*see Exhibit F8*). The Prices were living in the house and would have been aware of the leaking.

Before Plaintiffs Prices filed "Deficiency of Condition", Mrs. Sprague replaced the water manifold with a new one for the purpose of avoiding any further complaints by the Prices

regarding the leaking as the technician suggested to her. She also fixed and stopped all the leaking immediately right after she learned of it each time. Water softener was damaged after Prices moved in, as Shamrock Plumbing technician who also noted that it appeared the water softener had been tampered with. (*see Exhibit F10*).

Plaintiffs signed the contract and agreed to all its terms with such language, "Renter(s) agree to: 1. Keep the premises in a clean and sanitary as the condition of the premises permit,...3. Properly use and operate all electrical, gas, and plumbing fixtures and keep them as clean and sanitary as their condition permits;...5. **Leave the rental in the same condition as when possession was given to her/him**, reasonable use, wear, and damage beyond the control of the Renter(s) excepted (*see Exhibit A1*). All documents overwhelmingly show that no water leaking nor the alleged "mold" were ever seen or reported to Mrs. Sprague before the Price moved in. The leaking was not reported, but was found by Mrs. Sprague, for the very first time, on October 13, 2012, at the first inspection more than five weeks after they had moved in. The alleged dark substance was observed on November 14, 2012, and was reported on November 16, 2012 for the very first time.

All evidence proves the water softener damage, and all other water leaking damages were caused after Plaintiffs Prices moved in by beyond reasonable doubt. Mrs. Sprague also proves that Plaintiffs breached the contract by **failure of Renter's duties** under 57-22-5, Utah rental code and failing to keep premises in sanity condition.

**III. Mrs. Sprague was not in breach of the contract by failing to refund the security deposit as she had sent the deposit statement within the deadline, agreed upon under the Lease Agreement**

Mrs. Sprague did not breach the contract by not refunding the deposit to the Plaintiffs as the Plaintiffs Prices did not give a chance to process the deposit. The Prices had filed the suit before the deadline for the payment of the security deposit was due and agreed upon under the Lease Agreement. Plaintiffs Prices continued to claim that they moved out on the December 7, 2012 the date they filed this lawsuit but no documents support their claims. They moved out and returned the premises back to the Sprague on December 9, 2012 (*see Exhibits A3-4*). Even assumming they moved out on the 7<sup>th</sup> of December, as they insisted, it is still not justified for demanding the deposit to be refunded on the 5<sup>th</sup> of December 2012 while they were still living there (*see Exhibits G13*). The agreement gave owner three weeks to process the deposit and Mrs. Sprague had done it accordingly (*see Exhibits A1*).

The Prices never paid any rent nor late fee for the month of December of 2012 while they still lived there. Ms. Sprague had timely sent the Prices account balances and detailed statements to Prices each month. After Prices moved out she also timely processed the security deposit, sent the account statement and the deposit statement to attorney after the lawsuit was filed (*see Exhibits C1-9*).



It is injustice to demand Mrs. Sprague to pay back the partial deposit, interest, the court cost and all the fees up to the trial date to be paid to Plaintiffs Prices as it is prima facie evidence that the lawsuit had no cause of action when it was filed as Mrs. Sprague was not obligated to process the security deposit on the 5<sup>th</sup> of December, 2012 as they had demanded. The lawsuit was filed on 7<sup>th</sup> December, 2012 has no grounds and cause of action. How could a lawsuit be filed for security deposit refund when renters were still living in the premises and had totally control over the property? Even district court acknowledged that the Plaintiff still owed Mrs. Sprague December rent of 2012 as bleach contract, extra cleaning fee and other costs after Prices moved out (*see Exhibits L2 p6 #11*). The contract also clearly indicated the deposit carry no interest. The District Court concluded its judgment only on that Mrs. Sprague breached the contract by not refunding the partial security deposit, but this fact didn't exist at the time of Plaintiffs Prices filing the lawsuit. Later after this Lawsuit, Mrs. Sprague, in compliance with the lease agreement, sent security deposit statement on 28<sup>th</sup> December, 2012 to Plaintiffs after remedy all the damages and cleaning up the premises to be rent right after (*see Exhibits C7*).

**IV. The Prices did materially breach the contract by not paying rent, not fulfilling their renter's responsibilities, and repeatedly committing wrongful and criminal actions toward the Defendant Mrs. Sprague**

In the beginning, Mrs. Sprague never intended to charge the Prices late fees, it wasn't until November, 2012 the time the Plaintiffs Prices got aggressive to the point where it

was unbearable to Mrs. Sprague. Mrs. Sprague decided to observe the contract closely with the Plaintiffs Prices whose attitude created endless difficulties and barriers to this rental relationship. By considering the whole matter in entirety, it is obvious that they actually wanted to break the contract and extort the maximum pecuniary benefits from Mrs. Sprague. They remained successful in their design. They filed the lawsuit when they decided it was the right time for the distortion and moved out. Prices initiated this lawsuit two days before moving out not to fighting to stay on the premises, but for monetary gain only. Right after moving in, Plaintiffs and their first attorney Mr. Bill Bradford repeatedly blamed Defendant Mrs. Sprague for charging them at an exorbitant rental rate (*see Exhibits G10*). They already intended to breach contract from the beginning by refusing to pay full rent from the start. The first month's rent was \$150 short, and claimed the cleaning fee is unreasonable. The cleaning fee also is part of the rent and is not refundable (*see Exhibits A1*). Prices also never paid any of the utility cost above \$250 despite the fact that they were given an invoice each month and actual utilities bills. Mrs. Sprague also provided Plaintiffs Prices with a sufficient chance for their own calculation if they disagreed (*see Exhibits C9*). But the Plaintiffs Prices totally ignored all the chance and simply refused to pay any of the cost. Prices also refused to pay any of the cost of cable and internet service despite no provision of property owner responsible for such service in this Lease Agreement, but was demanded to have by the Plaintiff Prices (*see Exhibits C8*).

The law is very clear when it comes to a renter filing for “Deficiency Condition”, “Rent Abatement and Contract Termination” based on “Utah Fit Premises Act” against a property owner. It states “renter must be current on all payments required by the rent.” Plaintiff Prices were not current on payments, far from it. (*see Exhibits C1-C5*). They then tried to cover their tracks by filing “Deficiency of Condition” against Mrs. Sprague and refused to pay rent and other fees following by their wrongful claim of “Utah Fit Premises Act” with fabricated reasons. *See Eggett v. Wasatch Energy Corp.*, 2004 UT 28, ¶ 22, 94 P.3d 193, 199..

District Court ignored all the facts of all rent must be paid in advance as lease agreement, Prices’ bad faith and unfair dealings, eliminated all the late fees, cable, internet, and utilities cost for the Plaintiffs to justify its rulings that the Plaintiffs was merely, but not in material breach contract (*see Exhibits L2 p*) when all the document and Lease Contract showed otherwise.

Mrs. Sprague presents the following arguments with reference of Findings of The Facts by the District Court:

*Facts 4 - 5.* The Prices did not timely pay rent for September of 2012. The rent was short of \$150. It was not paid until September 20, 2012.

*Fact 6.* Prices did not notify their intent for a \$65 deduction from rent. They gave Sprague no time for objection. They also didn’t pay any of the previous two months

utility bills amount over \$250, cable and internet cost on November's rent (*See Exhibit C10*).

*Fact 7.* Mrs. Sprague timely sent the monthly account statement including the outstanding balance of \$65 to object the deduction (*See Exhibit C4*).

*Fact 8.* The Prices **did not** pay November 2012 rent in full.

*Fact 9.* The Lease does not contain any provision obligating Mrs. Sprague to pay for internet and cable for the Lease Premises as well, but the service was demanded by the Prices, or filed lawsuit against Mrs. Sprague for the breach of the contract if she did not provide (*See Exhibit C8*).

*Fact 10.* The Lease Agreement unambiguously states that \$250 of the utilities is included in the \$3,000 monthly rent payment. By saying that, any amount above \$250 shall be paid by the Plaintiffs Prices.

*Fact 11.* Extra cost of utilities for September 2012 was \$53.31. The cable and internet cost of \$86.99 all were never paid (*See Exhibit C1-6*).

*Fact 12.* October utility costs was over by \$10.33, plus \$67.20 for the cable and internet service. Despite providing invoices the bill was never paid.

*Fact 13.* According to the Lease Agreement on the very first item "1. Rent" specifies to include cleaning fee, utility cost, and other fees to be provision as Rent.

*Fact 15.* The District Court didn't correctly look at the facts that all the leaking water problems were only occurred more than 5 weeks after Prices moved in; and all were remedied immediately by Mrs. Sprague. Prices presented **no statement and no evidence** regarding leaking concerning in the "Notice of Deficiency Condition". Mrs. Sprague already installed a new manifold; bypassed the water softener twice by Rufus Sprague, Jeff Price, and the Pond's technician and remained off with no possibility of leaking. The lease agreement does not require landlord to provide water softener. And the water heater was still under warranty and in good working condition that was also confirmed by the Ponds' technician. All the leaking and deficiency were remedied by Mrs. Sprague long before Prices filed the "Notice of Deficiency Condition".

*Fact 17.* After repeatedly and extremely aggressive refusing to allow Mrs. Sprague to access and remedy the damage of small area of dark substance, no option or no other time was offered by the Plaintiffs Prices, Mrs. Sprague had no other choice but only could send out a "Notice to Repair in Three Days" to the Plaintiffs Prices, was giving them a chance to remedy the damages (see Exhibit). However, Prices spent no single dollar to remedy any damages after they moved in, but spent thousand dollars on "mold" and other reports regarding the premises but that all came back as harmless.

*Fact 18.* The district court was totally misled when it stated that Mrs. Sprague responded in an email that Mr. Price was correct and that **"she would not fix the problem"**. This statement is totally fabricated from the true statement from Mrs. Sprague's statement **"she would not come this morning of 9:00 am"** (See Exhibit G12). The reason of her

reply was since she had already called off her contractor the night before due to the objection to enter from the Plaintiffs. She never said she would not fix the problems (*see detail in Appellant's Brief*). She was waiting for an offer of another time for her to come from Plaintiffs, but it never happened.

*Fact 19.* Besides serving Prices a three day "Notice to Vacate for Committing a Criminal Act on the Premises", Mrs. Sprague also served a three day "Notice to Pay or Quit" to Price for failing to pay rent by five days after due, late fees and other cost (*See Exhibit B1-2*).

*Fact 20.* The Sprague have proof that the water damages were occurred after Prices moved in with a five pages check-in list, damages note from Ann Prices, pictures and email document... etc. Mrs. Sprague also proved that Prices constantly refused, put up barriers and created extreme difficulties for her to access, inspect and repair the damages from police reports, emails and unreasonable demanded letters from Mr. Bill Bradford... etc. (*see Exhibits G1-10, Appellant's Brief exhibits 16-19*).

*Fact 21.* Both Eviction Notices required the Prices to vacate the Leased Premises within three days if they did not comply. Under the Utah Rental Laws and in the Eviction Notices also provide a provision that the renters would be required to pay all the damages and remaining rent from the agreement. The lease agreement **nowhere** says that the remaining rent would be waived if renters moved out by eviction (*see Exhibit B1-2*).

*Fact 22.* No document shows Prices moved out on December 7, 2012. In fact, on December 8, 2012 Jeff Price emailed Mrs. Sprague notifying her for check-out process the next day. Prices completed moved and checked out on December 9, 2012 (*See Exhibit A3-4*).

Plaintiffs had intent and repeatedly failed the duty of best effort to this rental relationship and to the lease agreement, and intentionally mislead their intentions by creating this lawsuit. Defendant Mrs. Sprague's counter claim for Violation of Implied Covenant of Good Faith and Fair Dealing is the main counterclaim through out of the trial and was preserved for appeal.

There was always only one side of aggression all along by the Prices as proven in the court by the overwhelming evidence. Plaintiffs Prices frequently created the problems, caused damages and then blaming them on the Sprague's including this frivolous and painful lawsuit. Plaintiffs Prices first demanded Mrs. Sprague to communicate only with their lawyer Mr. Bill Bradford, accusing her of being a dangerous person and recorded every single visit soon after they moved in. Later, Plaintiff Jeff Price constantly framed Mrs. Sprague mislead and was aggressive to her to justify their claims (*See Exhibit G1a*). In in this appeal, Prices chose not to dispute and have no sign of denial of committing Violation the Implied Covenant of Good Faith and Fair Dealing after overwhelming proof and evidence submitted by the Defendant Mrs. Sprague. The Plaintiffs Prices only argued that Defendant Mrs. Sprague failed to preserve a status for this claim. However, from the very beginning, as THIRD CAUSE OF ACTION in Defendant's Amended

Counterclaim to the end of the court trial, Defendant's trial attorney repeatedly raised this claim to the court throughout the trial (*See Exhibit J, L1, L3, M1-3*). There is also no doubt that the Violation of the Implied Covenant of Good Faith and Fair Dealing committed by the Plaintiffs is also a most important counter claim filed by Defendant Mrs. Sprague to dispute this frivolous lawsuit by the Plaintiffs Prices. Plaintiffs/Appellees did not cross appeal. Even if it was not mainly or properly raised by the trial court, the Appellate Court is competent to take it up. *See State v. South*, 924 P. 2D 354 (Utah 1996).

More unfair dealings also came after this frivolous lawsuit was initiated by the Prices, with only three days to answer the Complaint Summon. Mrs. Sprague took action immediately to reply while she was out of the State. She managed with great difficulties to respond and counter claim before the three-days deadline might end without giving enough information to the attorney. After she returned, Mrs. Sprague hired the Services of a nearby attorney referred by first attorney who was located at considerable distance and Mrs. Sprague had difficulty in traveling back and forth. Since then, and after Mrs. Spragues' second attorney took over the case, the Plaintiffs Prices' attorney used all possible maneuvers repeatedly to delay their filings and missed the deadlines again and again to cause delay in this case. To answer Prices' accusation of changing attorneys (*see Appellees' brief footnote 1*), if facts, Mrs. Sprague always requested and urged her attorneys to end this lawsuit. Her lawyer Mrs. Sara Bouley was not cooperating with Mrs. Sprague and not performing her professional duties fairly to end this frivolous lawsuit as she should be. Mrs. Sprague never intended to delay this lawsuit process to cause



tremendously financial burdens and emotional distress that nobody should be forced to go through. After Mrs. Sprague found out that her attorney delayed and extended the process deadline without her knowledge with lies (*see Exhibit N1*). So she contacted and hired the services of another law firm to take over the case. However, soon after the law firm informed Mrs. Sprague that they had conflict of interest with this case, and because that reason the Plaintiffs' lawyer sought another chance to delay the case by intending to change the judge (*See Exhibit N2*). In hope to end this case soon, and with more consulting and professional help to ease emotional distress and anxiety, Mrs. Sprague took the professional advice to seek a right attorney with no conflict of interest to speed up this lawsuit. As the case record shows, and the Mrs. Sprague's trial lawyer filed two sets of motion to oppose deadline extensions request by the Plaintiffs Prices before the trial (*See Exhibits K1-2*). Mrs. Sprague did not cause any delay or damages to the case due to having different attorneys, but the Plaintiffs and their attorneys did as much as they could to continue to damage the Defendant Sprague by making slanderous statements about Mrs. Sprague. Both Plaintiffs Prices and their attorney continued to send Defendant Mrs. Sprague personal emails and threats after this lawsuit was filed, even on the Christmas Day to cause her emotional distress. It is so called their strategy according to the letter from Utah State Bar after Mrs. Sprague's complain.

During this appeal process with her appeal attorney (withdrew), besides spending another more than ten of thousands dollar of attorney fees to prepare for the appeal, Mrs. Sprague also spent more than \$7,000 extra attorney fee along just for another failed mediation

again recently with Plaintiffs Prices. And in total, it has caused Mrs. Sprague more than \$50,000.00 in attorney fees (*Invoices in process*), plus extremely emotional pain and distress for the frivolous and meritless lawsuit brought by Plaintiffs Prices three years ago on December 7, 2012. Also the Plaintiffs' account balance on December 28, 2012 is \$5,110.79 which includes December rent of \$3,000 after deposit (*See Exhibit C5-6*). The damage of remaining rent from the lease agreement the Prices owed is \$8,200.00 (*See Exhibit D*). Mrs. Sprague did her best effort to rent out the premises again to reduce the damages from January 3, 2013-June 10, 2013 (*see Exhibit D*).

Plaintiffs Prices were in breach of the contract by violation of the implied covenant of good faith and fair dealing. *Mark Technologies Corp. v. Utah Resources International, Inc.*, 2006 UT App 418, ¶ 7, 147 P.3d 509, 512., *St.*

#### **Oral Argument Request by the Plaintiffs**

Mrs. Sprague does not believe that an oral argument is necessary. The laws, Lease Contract, a five page check-in list, emails, Utah Rent Laws and all other documents hereto speak for themselves. However, if Appeal Court decides an oral argument is necessary, Mrs. Sprague will respect the Appeal Court order. Mrs. Sprague respectfully requests the Appeal Court to deliver detailed issues to be addressed and argued before the meeting of the court so that Mrs. Sprague may be able to prepare and get consultation appropriately.

### Conclusion

Burdens of proof *prima facie* must lay on the Plaintiffs who initiated the legal actions and lawsuit, not the Defendant. In this case, Plaintiffs Prices offered no proof of that Defendant Mrs. Sprague had breach contract. Mrs. Sprague requests that the judgment of the trial court be reversed; and the dispute is resolved judiciously in favor of Defendant/Appellant Mrs. Sprague for all the damages suffer from Plaintiffs' breach of contract, bad faith and unfair dealing including this meritless lawsuit that have caused Defendant Mrs. Sprague all the court costs, attorney fees, and other relief this court finds equitable and just.

**DATED** this 16th day of March, 2016.



---

Danielle Sprague, in Pro Se  
Appellant/Respondent/Defendant  
[daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)

**CERTIFICATE OF SERVICE**

I hereby certify that two true and correct copies of the foregoing **Reply to the Appellee's Brief** were mailed, postage prepaid, on this March 16, 2016, to:

Matthew N. Evans  
Al Green  
Ray Quinney & Nebeker

P.O. Box 45385,  
Salt Lake City, UT 84145  
Counsel for Appellees



**CERTIFICATION OF COMPLIANCE**

I hereby certify that this reply brief complies with the type-volume limitations as set forth in Utah R. App. P. 24. This Brief contains 6,554 words and is 29 pages (excluding addendum).

## **ADDENDUM**

Exhibits A - N

# EXHIBIT A

- A1- Lease Agreement
- A2 – Check-In List
- A3 -Final Check Out Email
- A4 -Check Out List

Danielle

801-951-0334

**VACATION HOME RENTAL AGREEMENT**

CAUTION: This is a legally binding agreement. READ IT CAREFULLY. It is intended to help promote harmony by clarifying the rights, duties, and responsibilities of property owners, managers, and renters. Additions and/or deletions may be made by having all parties initial each change; however, it cannot be changed into a lease.

Verbal agreements often lead to misunderstanding and confusion. MAKE SURE THAT ALL AGREEMENTS ARE MADE IN WRITING.

Both the Owner/Agent and the Renter(s) agree to fulfill the conditions listed below:

The OWNER/AGENT is: Danielle Sprague

Jeff R. Price and Ann K. Price

The RENTER(S) is/are:

519-76-3434 Aug. 23, 1961

Renter(s) SS#

Date of Birth:

1-406-285-9010

Renter(s) phone #:

J-cell (Sci) 554-8268

A-cell (801) 244-2487

**ADDRESS of the RENTAL:**

591E Oak View Ct. North Salt Lake, Utah 84054

**1. RENT**

Rent shall be \$3000.00 per month for 5 people with minimum term of 9 months (September 1, 2012 to June 10, 2013), and the basic cleaning fee of \$150.00 payable in advance before move in.

(Tenant may be charged extra cleaning fee if the property is not as clean as move in)

Rent includes the following: (check each item included)

Gas, Water, Garbage, Electricity, (Total utilities up to \$250/mo) Dishwasher, Covered Parking, Washer, Dryer and all furniture ....etc.

The Renter(s) must pay deposit by any major credit card for reservation; Rent payment must be paid in advance of 30 days before move in.

**2. FAILURE TO PAY RENT (for month to month renter - long term)**

If rent is not paid within five (5) days after due date,

Renter agrees to pay a charge of \$50 per day (not more than one day's rent) for late rent fee and/or each dishonored bank check, unless waived by written agreement. If the Renter is unable to pay rent when due, the Owner has the legal right to serve notice to pay rent or vacate within three (3) days, as provided by California Code of Civil Procedures Section 1161.

**3. OCCUPANCY AND SUBLETTING**

A) The rental is for the residential use of the signer of this Agreement and total occupant allowed is based on the signer's declaration when apply. No add on is allowed; or the signer will be charged \$50 per person per night if add on is found and is limited up to 15 occupants.

B) The Renter(s) will not sublet, assign, share or rent space, or maintain guests beyond days a month without the prior written consent of the Owner.

C) This Agreement is between the Owner/Agent and each renter individually. IN THE EVENT OF DEFAULT BY ANY ONE SIGNER, EACH AND EVERY REMAINING SIGNER SHALL BE RESPONSIBLE FOR ALL PROVISIONS OF THIS AGREEMENT.

**4. PERMITTED ITEMS**

Renter(s) may have the following items on the property:

SPRAGUE0002^^

A1



Vehicles, all vehicles are to be parked in the following designated areas: garage parking or visitors parking (street parking).

#### 5. DEPOSITS

A) The Renter shall pay the Owner/Agent the following refundable security deposit: \$3500.00 which shall not exceed 2 months rent for unfurnished property and 3 months rent for furnished.

1. When the Renter moves out the Owner may use the deposit solely for the purpose of:
  - i. Repairing damages for which the Renter is responsible,
  - ii. Cleaning beyond normal wear and tear,
  - iii. Paying due and unpaid rent and/or utilities. (Owner will pay utilities up to \$250 a month).

#### INTEREST:

B) The Owner shall not pay the tenant interest on all security deposits.

#### REPAIRS AND REFUND:

C) The Owner shall inform the Renter of needed repairs. The Renter shall have the right to make any repairs identified at the pre-move out inspection at his or her expense before the move out date without deduction from the security deposit. Within three weeks after the Tenant moves out, the Owner shall return the deposit to the Renter less any deductions the owner is entitled to under this agreement. If any deductions are made, the owner shall provide the Renter with a written itemized statement of expenses and receipts for cleaning or repairs for which deductions were made from the deposit.

#### Renter(s) agree to:

1. Keep the premises as clean and sanitary as the condition of the premises permits;
2. Regularly dispose of all rubbish, garbage, and other waste in a clean and sanitary manner;
3. Properly use and operate all electrical, gas, and plumbing fixtures and keep them as clean and sanitary as their condition permits;
4. Not, nor permit anyone on the premises within her/his control to, willfully or wantonly destroy, deface, damage, impair, alter, or remove any part of the structure, facilities, or equipment;
5. Leave the rental in the same condition as when possession was given to her/him, reasonable use, wear, and damage beyond the control of the Renter(s) excepted; and
6. Not to cause or allow unnecessary noise especially during the quiet times under the city or county noise and/or "party" ordinance (10:00 p.m. to 8:00 a.m.).
7. Renter agrees to do snow and ice removal a round the side walk and drive way during the winter.

#### D) ADDITIONAL DUTIES

The maintenance of the following additional items: n/a

The signing of this agreement acknowledges the Owner's receipt of \$3500 from the Renter for security deposit,

Both the Owner/Agent and the Renter receive a copy of this Agreement. This Agreement is entered and will be effective the 6th day of August, 2012.

Don Miller Date: 8-7-12  
Owner's Signature

Jeff R. Price Date: 8-6-12  
Renter's Signature (type name and sign above the line)

Jeff R. Price  
Ann K Price

9-20-12

\*\*\*It Is Your RESPONSIBILITY TO RETURN THIS LIST! FAILURE TO RETURN THIS WILL BE  
 ACCEPTANCE OF THE APARTMENT WITH NO DAMAGES AND THOROUGHLY CLEANED

Price Jeff Allen CHECK IN LIST

Tenant name:	Damaged	Cleaned	Not Clean
KITCHEN			
Inside Cupboards			
Outside Cupboards		✓	
Doorways		✓	
Halls		✓	
Baseboards		✓	
Doors		✓	
Dishwasher		✓	
Light Fixtures		✓	

REFRIGERATOR	Damaged	Cleaned	Not Clean
Inside		✓	
Outside		✓	
Freezer		✓	
Defrosted		✓	

STOVE	Damaged	Cleaned	Not Clean
Stove top (Paint base)		✓	
Controls ?			
Fridge Pans ?			
Fridge Hood (no oil)		✓	
Fan & light		✓	
Oven		✓	
Racks		✓	
Oven Door (only one small spot)		✓	

General	Damaged	Cleaned	Not Clean
Toilets		✓	
Sinks		✓	
Inside Cabinets		✓	
Outside Cabinets		✓	
Tub		✓	
Tile		✓	
Mirror		✓	
Floors		✓	
Light Fixtures		✓	
Faucets		✓	

MISCELLANEOUS	Damaged	Cleaned	Not Clean
Carpets		✓	
Drapes			
Windows		✓	
TV Receiver Box		✓	
Doors		✓	
Walls		✓	
Ceiling		✓	
Wood Stove			
Chimney		✓	
Utility Room		✓	
Closets		✓	
Garage		✓	
Blinds See note	✓	✓	

APPLIANCE CHECK	Working	Not Working Explanation
Furnace	✓	
Heater	✓	
Stove & Oven	✓	
TV Receiver Box	✓	
Garbage Disposal	✓	
Light Fixtures	✓	
Air Conditioner	✓	
Toilet	✓	
Door Locks	✓	

Other files - Kitchen not register Broken corner / cracked or broken in kitchen (33)

Tenant Ann K Price Agent/Owner Dani 9/5/12

# NOTICE OF DEFICIENT CONDITION(S)

Utah Fit Premises Act -- Utah Code §§57-22-1 et seq.

Name and address of owner/agent:	Tenant name and rental address:
Danielle Sprague	Jeff Price
511 West 910 North	591 East Oak View Court
Salt Lake City, Utah 84116	North Salt Lake, Utah 84054

Pursuant to Utah Code §57-22-4(1)(a), the undersigned Tenant now give the Notice to the Owner of the following deficiencies in the rented premises. The Utah Fit Premises Act requires that the owner take substantial action to fix these deficiencies within the number of days ("corrective period") required by the Act. The undersigned Tenant hereby gives the Owner permission to enter the rented premises in order to take corrective action.

CHECK IF APPLICABLE	5. STANDARD OF HABITABILITY OR EQUIPMENT OF RENTAL AGREEMENT (Reference is made to Utah Code §§57-22-4(1)(a) and (b))	CORRECTIVE PERIOD	SELECTED REMEDY IF OWNER TAKES NO TATF / SUBSTANTIAL ACTION
<input checked="" type="checkbox"/>	§5(1) and §4(1)(b): Rented premises are unsafe and/or unsanitary for the following reason(s): Mold has been located in several areas of the home requiring the corrective measures set forth in the November 29, 2012 letter from Charles Nixon, MSPH-COH, attached and incorporated by reference.	3 (three) calendar days	<input checked="" type="radio"/> Rent abatement <input type="radio"/> Repair and deduct
<input type="checkbox"/>	§3(1) and §4(1)(b)(i): Electrical system is deficient because:	3 (three) calendar days	<input type="radio"/> Rent abatement <input type="radio"/> Repair and deduct
<input type="checkbox"/>	§3(1) and §4(1)(b)(i): Heating is deficient because:	3 (three) calendar days	<input type="radio"/> Rent abatement <input type="radio"/> Repair and deduct
<input checked="" type="checkbox"/>	§3(1) and §4(1)(b)(ii): Plumbing is deficient because: The water softener is defective and deficient, requiring replacement.	3 (three) calendar days	<input checked="" type="radio"/> Rent abatement <input type="radio"/> Repair and deduct
<input type="checkbox"/>	§4(1) and §4(1)(b)(ii): Hot and/or cold water is deficient because:	3 (three) calendar days	<input type="radio"/> Rent abatement <input type="radio"/> Repair and deduct
<input type="checkbox"/>	§4(1)(b)(iii): Air conditioning system is deficient because:	3 (three) calendar days	<input type="radio"/> Rent abatement <input type="radio"/> Repair and deduct
<input type="checkbox"/>	§4(1)(c)(i): Common areas of the rental unit are unsafe and/or unsanitary for the following reason(s):	3 (three) calendar days	<input type="radio"/> Rent abatement <input type="radio"/> Repair and deduct

Sf

EXHIBIT 8

- 2. No door stopper
- 3. Dent in wall behind door

#### Purple room

- 1. Walls -- paint chipped
- 2. Dresser -- 2<sup>nd</sup> drawer is loose

#### Blue room

- 1. Walls -- paint chipped
- 2. Blinds don't pull straight
- 3. Register hanging down 1-1 1/2 inches

#### Need:

- ✓ 1. Vacuum
- ~~AP 2. Mop & Bucket (Terry)~~
- ~~3. Broom~~
- ~~AP 4. Hand towels (1) didn't take~~
- ~~AP 5. Wash cloths~~
- ~~AP 6. Paper towel holder~~
- ~~7. Cereal bowls (7 more to make 12)~~
- ~~8. Tall glasses (5 more to make 12)~~
- ~~9. Short glasses (3 more to make 12)~~
- ~~AP 10. Dish drainer~~
- ~~? 11. DVD player - will not be provided~~
- ~~AP 12. Sauce pan (Lara)~~
- ~~AP 13. more garage door opener (2)~~

Garage Door (sm) (fixed)  
 Some times door pop back up only one in ten or  
 Not working goes up when closing, have to stop manually with buttons  
 correct if

AP - Garage door (sm) has been fixed.

Sign by  
 Tenants:

7. Floor register - broken
8. Blinds - broken - main

#### Staircase

1. Tile - missing grout
2. Door - broken bottom panel

#### Banister

1. Loose
2. Rail - marred

#### Ping Pong room

1. Holes around electrical outlets and light switch
2. Crack above door to furnace room
3. Glass door - dent in wall next to jamb
4. Carpet not laid right
5. Window Wall - dent about six feet up

#### Air Hockey/TV room

1. Holes around electrical outlets
2. Walls - Puck dented
3. Window - No screen
4. Dimmer Light Switch - no knob
5. Behind TV - paint chipped up high
- ~~6. 1 light bulb out~~

#### Hallway

- ~~1. 3 light bulbs out~~

#### Pine room

1. Door jamb - nail showing and nail coming out of wall

Laundry - Washer Knob missing

Tenant:

Author:  
SPRAGUE000294

- ~~5. Light above shower doesn't work~~
- 6. Walls - paint chipped
- ~~7. Threshold - loose~~
- 8. Door jamb - ~~dirty~~ <sup>clean</sup> and paint chipped
- 9. Door - Hole from door stopper

#### Bathroom - Downstairs

- ~~1. No door stopper~~
- 2. Screw tops showing in ceiling
- 3. Door jamb - paint chipped and nail showing
- 4. Mirror - chipped bottom left corner

#### Corvette Room

- 1. Blinds broken ?
- 2. Walls - paint chipped

#### Red/Black Room

- ~~1. Floor under rug (you showed us)~~ <sup>when can</sup>
- 2. Windows - Dirty jamb, water stained
- 3. Baseboards - knicked
- ~~4. Threshold - loose~~
- ~~5. No Door stopper~~

#### Master

- ~~1. Windows - 2 broken (not the glass)~~ <sup>1 broken NO</sup>
- ~~2. Window - Screen missing~~
- 3. Baseboard - ~~dirty~~ <sup>clean</sup> marred, missing corner at bathroom entry
- ~~4. Ceiling light over bed not working (maybe needs 2 bulbs)~~
- 5. ~~Door jamb~~ door frame Crack (Top)
- 6. Closet door - paint chipped

SPRAGUE000293

*tenant:*  
*Dweller*

Kitchen:

1. Inside Cupboard – Damaged – Left of sink shelf and cupboard. Under sink.  
Left island cupboard.
2. Bottom shelf of lazy susan does not spin.
- ✓3. Blinds over sink – Broken
4. Baseboards – Marred ~~and dirty~~ <sup>clean AP</sup>
5. Tile – Kitchen nook – Broken tile under register  
33 broken or hairline cracks in tiles
6. Stools – legs slightly broken (they work)
7. Screen missing
8. Dish wash – Soap door broken; main door not fit, leaking water on the floor.

Dining Room:

- ✓1. Window – Screen missing

Stove:

1. Stove top – damaged paint

Entryway:

1. Hairline cracked tile
2. 1 light bulb needed decorative
- ✓3. Door needs weather stripping find.

Bathroom – Main

- ✓1. Toilet – seat damaged (paint)
2. Inside cabinet ~~dirty~~ <sup>clean AP</sup>
- ✓3. 1 light bulb (clear) <sup>try ends bigger bulb</sup>

Bathroom – Master

- ✓1. Toilet – doesn't flush well and drips <sup>drives crazy</sup>
2. Inside drawers ~~dirty~~ <sup>clean AP</sup>
3. Blinds – Dirty – top part
- ✓4. Light fixture – 3 small clear bulbs <sup>try ends</sup>

Tenant: <sup>fixed by</sup>

SPRAGUE000292

Owner

## Final Check out!!!

From: **JEFF PRICE** (jeffprice3399@msn.com) You moved this message to its current location.

Sent: Sat 12/08/12 9:22 AM

To: Danielle Sprague (daniellesprague@hotmail.com); Bill Bradford (rwblbe@gmail.com);  
Ann Price (aprice3399@msn.com)

Rufus and Danielle Sprague

Mr. Bradford has suggested that we meet tomorrow evening to have a final inspection. I talked to John Isakson, your friend and neighbor about joining us. He has agreed. I can be available after 5PM if this works for you. If the morning is better please advise. As you know John's church is from 1PM to 4PM, I feel that we should accommodate John's schedule. Please bring your camera. I will be away from the internet after a few minutes of this being sent so please text Ann or Jeff Price, I will also take calls.

Jeff Price



\*\*\*It Is Your RESPONSIBILITY TO RETURN THIS LIST! FAILURE TO RETURN THIS LIST WILL BE DEEMED AS ACCEPTANCE OF THE PERMIS WITH NO DAMAGES AND IS THOROUGHLY CLEANED \*\*\*

CHECK IN LIST — Check out

Tenant name:	Damaged	Cleaned	Not Clean
KITCHEN			
Inside Cupboards	X		
Outside Cupboards		X	
Doorways			
Halls		X	
Baseboards		X	
Doors		X	
Dishwasher		X	
Light Fixtures			X

REFRIGERATOR	Damaged	Cleaned	Not Clean
Inside		X	
Outside			X
Freezer		X	
Defrosted			

STOVE	Damaged	Cleaned	Not Clean
Stove top		X	
Comers		X	
Fringe Pans		X	
Fringe Hood		X	
Fan & light		X	
Oven		X	
Racks		X	
Oven Door		X	

General	Damaged	Cleaned	Not Clean
Toilets		X	
Sinks		X	
Inside Cabinets	X		
Outside Cabinets		X	
Tub		X	
Tile	X		
Mirror		X	
Floors		X	
Light Fixtures		X	
Faucets		X	

MISCELLANEOUS	Damaged	Cleaned	Not Clean
Carpets			X
Drapes			X
Windows			X
Blinds			X
Doors		X	
Walls		X	
Ceiling		X	
Wood Stove		N/A	
Chimney		N/A	
Utility Room	X		X
Closets		X	
Garage			X
Swimming Pool		N/A	

APPLANCE CHECK	Working	Not Working Explanation
Furnace	X	
Heater		
Stove & Oven	X	
Water softener		NOT WORKING, DISCONNECTED
Garbage Disposal	X	
Light Fixtures		
Air Conditioner		TURNED ON
Toilet	X	
Door Locks	X	

Other MOLD IN THE UTILITY ROOM, WATER SOFTENER NOT WORKING

Agent/Tenant

EXHIBIT 4

Date 12/9/13

A4

# EXHIBIT B

## Eviction Notices

- B1- Notice of Eviction Three Day To Pay or Quit
- B2 - Notice of Eviction Three Day to Vacate for Committing a Criminal Act on Premises
- B3 – Notice of Repairs within three business days  
Right Before Evictions were sent

# NOTICE OF EVICTION

## THREE DAY NOTICE TO PAY OR QUIT

This Notice is Given to Tenant(s):  
Name: Ann K. Price  
Address: 591 Oak View Ct. North Salt Lake  
Utah 84054  
(And all other tenants known)

This Notice is Given by Landlord(s):  
Name: Danielle Sprague  
Address: 511 W 500 N Salt Lake City  
Utah 84116  
Phone: 801-936-1109

**You are hereby given notice that you are behind in your rent payments. You are required to either pay everything owed as indicated below, or move out within three (3) calendar days (counting weekends & holidays).**

You are required to do one of the following:

1. Within **three calendar days** you must pay \$ 5,582.83 (the total amount owing) which consists of:
  - a. \$ 3,178.64 Rents from Oct. 2012 to Dec. 2012
  - b. \$ 2,250.00 Late fees from Sept. 2012 to Dec. 2012
  - c. \$ 154.19 Misc Fees Cable and internet

**OR**

2. Within **three calendar days** you must vacate the premises you have rented.

If you do not comply with this notice, you will be served with a Summons & Complaint for unlawful detainer. Unlawful detainer is when you remain in possession of rental property after the owner serves you with a lawful notice to leave, such as this eviction notice. If you are found by the court to be in unlawful detainer, you will be evicted by the court & found liable for: (1) any rent due & unpaid through the end of your rental agreement, less any amounts the landlord receives from the next tenant; (2) damages caused by your unlawful detainer of the rental property; (3) damages for any waste of the property caused by you, if & only if the landlord alleges them in a court complaint & proves them at trial, or submits them to the court by affidavit in the event of your default (Waste is damage you cause beyond normal wear & tear.); (4) damages as provided in Utah Code Ann. § 78B-6-1107 through 1114 for the abatement of nuisance, if any, caused by you (abatement of nuisance means to stop a nuisance); & (5) attorney fees & court costs.

**You will also be liable for three times those damages allowed to be trebled under Utah Code Ann. § 78B-6-811 which may include trebling damages mentioned above.**

**FAIR DEBT COLLECTION PRACTICES ACT NOTICE:** THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT, & ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. Unless you dispute the validity of this debt within 30 days, it will be assumed by the landlord to be valid. If you notify the landlord in writing, within 30 days that you dispute this debt or any portion thereof, the landlord will obtain & mail to you verification of this debt or a copy of a judgment against you. Upon your written request within the 30 day period, the landlord, or the person or entity serving this notice, will provide you with the name & address of the original landlord, if different from the current landlord.

### RETURN OF SERVICE AND SELF AUTHENTICATION DECLARATION

This Notice was served on the above-listed tenant(s) on this 6th day of December, 2012, in one (or more) of the following manners:

☒ **Personal Service.** A copy was delivered to the tenant personally.

☐ **Posted Service.** A copy was posted in a conspicuous place on the premises, as no one was home.

☐ **Suitable Age & Discretion – Residence.** A copy was left with a person of suitable age and discretion at tenant's residence and a second copy was mailed to tenant's residence.

☐ **Suitable Age & Discretion – Place of Business.** A copy was left with a person of suitable age and discretion at tenant's place of business and a second copy was mailed to tenant's place of business.

☒ **Certified Mail.** A copy was sent through certified or registered mail to tenant's address.

Pursuant to Utah Code Ann. §46-5-01, I declare under criminal penalty that the foregoing is true and correct.

Signature of Notice Giver: Danielle Sprague @ 10:57 A.M.

# NOTICE OF EVICTION

## THREE DAY NOTICE TO VACATE FOR COMMITTING A CRIMINAL ACT ON PREMISES

This Notice is Given to Tenant(s):  
Name: Ann K. Price  
Address: 591 Oak View Ct. North Salt Lake  
Utah 84054  
(And all other tenants known)

This Notice is Given by Landlord(s):  
Name: Danielle Sprague  
Address: 511 W 500 N Salt Lake City  
Utah 84116  
Phone: 801-936-1109

You are subject to eviction within 3 days under Utah Code § 78B-6-802(1)(d) for committing a criminal act on the premises as follows:

- Improperly use water softener to cause the damage and water leaking;
- Failure to clean up the water leaking and keep the premise in sanitary manner;
- Refuse property owner to access the premise to do the inspection and repairing the damages.

You are required to vacate the premises within three calendar days, counting weekends and holidays. If you do not comply with this notice, you will be served with a Summons and Complaint for unlawful detainer. Unlawful detainer is when you remain in possession of rental property after the owner serves you with a lawful notice to leave, such as this eviction notice. If you are found by the court to be in unlawful detainer, you will be evicted by the court and you will be liable for: (1) any rent due and unpaid through the end of your rental agreement, less any amounts the landlord receives from the next tenant; (2) damages caused by your unlawful detainer of the rental property; (3) damages for any waste of the rental property caused by you, if and only if the landlord alleges them in a court complain and proves them at trial, or submits them to the court by affidavit in the event of your default (Waste is damage you cause beyond normal wear and tear.); (4) damages as provided in Utah Code Ann. § 78B-6-1107 through 1114 for the abatement of nuisance, if any, caused by you. (Abatement of nuisance means to stop a nuisance.); and (5) attorney fees and court costs.

You will also be liable for three times those damages allowed to be trebled under Utah Code Ann. § 78B-6-811 which may include trebling damages mentioned above. Rent due and unpaid shall be trebled each day you remain in the premises after this notice expires.

### RETURN OF SERVICE AND SELF AUTHENTICATION DECLARATION

This Notice was served on the above-listed tenant(s) on this 6<sup>th</sup> day of December, 2012, in one (or more) of the following manners:

- ☒ Personal Service. A copy was delivered to the tenant personally.
- ☐ Posted Service. A copy was posted in a conspicuous place on the premises, as no one was home.
- ☐ Suitable Age & Discretion - Residence. A copy was left with a person of suitable age and discretion at tenant's residence and a second copy was mailed to tenant's residence.
- ☐ Suitable Age & Discretion - Place of Business. A copy was left with a person of suitable age and discretion at tenant's place of business and a second copy was mailed to tenant's place of business.
- ☒ Certified Mail. A copy was sent through certified or registered mail to tenant's address.

Pursuant to Utah Code Ann. §46-5-01, I declare under criminal penalty that the foregoing is true and correct.

Signature of Notice Giver: Danielle Sprague

Copyright © 2010-2012. This form provided by the Law Offices of Jeremy M. Shorts, LLC and may be used by landlords within the state of Utah. Use of this form shall not constitute legal representation by this Firm. Visit [www.utah eviction law.com](http://www.utah eviction law.com) for more landlord forms and materials. Phone: 801-610-9879. Rev. 10-17-2011

B2

**Notice of Repairs within three business days**

December 2, 2012

Re: Water softener and mold damages

Jeff and Ann Price  
591 Oak View Ct.  
North Salt Lake, Utah 84054

Mr. and Mrs. Price,

As you made the statement to both of us on the Oct. 26, 2012 when the Pond's technician was replacing the water manifold, you stated that the water softener was working at the beginning when you turned it on but no knowing why it is now not working. We believe that you turned the water softener on improperly and caused the damage. By this, we request you to make the proper repairs to fix the water softener or replace it with a new one within three business days.

After the leaking problems have been stopped, the affected leaking area has dried up and the mold that was caused by the leaking water has become visible to see. During our inspection on Nov. 28, 2012, we both clearly saw the mold in the utility room on the bottom of wall next to the purple room. As by your family health concern and by protecting our property, we request that you to have a license mold clean up contractor remove all the mold, and repair all the damages that the leaking water caused which you refused to clean up in a timely manner.

If you fail to do such repairs stated above within three business days, you will be subject to eviction.

Sincerely,

Rufus and Danielle Sprague  
Owner of the property

## RE: Notice fo repairs

From: **danielle sprague** (daniellesprague@hotmail.com) You moved this message to its current location.

Sent: Mon 12/03/12 8:12 AM

To: **JEFF PRICE** (jeffprice3399@msn.com)

Jeff,

You are correct. We will not be there of 9 am this morning.

Danielle

---

From: jeffprice3399@msn.com

To: daniellesprague@hotmail.com; rwb1be@gmail.com; jeffprice3399@msn.com

Subject: RE: Notice fo repairs

Date: Mon, 3 Dec 2012 07:35:17 -0700

Danielle,

I believe this statement is implying that your unnamed contractor will not be at 591 Oak View Ct at your requested time of 9 am this morning December 03, 2012. Unless we hear other wise we will proceed with our normal schedule. Our presence will not be guaranteed. Please plan accordingly if you intend to comply with the FIT premises Act served to your private residence on Friday.

Please refer to your contract to justify your accusations and demands.

Jeff

---

From: daniellesprague@hotmail.com

To: jeffprice3399@msn.com

Subject: Notice fo repairs

Date: Mon, 3 Dec 2012 13:19:08 +0000

Please see the attachment.

# EXHIBIT C

## Invoices and Account Statement

- C1- September Utilities, Cable and Internet Bill
- C2 - October Utilities, Cable and Internet Bill
- C3 - November Utilities, Cable and Internet Bill
- C4 - November Account Outstanding Balance
- C5 - December ~~P~~ Account Outstanding Balance
- C6 - Security Deposit Allocation Statement
- C7 - Email to Bill Bradford for Deposit Statement
- C8 - Bill Bradford Demanded for Cable and Internet
- C9 - Offering Chance to Prices for their own Utilities cost Calculation
- C10 -Nov. 2012 Rent Payment from Prices

**RE: Utilities fee, cable and internet bills**

From: **danielle sprague** (daniellesprague@hotmail.com)  
Sent: Mon 10/08/12 10:21 PM  
To: aprice3399@msn.com

Hi Jeff and Ann,

You can come to pick up the utilities bill copy any time at 511 W 500 N. Salt Lake City, Utah 84116  
Danielle

---

From: aprice3399@msn.com  
To: daniellesprague@hotmail.com  
Subject: RE: Utilities fee, cable and internet bills  
Date: Fri, 5 Oct 2012 12:47:54 -0600

Danielle,

Would you please send us copies of the bills,

Jeff Price

---

From: daniellesprague@hotmail.com  
To: aprice3399@msn.com  
Subject: Utilities fee, cable and internet bills  
Date: Fri, 5 Oct 2012 14:44:00 +0000

Jeff and Ann,

Here is the utilities bills for Sep. 2012:

Gas: \$17.16

Power: \$125.20

NSL city bill for Water, Garbage...: \$160.95

Total of the utilities bills: \$ 303.31

Amount you need to pay for the utilities: \$ **53.31**

Cable and internet bills for Sep. 2012: **\$86.99**

Total cost you need to pay for Sep. 2012: **\$140.30**

Let me know if you have any question.

Thanks,  
Danielle

SF

E

C1



Rufus & Danielle Sprague  
511 W 500 N  
Salt Lake City  
UT 84116  
(801) 936-1109

## **Invoice**

Invoice: 2012-10  
Date: 11/13/2012  
Due date: 11/30/2012

Utilities bills for Oct. 2012:

Gas: \$49.43

Power: \$86.07

NSL city bill for Water, Garbage...: \$124.83

Total of the utilities bills: \$260.33

Less \$250.00

Amount you need to pay for the utilities: **\$10.33**

Cable and internet bills for Oct. 2012: **\$67.20**

**Total amount you need to pay for Oct. 2012: \$77.53**

Any copies can be picked up at the office, or \$50 will be charged to send by certified mail to the tenant. Please call before you come. Thank you!

C2

Rufus & Danielle Sprague  
511 W 500 N  
Salt Lake City  
UT 84116  
(801) 936-1109

## **Invoice**

Invoice: 2012-11  
Date: 12/20/2012  
Due date: 12/30/2012

Utilities bills for Nov. 2012:  
Gas: \$102.00  
Power: \$80.80  
NSL city bill for Water, Garbage...: \$58.99  
Total of the utilities bills: \$241.79  
Less \$250.00  
Amount you need to pay for the utilities: **\$0**

Cable and internet bills for Nov. 2012: **\$64.96**

**Total amount you need to pay for Nov. 2012: \$64.96**

Any copies can be picked up at the office, or \$50 will be charged to send by certified mail to the tenant. Please call before you come. Thank you!

SI

EXI

C3

**Outstanding Rental Payment Balance**

Date: Nov. 6, 2012

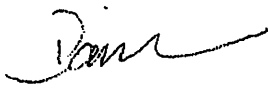
Tenants: Jeff and Ann Price

Due date:           Upon received

<u>Date</u>	<u>Description</u>	<u>Amount</u>
10/11/2012	Utilities bills	\$ 140.30
11/1/2012	Rent payment	\$ 3,000.00
11/6/2012	Certified mail fee	\$ 50.00
Total balance:		\$ 3,190.30
11/2/2012	Credit	\$ (2,935.00)
Balance due:		\$ 255.30

A late fee of \$20 each day for unpaid rental payment will be added to the balance after 6th of each month. If the outstanding balance is not paid within 10 days, the account will be turned over to the collection agency.

Any copies can be picked up at the office, or \$50 will be charged to send by certified mail.  
Please call before you come. Thank you!

  
Owner of the property

Balance of account - by end of occupancy

Name Jeff & Ann Price  
591 Oak View Ct. North Salt Lake

Sept. Rent + Cleaning fee	\$	3,150.00	9/1/2012	\$	3,000.00	9/4/2012		
			9/1/2012	\$	150.00	9/20/2012	\$	700.00 \$ 700.00
Oct. Rent + Late fee	\$	3,700.00	10/1/2012	\$	3,000.00	10/1/2012		
Cable, Internet, Utility	\$	140.30	11/1/2012	Not paid			\$	840.30
Nov. Rent + Late fee	\$	3,840.30	11/1/2012	\$	2,935.00	11/2/2012	\$	1,250.00
Certified mail	\$	50.00	12/1/2012	Not paid				
Cable, Internet, Utility	\$	77.53	12/1/2012	Not paid			\$	2,282.83
Dec. Rent + Late fee	\$	5,282.83	12/1/2012	Not paid			\$	1,150.00
Cable, Internet, Utility	\$	64.96	1/1/2013	Not paid			\$	6,497.79
							\$	3,100.00 \$ 6,497.79

NOTES:

SPRAGUE DEFENDANTS  
EXHIBIT

C5

### Deposit Allocation Breakdown

Date: Dec. 28, 2012

Tenant: Jeff and Ann Price (591 Oak View Ct. NSL)

Due date: up on received

<u>Date</u>	<u>Description</u>	<u>Amount</u>
9/1/2012	Refundable deposit	\$ 3,500.00
12/2/2012	Mold inspection	\$ (75.00)
12/10/2012	Mold inspection	\$ (125.00)
12/18/2012	Water softener repair	\$ (1,500.00)
12/20/2012	Cleaning cost	\$ (83.00)
12/22/2012	Carpet Shampoo Cleaning	\$ (80.00)
12/26/2012	Mold cleaning and wall repair	\$ (250.00)
12/28/2012	Unpaid rent (past invoice)	\$ (6,497.79)
12/28/2012	Others and total unpaid rent to be determined	
	Outstanding amount:	<u><u>\$ (5,110.79)</u></u>

There is no deposit to be refunded to you since the amount of your deposit is not even enough to cover the damages and the past due invoices.

**Any copies can be picked up at the office, or \$50 will be charged to send by certified r  
Please call before you come. Thank you!**


C 6

- ^ Folders
- Inbox 15
  - Junk Email
  - Drafts 123
  - Sent Items
  - Deleted Items 206
  - Archive


# Price's deposit breakdown statement



danielle sprague

To: Bill Bradford <rwblbe@gmail.com>; 

Documents

Jeff and Ann Price depo...   
11 KB

Download Save to OneDrive - Personal

Mr. Bill Bradford,  
Please find an attachment of your clients Prices' deposit breakdown statement.  
Thanks,  
Danielle

C7

Re:

Bill Bradford

**Reply:**

To:

danielle sprague <daniellesprague@hotmail.com>;

Cc:

JEFF PRICE <jeffprice3399@msn.com>;

Ann Price <aprice3399@msn.com>;

...

Sat 11/17/2012 7:32 PM

Ms. Sprague -

I inadvertently referred to mediation on the 29th of November, rather than the 30th, a date chosen by you, and the date on which mediation has already been established with the mediator. Consequently, my clients will expect you to attend on the 30th as agreed. That date is, of course, after Thanksgiving and well in advance of the Christmas season, so the "holiday season" is not a valid excuse for your attempt to evade or avoid mediation on the 30th.

As to the cable and internet service - I have advised my clients that a VACATION HOME RENTAL - by definition, includes all usual amenities, INCLUDING cable and internet service. If you refuse or fail to provide those services, I have advised the Prices that you will be in breach of your contract, and liable to my clients in damages.

Also - I have advised my clients that there cannot be any changes or amendments to the VACATION RENTAL HOME AGREEMENT until the time of the mediation.

PLEASE GOVERN YOURSELF ACCORDINGLY ! ! !

Bill Bradford

On Sat, Nov 17, 2012 at 6:47 AM, danielle sprague <[daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)> wrote:  
Mr. Bill Bradford,

Because of this season of the year, we are not available for the mediation on the day of November 29. We will inform you once we can make a schedule of the mediation.

Also please advise your client Jeff if he still want to have our cable and internet services, he

C8

needs to pay the bills as we agreed verbally at the beginning of the lease. And if still he want to keep these services, please let me know within 24 hours; or I will cut off the services if I don't hear from you after 24 hours from now.  
Thank you!

Sincerely,

Danielle



November 28, 2012

Jeff and Ann,

After the conversation with you this afternoon, you had requested an itemized list of total balance that is owed. Upon your request included in this letter, the itemized balance for Dec. 1, 2012 is \$5,282.83

If you have questions or would like a hard copy of the actual bills they can be picked up at our office located at 511 West 500 North, Salt Lake City, Utah 84116. Please notify us before coming so we can prepare the documents you request. If you have any discrepancies with any of the utility bills, please make note of them and return them to us along with your calculation before the due date.

Please note that your rent is over 30 days late, and non payment of this balance is not acceptable, any discrepancies need to be brought to our attention.

As the property owners we need to protect our property. Today we wanted to clean the mold that you had failed to prevent and refused to clean, have brought to our attention. We had brought the proper equipment and tools to clean the mold properly with us today, however; you declined to let us clean it. Please let us know when we will be allowed on the property to do so. If any damage causes by the leaking and mold to the property will be your responsibility.

Sincerely,

Rufus and Danielle Sprague

C9

## RE: October 2012 Invoice

From: **JEFF PRICE** (jeffprice3399@msn.com) You moved this message to its current location.

Sent: Sun 12/02/12 4:24 PM

To: Danielle Sprague (daniellesprague@hotmail.com)

Justify this with your contract.

Jeff

---

From: daniellesprague@hotmail.com

To: jeffprice3399@msn.com

Subject: RE: October 2012 Invoice

Date: Sun, 2 Dec 2012 20:26:57 +0000

Jeff,

As our invoice indication, you are always welcome to come to our office to pick up all the actual bills to verify the charges. Also you can call the company, which the actual bill generated from, to verify as well. Our other tenants have been doing this with no problem.

Danielle

---

From: jeffprice3399@msn.com

To: daniellesprague@hotmail.com; rwblbe@gmail.com

Subject: RE: October 2012 Invoice

Date: Sun, 2 Dec 2012 12:47:52 -0700

I received it then and again now. I am sure you wouldn't send a bill to your cookie customers with no bases of support. Please give me the same respect. Just because you have a computer and can produce words doesn't mean that it is worth the paper it is printed on.

Jeff

---

From: daniellesprague@hotmail.com

To: jeffprice3399@msn.com

Subject: FW: October 2012 Invoice

Date: Sun, 2 Dec 2012 19:35:08 +0000

I had sent this invoice on Nov. 13 and I resend it again to you today.

Danielle

---

From: daniellesprague@hotmail.com

To: jeffprice3399@msn.com

JEFF AND A. PRICE  
406-283-6772  
P.O. BOX 727  
THREE FORKS, MT. 59752

33 61 929

4396

11-1 20/12

Pay to the order of Danielle Sprague \$2935.00  
Two thousand nine hundred thirty-five and 00/100

FIRST SECURITY BANK

(800) 655-9801

WWW.OURBANK.COM

MEMBER FDIC

For Nov. Rent loss #65

Ann K Price

⑆092980613⑆ 054002054⑆ 4396

TO THE ACCOUNT  
OF THE WITHIN NAMED PAYEE  
ZIONS BANK

# EXHIBIT D

- Plaintiffs Prices Unfinished Remaining Rent

Up to Date loss rent Balance June 10, 2013

Date: June 10, 2013

Tenant: Jeff and Ann Price (591 Oak View Ct. NSL)

Due date: up on receive

Date	Description	Amount
Days without rent	Month	\$100/day per agreement
16 days rent	January	\$ 1,600.00
21 days rent	Febuary	\$ 2,100.00
9 days rent	March rent	\$ 900.00
15 days rent	April rent	\$ 1,500.00
17 days rent	May rent	\$ 1,700.00
4 days rent	June rent	\$ 400.00

Legal cost	Attorney and court filing (estimated)
Others	TBD

Total out standing balance:	\$ 8,200.00
-----------------------------	-------------

# EXHIBIT E

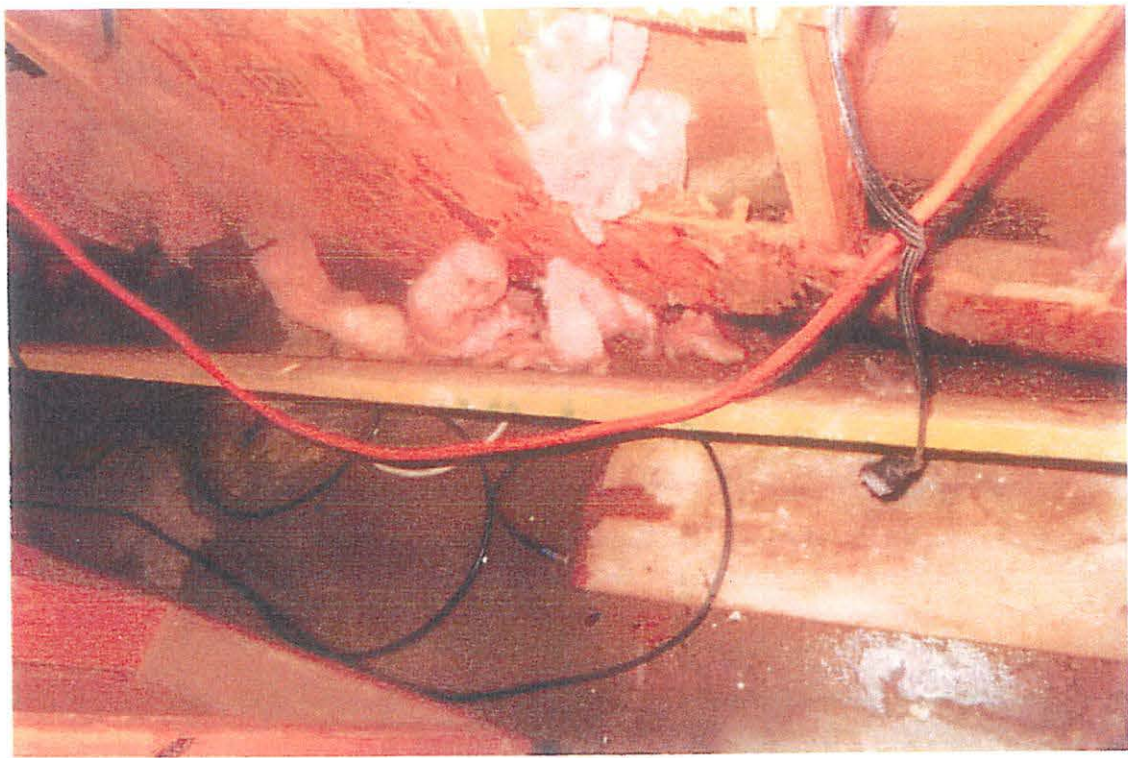
## Pictures of Furnace Room

- E1- Prices' Picture taken on 9/9/2012
- E2 - Sprague's Picture taken on 11/14/2012



PRICE 0027

E1



SPR U E 2



# EXHIBIT F

## Damages after Moved In

- F1-Prices' Salt Purchase Receipts from 9/10/12 to 10/2/12, Using Softener for over 3 Weeks
- F2-First Leaking Prices Inform Sprague on 10/11/12
- F3-Jeff Prices Request Spragues to Plan for Cleaning Up the Water after the Visit on 10/13/12
- F4-Second Time 10/16/12 Prices inform Leaking after the First Leaking was already Fixed and Stop
- F5-Mrs. Sprague Email asking Permission for Access the Premises to Repair on 10/17/12
- F6-Prices confirm the Softener didn't Leak no more and Manifold had only Small Leak when they
- Excused Themselves for a Vacation, but Reject Owner Access to the Premises 10/18/12
- F7-Third Time Prices Inform Sprague of Leaking
- F8-Forth Time Prices Inform Sprague of Leaking after all Pervious Leaking was Completely Stop
- F9-Email from Home Inspector Joe Reid confirm no "mold" was not found in the Premises on 6/26/12
- F10 -Shamrock Opinion Prices Tampered Water Softener
- F11 -Ann Prices Written Notice for Repairs on 9/20/12



735 W. BOUNTIFUL

573 WEST 100 NORTH  
W. BOUNTIFUL, UT 84087  
MEMBER #808576127000

26442 SALT PLT 150#	2.99	A
26442 SALT PLT 150#	2.99	A
25248 SCRUB BUBBLE	9.99	A
535699 BATH MAT	13.99	A
538242 TAMPAK PEARL	13.99	A
538242 TAMPAK PEARL	13.99	A
20384 M&B CHEDDAR	13.99	C
597249 16GB UNICROSS	19.99	A

Date 01/01/2012

659702 VN-702PC	39.99	A
653441 2 PK CAMI	19.99	A
340293 2 CMISOLES	19.99	A

SUBTOTAL	171.89
A 6.60% TAX	10.42
C 3.00% TAX	.42

VF TOTAL	182.73
EFT/DEBIT	182.73

XXXXXXXXXXXX1389 SWIPED  
09/10/12 10:50 PIN USED  
Seq#: 000048 App#: 305292  
EFT/DEBIT Resp: AA  
Tran ID#: 225410425000  
Merchant ID 99073511

APPROVED - PURCHASE  
AMOUNT: \$182.73

0735 004 0000000019 0061

CHANGE .00

TOTAL NUMBER OF ITEMS SOLD = 11  
CASHIER: DEBBIE R REG# 4  
01/10/2012 10:50 0735 04 0061 19

THANK YOU!  
PLEASE COME AGAIN!

PLAINTIFFS'  
EXHIBIT

5



735 W. BOUNTIFUL

573 WEST 100 NORTH  
W. BOUNTIFUL, UT 84037  
MEMBER #808576127000

2.99	26442 SALT PLT 150#	8.97	A
	5 1% MILK 2 PK	4.39	C
	37020 OATHEAL CKS	6.99	C
	87745 ROTISSERIE	4.99	A

SUBTOTAL	25.34
6.60% TAX	.92
3.00% TAX	.34

VF TOTAL	26.60
EFT/DEBIT	26.60

XXXXXXXXXXXX1389 SWIPED  
09/13/12 19:49 PIN USED  
Seq#: 002791 App#: 261497  
EFT/DEBIT Resp: AA  
Tran ID#: 225721185000  
Merchant ID 99073511

APPROVED - PURCHASE  
AMOUNT: \$26.60

0735 002 0000000035 0418

CHANGE .00

TOTAL NUMBER OF ITEMS SOLD = 6  
CASHIER: LORI I REG# 2  
01/10/2012 19:49 0735 02 0418 35

THANK YOU!  
PLEASE COME AGAIN!

F1

## post inspection questions

From: **JEFF PRICE** (jeffprice3399@msn.com) You moved this message to its current location.

Sent: Sun 10/14/12 12:12 PM

To: Danielle Sprague (daniellesprague@hotmail.com); Bill Bradford (rwblbe@gmail.com)

October, 14 2012

Danielle and Rufus Sprague

Three points and questions.

I forgot to point out that we purchased a new king mattress. Ann stated that Danielle took pictures of the old mattress. As the pictures show I leaned it up against the north wall in the room below the garage and placed plastic under it, if you would like something else done with it please inform us. The king mattress in the master is our new mattress.

You may have noticed that there was a different couch in the living room. We purchased because we did not enjoy sitting on the black one. We moved your black couch in front of the East window in the dining area. Is that OK?

The last question is what would you like us to know and do about the water on the floor in the utility room caused by the leaking water softener and supply manifold? Do you have a plan?

We are glad that Danielle and Rufus seemed pleased with the way the Vacation Rental Home was being taken care of.

Regards

Jeff R Price

From: jeffprice3399@msn.com  
To: daniellesprague@hotmail.com; rwblbe@gmail.com  
Subject: possible water damage  
Date: Tue, 16 Oct 2012 22:47:48 -0600

Danielle and Rufus Sprague

I just returned home from a trip and find that the water manifold is still leaking. It appears that the OSB is starting to soak and soften; Furthermore, the water is causing the carpet to get wet and smell. We will be in and out tomorrow then we are supposed to be out of town for the UEA weekend. I strongly urge you to make a plan to protect your asset.

As for Ann's role in this, She was volunteering at Woods Cross the last two days and was not home to continuously monitor the water leak. She has drained about 20 gallons of water out of the water softener and moped up the water on the floor.

For your notes. I showed you the water leaking during your October 13, 2012 inspection. I wrote you and ask if you had a plan on October 14, 2012. Now I'm reminding you that the water is still leaking. What else would you have me do?

Regards

Jeff R Price

danielle sprague

**Reply**

To:

Bill Bradford <rwblbe@gmail.com>;

Wed 10/17/2012 9:11 AM

Dear Mr. Bill Bradford,

How are you doing?

I don't understand why your client Jeff has kept contacting me directly. I am afraid; and I am confused at the same time. I am afraid that I will be wrongfully accused again if I may do or say anything wrong. I can not afford an attorney as he can, so I have to be very careful to handle this case (tenant and landlord's relationship) with him as you know. Please let him know that he shouldn't communicate with me directly, or I will believe his continuing communication with me as an harassment. And I will not communicate with him directly as he requested.

I know I am not a good communicator or professional legal person (especially English is not my first language). Please forgive me if I was or may in the future offend you in any way that I am surly not mean to.

Your client didn't tell us or never mention any thing about water pipes leaking or water softer not working's problem prior to our request of the property inspection. While we inspected the premise, we notice that the water was leaking badly in the furance room, and he also showed us that the water softer's problem too. My husband and I had a long meeting with their friends Walkers today; and when we mention about the water softer's problem, they strongly rejected any responsibility for it since the problem is not happen under their watch.

Your client asked me to take action to protect my assets and should make plan to fix the problems. I believe I can not do too much to protect my assets since the assets are in your clients' hands and watch. They should do whatever it takes to protect them. I am sure that you can advise your clients better. If they insist that they won't do any thing about the problems, please let me know, and I'll need to have their permission to do it. I will call a contractor to fix both of the problems; and who should pay for the cost will depends on what the contractor's report. I want all the tenants be cleared out of the house when the contractor comes, so not any tenant should interference the contractor to do his job.

Please get back to me ASAP:)

Thank you very much!

Danielle

## Notice: solution of water problem

From: **JEFF PRICE** (jeffprice3399@msn.com) You moved this message to its current location.  
Sent: Thu 10/18/12 11:52 AM  
To: Danielle Sprague (daniellesprague@hotmail.com); Bill Bradford (rwblbe@gmail.com)

Mr. and Mrs Sprague,

You have not contacted me as requested. Therefore, This is my solution to the water problem.

I have an appointment with Ponds plumbing at 8 AM on the 22 of October. As Per Utah rental law it is your responsibility to pay them. If I have to pay them I will be forced to deduct it from the rent payment! Because of the smell we will have to have the basement carpet cleaned following the repair. You may chose who you wish to clean the carpets. If you chose not to clean them I will pay for the cleaning and deduct the cost out of the rent also.

Again, I remind you that you do not have permission to enter the premises with out us present. I will give you one other option, If you choose to contact our lawyer, Mr Bradford, and reimburse us for his fee, he would come and supervise. You will have to coordinate this meeting with him.

For your information, The water out of the water softener has stopped leaking. The water manifold still has a slow leak. It is my opinion that the leak will cause no more damage in the next 4 days. I feel that you must agree with this conclusion because you have chosen not to repair it after your inspection on October 13, 2012.

Jeff R Price

---

From: jeffprice3399@msn.com  
To: daniellesprague@hotmail.com  
Subject: FW:  
Date: Wed, 17 Oct 2012 22:23:40 -0600

Mr and Mrs Sprague.

As I stated on the message I left on your answering machine, I spent from 2000 to 2040 with Mr Bradford tonight. He recommended that He not be involved in this matter. As such I am asking you to please call me so we can take care of your Vacation home Rental. If you refuse to call me, I will be left with no other option but having pond's plumbing come out and repair the water manifold and water softener. I will then have them bill you directly. I will expect a call in the morning.

Jeff R Price

---

From: jeffprice3399@msn.com

## Water problems

From: **JEFF PRICE** (jeffprice3399@msn.com) You moved this message to its current location.

Sent: Sun 10/21/12 5:07 PM

To: Danielle Sprague (daniellesprague@hotmail.com); Bill Bradford (rwblbe@gmail.com)

October 21, 2012

Mr. and Mrs Sprague

In the paper trail I am leaving you, I wanted you to know that we have been out of the house since Thursday the 18th of October. We just arrived to your vacation Home and found that the water softener has filled up and is leaking on the carpet again. I know that I shut it off when Rufus was inspecting. I am not sure how it could have filled unless we have been sabotaged. As stated in the last email, Pond's Plumbing will be here at 8 AM on the 22 of October to solve your water leaks.

Regards

Jeff R Price

Reply to Inspection Notice and Water Heater Leak Notice

November 13, 2012

Rufus & Danielle Sprague

In reply to your Inspection Notice, We respectfully decline because it is not convenient to our schedule. I have conferred with Mr. Bradford and he has advised me that you as a landlord do have the right to inspect your property on occasions; However, a landlord needs to consider the time line of the renter. You have inspected the property twice in the last four weeks. Is there something you are looking for that I may help you find during a time which is convenient for both of us? I would strongly encourage you to postpone uninvited inspections until after the 30<sup>th</sup> of November. As you know, we tried to meet with you almost as soon as you requested mediation. You declined and wanted more time. Basically this is give and take. We work with you. You work with us.

That being said, I would invite you to come here in the morning to inspect the water heater. Upon my arrival from a 4 day trip (I left on November 10<sup>th</sup> and returned on the night of November 13<sup>th</sup>) tonight I found that the water heater overpressure valve is leaking at a rate of one drop per second. If it was draining without causing damage I wouldn't be as concerned. I am reporting that the leak is causing the floor and north wall to become wet along with the carpet in the purple bed room. As I and the Ponds plumber have stated earlier. "The hard water in North Salt Lake requires a water softener, If the water softener is not replaced, your on demand water heater is subject to corrosion". This corrosion has caused the pressure relief valve to leak.

As per our other conversations on water leaks I have now given you notice! If you choose not to act I don't have time to play around. This time, it will be fixed in the next two days!!!

Jeff R Price



inspection was on June 26, 2012

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Date: Fri, 16 Nov 2012 23:40:21 +0000  
From: [joenra@comcast.net](mailto:joenra@comcast.net)  
To: [daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)  
Subject: Re: Time change

At the time of the inspection of your home in North Salt Lake located @ 591 Oak Ct. I saw no evidence at the water zone manifold to indicate mold or mildew present. Thanks, Joe Reid.

---

From: "danielle sprague" <[daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)>  
To: [joenra@comcast.net](mailto:joenra@comcast.net)  
Sent: Friday, November 16, 2012 4:25:33 PM  
Subject: RE: Time change

Joe,

Thank you for taking time to talk to me today. You can just reply this email to me when you address the condition of our furnace room in the house (whatever leaking stain or dark mold had been seen or not) at the time of your inspection. In case you may need, the property address is: 591 Oak View Ct. North Salt Lake, 84054.

Thank you so much for your help.

Have a great weekend!

Danielle

---

SPRAGUE000013

From: [rwblbe@gmail.com](mailto:rwblbe@gmail.com)  
To: [daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)  
CC: [jeffprice3399@msn.com](mailto:jeffprice3399@msn.com); [aprice3399@msn.com](mailto:aprice3399@msn.com)

Mrs. Sprague -

I acknowledge receipt of your email regarding the black mold found on the premises of the VACATION HOME you have rented to my clients the Prices. I have advised them that any water leak, and well as any problem emanating therefrom, are the responsibility of the owner, NOT the renters, and that that responsibility includes the duty immediately to correct any problem which affects the habitability of the property, as well as ALL expense connected thereto.

Yours very truly,

Bill Bradford

On Fri, Nov 16, 2012 at 1:07 PM, danielle sprague <[daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)> wrote:  
Dear Mr. Bill Bradford,

Thank you for addressing me about the black mold problem which I had told your client Jeff Price that he needs to take care of it immediately on Nov. 14, 2012 while we inspected the water heater leaking. We believed the mold is caused by recent leaking while your client did not take any action to prevent from getting it. We as the owner of the property will take all action to prevent any problem happen if we feel there is a chance that is under our responsibility. I will go back to search all the pictures and documents this weekend and see if there is any indication that the mold was there before your client move in. If it did indicated that was before they move in and will cause harm to your clients' health, we will take immediate action to prevent it ASAP.

Sincerely,  
Danielle Sprague

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Date: Fri, 16 Nov 2012 11:30:57 -0700  
Subject: Black Mold  
From: [rwblbe@gmail.com](mailto:rwblbe@gmail.com)  
To: [daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)  
CC: [jeffprice3399@msn.com](mailto:jeffprice3399@msn.com)

Mrs. Sprague -

I have advised my clients, the Prices, that the black mold problem which has been discovered on the rented premises, AND reported to and inspected by you, is YOUR problem and obligation to remedy.

Jeff Price has sent me a letter addressed to you which letter I am attaching to this email.

**YOUR IMMEDIATE ATTENTION IS REQUIRED !**

Bill Bradford



Shamrock  
Plumbing, LLC

340 West 500 North

North Salt Lake, UT 84054

Phone (801) 295-1690 • Fax (801) 295-1483

Job No. \_\_\_\_\_

Bill To: \_\_\_\_\_

Address \_\_\_\_\_

Job Name: David Sprague

Address 591 Oakview Court

City-St-Zip North Salt Lake

Phone 801 936-1109

Called in by/ phone #: \_\_\_\_\_

Receipt / Invoice

Service Need

<input checked="" type="checkbox"/>	Home System	_____
<input type="checkbox"/>	RO Unit	_____
<input type="checkbox"/>	Faucets	_____
<input checked="" type="checkbox"/>	Office Cooler	_____
<input type="checkbox"/>	Service	_____
<input type="checkbox"/>	Other	_____
<input type="checkbox"/>	Emergency	_____

Payment Method

<input type="checkbox"/>	Cash Sale	Amt Pd <u>500.00</u>	Ck #: _____
<input checked="" type="checkbox"/>	Visa / MC / AMX / DC	Authorization No. <u>019513</u>	
<input type="checkbox"/>	Credit Sale T&M*	Authorized by: _____	
<input type="checkbox"/>	How Customer Contacted	_____	
<input type="checkbox"/>	Referral	_____	
<input type="checkbox"/>	Phone Book	_____	
<input type="checkbox"/>	Other	_____	

Date Called In \_\_\_\_\_ Date of Service 12-12-12 Time Truck on Job 4:30  
Date Scheduled \_\_\_\_\_ Day of Week Tuesday Time Truck Left Job 5:30

Name	Labor Record	Hours on Job	Travel Time Billed to This Job	Total Hours
<u>[Signature]</u>		<u>1</u>		<u>1</u>

Sales Rep

New

Model #

Installer

Model

Serial #

Notes:

gave B.O To install 42,000 gpm Softener. Scheduled Wed Sat afternoon  
At 2:00pm. 1-1495. The water Softener that was in House  
was Temporarily With By Tenant Requiring the Softener  
To Be Replaced the put on Softener was installed up and  
caused water damage to wall

Quant	Description	Price	Total	Quant	Description	Price	Total
<u>1</u>	<u>42,000 gpm Softener</u>		<u>1495.00</u>				
<u>1</u>	<u>December payment</u>		<u>500.00</u>				
<u>1</u>	<u>Jan</u>		<u>500.00</u>				
<u>1</u>	<u>Feb</u>		<u>500.00</u>				
	<u>Lifetime warranty parts</u>						
	<u>1 year labor &amp; truck</u>						
					<b>Sub Total Materials</b>		<u>1495.00</u>
					<b>Labor - Lead Man &amp; Truck</b>		
					<b>Labor - Helper</b>		
					<b>Sub Total</b>		<u>1500.00</u>
					<b>Tax</b>		<u>500.00</u>
							<u>1000.00</u>

Manager: Brian

\*See Reverse Side for Credit Terms:

Work Accepted by: \_\_\_\_\_

Customer Signature

White - Office Copy

Canary - Salesman Copy

Pink - In

rev 10/08

F 10

September 20, 2012

Dishwasher front door leaking because dishwasher does not fit in cabinet.

Single car garage door top roller off track. Will not open over 10 inches.

*Price*

# EXHIBIT G

## Unfair Dealing

- G1a -Prices Demanded Mrs. Sprague Only Communicate with Their Attorney Mr. Bill Bradford
- G1- Picture of Ann Price Watching Mrs. Sprague closely even at the Back Yard of the House
- G2 -Jeff Price confirm Ann Price Physically Blocking Mrs. Sprague from Inspection
- G3 -Prices Transcript of First Inspection
- G4- Sprague's Notice of Entry 11/30/12
- G5- Plaintiffs' Harassing Letter with Ground Rules and 10 Steps of How to Remedy the Small Area of Dark Substance in the Premises on that Day.
- G6 -Mrs. Sprague Accepted the Ground Rules
- G7 -Mrs. Sprague Lay Out the Remedy Schedule of that Day on 12/1/12
- G8 - Mrs. Sprague Request Prices Not to Call Police but Jeff Price Replied that Police have been Notified
- G9 - Prices Denied again Access to Remedy after the Inspection on 12/1/2012
- G10 -Prices Again Denied Reenter if Sprague and Contractor were not Following their Demands
- G11 -Mrs. Sprague Gave Prices Chance to Remedy
- G12 -Mrs. Sprague Replied for No Coming on that Morning of 12/3/2012 after Called Off her Contractor
- G13 -Prices Demanded Deposit Refunded on 12/5/12

## RE: Vacation Rental Palm Tree

danielle sprague

10/1/2012

10/1/2012

10/1/2012

10/1/2012

10/1/2012

10/1/2012

10/1/2012

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Gla



rwblbe@gmail.com

## Reply to "Urgent Notice"

JEFF PRICE

## Folders

Inbox 4

Junk 105

Drafts 74

Sent

Deleted 85

Search Results

## Quick views

Documents 1

Flagged

Photos 2

Shipping updates

JEFF PRICE (jeffprice3399@msn.com) 12/02/  
To: Danielle Sprague, Bill Zimmerman, Bill Bradford

Jeff Price

Rufus Sprague,

I have now had time to read and contemplate your urgent notice which was hand delivered to our home. I feel it necessary to set the record straight. If you will recall, you, Rufus and Danielle showed up unannounced on November 28, 2012 to do another and/or complete the inspection of the 14th (this is now the fifth time you have inspected the home). Again I remind you Officer Carlson told you, Danielle, that you were aggressive, argumentative and uncooperative and finally asked you to leave. During this unannounced inspection on November 28th Rufus begged to be let in stating that you had notified Mr. Bradford a week ago about the inspection. As always, I have tried to give Rufus the benefit of the doubt and let him in on the condition that Danielle stay in the car, Rufus pleaded Danielle's case while Danielle refused my request and came in uninvited. After you came in you again asked to see the downstairs bathroom. Once again I allowed both you and Danielle that courtesy of invading our privacy to look at the downstairs bathroom. After completing this inspection, you both came upstairs and insisted that you see the bathrooms upstairs again (two weeks after the inspection on Nov. 14). If you recall I allowed you, Rufus and only you to inspect the upstairs bathrooms. Danielle was not invited to follow. In her normal fashion Danielle tried to go against my direct instructions and walk into our bedroom. Ann simply stepped in front of her. She never said a word or touched the offending Danielle. Now you have the audacity to hand deliver a letter insinuating that Ann was "displaying aggressive behavior" by physically blocking Danielle and not allowing her to inspect the premises against our will.

Furthermore, while you were leaving I asked you how many times you inspected your other properties. In a nut shell you said it depends, but not very often. Rufus, you surprised me with your truthfulness and said that since Ann had been in the court room for the Walkers hearing, you were planing on inspecting the Prices property at least every month. This is very vindictive and aggressive.

For the record, by failing to comply with our requests, when in our Vacation home, is aggressive and unacceptable behavior and will no longer be tolerated. Please stop wasting our time and yours by continuing to harass us with unnecessary inspections.

Jeff Price

G2



October 13, 2012

Sprague home inspection notes.

Sprague's arrived at 1650 local which was 10 minutes early. Danielle rang the doorbell and Jeff answered the door and invited her in. Jeff asked Danielle about the palm tree and stated that it had been outside all afternoon until 2200 on October 13, 2012. Danielle said that she had been talking to "your lawyer" and that she did not want to take the palm out of the vacation home. At this time Jeff commented about the contract. Immediately, Danielle said that she would wait until Rufus was able to come in with her. Danielle then walked back out of the house. As soon as Danielle was outside Jeff called Mr. Bradford to ask him if Danielle had truly been talking with Mr. Bradford. Jeff and Mr. Bradford conversed for about 5 minutes to verify if Danielle had been communicating with Mr. Bradford. Mr. Bradford stated that Danielle had not been communicating with him other than to say that she would be at the vacation rental home to inspect it at 1700 on October 13, 2012. Jeff and Mr. Bradford made a plan of attack to not provoke Danielle, complete our statement on the contract then present it to the Sprague's after the Walker, Sprague dispute. Conclusion: Danielle once again misrepresented the truth.

Rufus was taking care of the yard, did not finish until 1730. Jeff again opened the door, shook Rufus's hand and welcomed him and Danielle back in. Ann asked the Spragues if she could record the conversation. The Spragues denied the request. Danielle started inspecting the upstairs and taking pictures; however, Jeff redirected them to the downstairs to inspect the utility room which had a small amount of water on the floor. Jeff showed the Sprague's the leaking culinary water manifold and malfunctioning water softener both of which were leaking. Jeff showed the Sprague's that the salt brine barrel was full of water. Jeff further explained that the water softener had used 7 bags of salt in less than a month. Danielle took multiple pictures of the utility room.

The Sprague's started speaking in Danielle's language. Ann asked them to speak in English. This request must have been denied because they continued conversing in Danielle's language for about one minute. After inspecting the utility room Danielle walked to the family room photographing the room as she progressed. Danielle continued to the back bed rooms accompanied by Ann. Jeff stood by the ping pong table while talking to Rufus. Jeff asked Rufus if he felt that the home was being taken care of. Rufus answered to the affirmative. Jeff stated to Rufus that the Price's only intent was to take care of their home and leave after nine months. Jeff felt that Rufus could see Jeff was telling the truth by the look in his face. Rufus then made reference that this whole chain of events between the Price's and Sprague's bordered on ridiculous. Jeff agreed. Rufus then stated that the confrontation (Price's understood it was a law suit.) with the Walkers was going to take place the following week which was causing Danielle much consternation.

Ann reported that Danielle photographed all of the bed rooms, the room under the garage and bathroom. Danielle did not photograph the room under the stairs.

The Price's and Sprague's ascended the stairs so Danielle could continue to photograph the living room and kitchen. Jeff asked Danielle to take a picture of the westerly cabinet which does not have the skin on

the west side. Danielle then went into the garage and photographed several angles of the garage. This concluded her inspection. As the Sprague's were leaving Jeff asked them what the Sprague's thought. Danielle first seemed not to want to answer the question. Jeff again questioned Danielle at the conclusion of her inspection. Danielle reluctantly conceded that the Prices were indeed taking care of the home. Jeff recalls her answer as "It is OK". The Sprague's left the home and finished caring for the yard. They(Spragues) were outside for about 15 minutes. At the conclusion of their visit, the Sprague's took their mail, loaded up the palm tree, which was alive and in good shape. The Spragues left at about 1830.

This concludes Jeff's report of the Sprague's vacation rental home inspection.

Jeff R Price

**Notice: solution of water problem**

From: **JEFF PRICE** (jeffprice3399@msn.com) You moved this message to its current location.  
Sent: Thu 10/18/12 11:52 AM  
To: Danielle Sprague (daniellesprague@hotmail.com); Bill Bradford (rwblbe@gmail.com)

Mr. and Mrs Sprague,

You have not contacted me as requested. Therefore, This is my solution to the water problem.

I have an appointment with Ponds plumbing at 8 AM on the 22 of October. As Per Utah rental law it is your responsibility to pay them. If I have to pay them I will be forced to deduct it from the rent payment! Because of the smell we will have to have the basement carpet cleaned following the repair. You may chose who you wish to clean the carpets. If you chose not to clean them I will pay for the cleaning and deduct the cost out of the rent also.

Again, I remind you that you do not have permission to enter the premises with out us present. I will give you one other option, If you choose to contact our lawyer, Mr Bradford, and reimburse us for his fee, he would come and supervise. You will have to coordinate this meeting with him.

For your information, The water out of the water softener has stopped leaking. The water manifold still has a slow leak. It is my opinion that the leak will cause no more damage in the next 4 days. I feel that you must agree with this conclusion because you have chosen not to repair it after your inspection on October 13, 2012.

Jeff R Price

---

From: jeffprice3399@msn.com  
To: daniellesprague@hotmail.com  
Subject: FW:  
Date: Wed, 17 Oct 2012 22:23:40 -0600

Mr and Mrs Sprague.

As I stated on the message I left on your answering machine, I spent from 2000 to 2040 with Mr Bradford tonight. He recommended that He not be involved in this matter. As such I am asking you to please call me so we can take care of your Vacation home Rental. If you refuse to call me, I will be left with no other option but having pond's plumbing come out and repair the water manifold and water softener. I will then have them bill you directly. I will expect a call in the morning.

Jeff R Price

---

From: jeffprice3399@msn.com

URGENT NOTICE

Jeff and Ann Price  
591 East Oakview Court  
NSL, Utah 85054

Date: November 30, 2012

Jeff and Ann,

Upon receiving your Notice Of Deficient Conditions, we will be taking action to assess and fix the problems stated within tomorrow morning, December 1, 2012, at 9:00am.

Accompanying us will be a mold contractor to assess the damages, clean the mold and make any repairs as needed.

We will be present during the process and expect to be treated with respect. The behavior of Ann Price last Wednesday, November 28<sup>th</sup>, by physically blocking Danielle and not allowing her to inspect the premises is not acceptable. This aggressive behavior is unacceptable and shouldn't happen again.

Should you have any questions please contact us immediately as according to your notice this is an urgent matter that we will get resolved.

Sincerely,

Rufus and Danielle Sprague  
Owners of the property above

P.S. Attached is the email that Danielle sent you earlier today.

delivered by hand on Dec 3, 2012

SPRAGUE

G4

R. WILLIAM BRADFORD

Attorney-at-Law  
4820 Three Fountains Drive #176  
Salt Lake City, Utah 84107  
Telephone 801.265.2455  
Facsimile  
801.265.1476

November 30, 2012

Mr. and Mrs. Rufus Sprague

HAND DELIVERED

via email: daniellesprague@hotmail.com

Re: Compliance with NOTICE OF DEFICIENCIES

Dear Mr. & Mrs. Sprague:

I have been in regular contact with my clients, the Prices, throughout the day and have reviewed the many emails which have been generated by you, them and me regarding the NOTICE which was served upon you at 2:34 p.m. today regarding deficiencies which you must, by law, correct within three business days. I am writing this letter to clarify some apparent misunderstanding and confusion on your part. I will address these in the following paragraphs:

A. The mold apparent in numerous locations in the basement of the home were NOT caused, in any way, by my clients, but was, according to one expert who examined it, has been there for at least 3 to 5 month, thus predating the Prices taking possession.

I will not address the legal liability you took upon yourselves in renting a VACATION RENTAL HOME without disclosing your knowledge of the presence of mold;

B. Maintaining the plumbing and correcting any problems which arise from its failure, are SOLELY the responsibility of you, the owners and NOT the responsibility of my clients, the renters;

C. Given the severity of the problems discovered and outlined by Mr. Dickson in his letter, any action taken by you other than in complete adherence to the ten items he stated "should be done" and that by a certified . . . [WHAT?] . . . , WILL NOT BE CONSIDERED THE "CORRECTIVE ACTION" CONTEMPLATED BY THE Fit Premises Act. Unless ALL ten points of Mr. Dickson's recommendations are undertaken and completed by a properly certified contractor/expert, you will be deemed NOT in compliance with the Act and my clients will thereon, after three business days, declare the Rental Agreement terminated and will demand the IMMEDIATE

SPRAGUE



G5

return to them of their \$3,500 deposit. Failing that, you will be sued in district for ALL your breaches of contract and torts;

As to your compliance, I will refer to Mr. Dickson's ten requirements:

- 1) Fix the source of the water problem:  
This can ONLY be fixed by making sure the water softener is replaced and possibly also the washer drain, because that is the last place water could cause mold! In Utah: "No water! No mold!"
- 2) Isolate the mechanical room and put it under negative pressure that is vented to the outside:  
Mold spores are disturbed easily and transmitted through air currents. The negative air pressure removes the mold spores from the home and expels them safely outside. Isolating will make it safe for the workers while working and the tenants who reside thereby preventing dust and mold spores from traveling throughout the house and into their lungs.
- 3) Remove all items from the isolated area in the basement:  
Mold hides and if not removed continues to grow, thus making the property uninhabitable
- 4) Remove all wet and moldy building material in the contained area:  
By this is meant the removal of all vertical and horizontal 2 x 4 studs, as well as all affected drywall and moldings, etc.
- 5) Sand or replace all moldy or wet wood inside the contained area:  
By this is meant, as an adjunct to number 4) above, to remove, sand (all surfaces and ends) and then re-install them. The other option is to replace with new studs and new sheetrock. Mold hides and if not removed continues to grow.
- 6) Hepa Vacuum the area inside the containment:  
Removes the residue which will be spread by any disturbance. Disturbing of particles, dust, mold spores, etc., will only exacerbate the hazard and defeat the corrective process;
- 7) Wipe all surfaces in the containment with a detergent based solution with a moldicide added:  
This will assist the prevention of mold forming on those surfaces not already removed and replaced.
- 8) Encapsulate all the exposed structural materials in the contained area:  
This is accomplished by painting with a special paint which "encapsulates " any remaining traces of mold and chemically prevents future growth. This is CRITICAL.

**SPRAGUE000232**

9) Replace the furnace filter:  
Self explanatory.

10) Do clearance sampling:  
Necessary to determine the results of the cleaning process.

If these steps are short-cutted there is a health hazard to us and future residents.

D. As to your "URGENT NOTICE" delivered to the Prices earlier this evening please be advised that I have advised them, by reason of prior conduct of Mrs. Sprague, to invite the North Salt Lake Police to be present at 9:00 a.m. tomorrow when you arrive with your "mold contractor," for the purpose of keeping the peace as ground rules are established which **WILL BE FOLLOWED** during the presence of your contractor. These rules will include 1) You, the Spragues, will not be allowed in any portion of the residence **EXCEPT** where mold is present and needs inspecting and treatment, as outlined above; 2) once you have received your contractor's bid and given your instructions you will both leave the residence and both you and the Prices will leave the workmen to do their jobs; 3) Mr. Sprague may wait outside in his car, if he so wishes, or can return when called, to answer any questions the workmen may have; 4) Mrs. Sprague will be shown respect as she earns it; 5) the Prices will not interfere with the workmen and will not give them any instructions; and 6) you will not photograph any part of the interior of the home except the polluted areas or any of the belongings of the Prices.

Please be advised that the foregoing terms are non-negotiable. The Prices are aware of your right **REASONABLY** to inspect the premises and to provide for its maintenance and repair, but they are also aware of their right, as renters, to the quiet enjoyment of the interior, absent harassment from Mrs. Sprague, as in the past.

Let me also remind you that, failing a complete and satisfactory correcting of the deficiencies set forth in the notice, in the manner set forth above will be construed as a failure on your part to correct deficiencies as required by The FIT Premises Act.

**PLEASE GOVERN YOURSELVES ACCORDINGLY ! ! !**

R. William Bradford

RWB:zz

**SPRAGUE000233**

Date: Fri, 30 Nov 2012 23:32:04 -0700  
Subject: RE: URGENT NOTICE  
From: [daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)  
To: [jeffprice3399@msn.com](mailto:jeffprice3399@msn.com)

Please let us know what your ground rules are, we will do our best to comply if the rules are resonable.  
Danielle

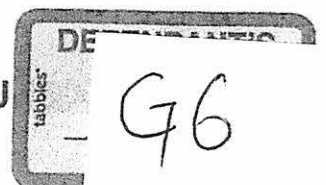
From my Android phone on T-Mobile. The first nationwide 4G network.

JEFF PRICE <[jeffprice3399@msn.com](mailto:jeffprice3399@msn.com)> wrote:

There will be ground rules to follow.

From: [daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)  
To: [customerservice@tankinz.com](mailto:customerservice@tankinz.com); [jeffprice3399@msn.com](mailto:jeffprice3399@msn.com); [rwblbe@gmail.com](mailto:rwblbe@gmail.com)  
Subject: URGENT NOTICE  
Date: Sat, 1 Dec 2012 02:41:25 +0000

SPRAGU





## RE: Rufus letter delivery

From: **danielle sprague** (daniellesprague@hotmail.com) You moved this message to its current location.

Sent: Fri 11/30/12 4:45 PM

To: **JEFF PRICE** (jeffprice3399@msn.com)

Jeff,

As much as you confuse yourself, I am also very confused regarding whom I should contact to, I am sending this letter to both of you and your Lawyer Bill Bradford again.

We just received a Notice of Deficient Condition. Regarding the Mold has been located in several areas of the home, we believe it is caused by you of refusing to clean up the leaking water after you and your family moved in the premise. We had contacted the Environmental Solutions, Inc. and Mr. Charles Dixon told us that the mold test result came out negative of causing health problem. However, we also been suggest that the non dangerous mold still needs to be clean out for the best. Therefore, **my mold contractor Mr. Jim is coming to the premise with us tomorrow morning at 9:00 am to inspect the mold area and follow up by his people come to clean up the mold properly.** As you know you refused us to clean last Wednesday the 28th, if the mold is found and is verified that the cause is after you moved in, you as tenant will be liable for all the cost of this cleaning up process. **If you have any question, please let us know ASAP!!!**

Sincerely,

Danielle Sprague

---

From: jeffprice3399@msn.com  
To: daniellesprague@hotmail.com  
Subject: Rufus letter delivery  
Date: Thu, 29 Nov 2012 15:58:17 -0700

Rufus,

In an attempt to communicate with you and your wife, I have Emailed The only address you have given and hand delivered the letter to your business. As you can see the address is 511 and it is your building. I want to make sure we are receiving each others communications. Again, I see no need to spend money on certified mail. I am inviting a response.

Jeff Price

G7

JEFF PRICE <jeffprice3399@msn.com> wrote:  
The North Salt Lake Police have been notified.

---

From: daniellesprague@hotmail.com  
To: jeffprice3399@msn.com  
Subject: RE: URGENT NOTICE  
Date: Sat, 1 Dec 2012 08:20:59 +0000

Mr. Bill Bradford  
cc. Jeff Price,

Thank you for your letter and informed us what your clients' ground rules are. We have no problem with that. However, as you advised your clients for calling the North Salt Lake police officers to come tomorrow morning at the premise, we strongly suggest that it is not a necessary. For the community and all the neighbors sake, they have been suffered enough since your clients' friend Walkers moved in until as today. They don't deserve this disturbance as well. I, Danielle has never post any violent or harass to any body by physically or verbally. I am willing to be physically search, tied my hands, and sealed my mouth in the morning to enter the premise if this could exchange of calling the police officers to the property to disturb our neighbors who are all good and wonderful people; and they should be respected as they proud of living in this respectful community.

Sincerely,  
Danielle Sprague

---

From: jeffprice3399@msn.com  
To: daniellesprague@hotmail.com  
Subject: RE: URGENT NOTICE  
Date: Fri, 30 Nov 2012 21:30:09 -0700

There will be ground rules to follow.

---

From: daniellesprague@hotmail.com  
To: customerservice@tankinz.com; jeffprice3399@msn.com; rwblbe@gmail.com  
Subject: URGENT NOTICE  
Date: Sat, 1 Dec 2012 02:41:25 +0000

## RE: URGENT NOTICE

From: **daniellesprague** (daniellesprague@hotmail.com) You moved this message to its current location.

Sent: Sat 12/01/12 1:08 PM

To: JEFF PRICE (jeffprice3399@msn.com)

Jeff,

We went there to fix the problem and found no body home, so we left. We have arranged with the contractor to come back on Monday Morning at 9:00am. Any cost for the contractor additional travel will be your responsibility. Again, we will be entering the premise on Monday morning 9:00am December 3, 2012.

Danielle

From my Android phone on T-Mobile. The first nationwide 4G network.

JEFF PRICE <jeffprice3399@msn.com> wrote:

We are out of the county for several hours. We will need reasonable notice. If you enter you will be trespassing.

---

From: daniellesprague@hotmail.com

To: jeffprice3399@msn.com

Subject: RE: URGENT NOTICE

Date: Sat, 1 Dec 2012 18:54:42 +0000

Our contractor just called and said his workman is on the way but will be late 10 to 20 min.

Danielle

---

Date: Sat, 1 Dec 2012 10:59:35 -0700

Subject: RE: URGENT NOTICE

From: daniellesprague@hotmail.com

To: jeffprice3399@msn.com

Our Contractor is sending his personal with all the equipment to do the mold cleaning work and will be on the property within an hour.

Danielle

From my Android phone on T-Mobile. The first nationwide 4G network.

Date: Sat, 1 Dec 2012 12:59:30 -0700  
Subject: Re: FW: URGENT NOTICE  
From: [rwblbe@gmail.com](mailto:rwblbe@gmail.com)  
To: [daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)  
CC: [jeffprice3399@msn.com](mailto:jeffprice3399@msn.com); [aprice3399@msn.com](mailto:aprice3399@msn.com)

Mrs. Sprague -

I just received a phone call from the Prices who are taking care of personal business in a County South of Salt Lake County, telling me of your email announcing that your contractor would be at the North Salt Lake Home within an hour. I then checked my email and saw yours of 11:05.

You must have believed that the Prices would stay at home all day waiting for some word from you AFTER their being told NOTHING by your contractor when Jeff asked for the identity of the contractor and what his plans were.

If it was then your plan for the workers to return today you should have asked the Prices when it would be convenient for them for your contractor to return and commence work. (See the following paragraph).

Also, on the basis of my last letter to you of November 30th, you should first have informed the Prices that your plans, and those of your contractor, were to proceed in the manner set forth in my letter. You did not, so it is that information we are waiting for, not an announcement from you that the workers are returning to "do mold cleaning work," without proper explanation.

Please re-read my letter and respond accordingly. Ignoring the conditions set forth therein is NOT complying with them.

Bill Bradford

On Sat, Dec 1, 2012 at 11:05 AM, danielle sprague <[daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)> wrote:  
Mr. Bill Bradford,

Date: Sat, 1 Dec 2012 22:10:52 -0700  
Subject: Re: URGENT NOTICE  
From: [rwblbe@gmail.com](mailto:rwblbe@gmail.com)  
To: [daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)  
CC: [jeffprice3399@msn.com](mailto:jeffprice3399@msn.com); [aprice3399@msn.com](mailto:aprice3399@msn.com)

Mrs. Sprague -

Your "Notice" is evidence that you are not listening. Your plan to come (again) to the home with your contractor to enter (again) to visit the areas affected with mold (again) is rejected. You have already done all of that.

Your statement that your contractor is coming to clean up the mold and do "their suggested repairs" is NOT in compliance with the ten conditions laid down by the expert on mold, Mr. Dickson, as set forth in my letter to you of November 30, 2012.

If you come to the home on Monday, or send your contractor, to do anything less than or other than exactly and completely what Mr. Dickson stated in his letter, a copy of which I provided to you, and without first committing in writing to do so, specifically, then DO NOT COME. You will not be admitted.

If you first commit in writing, and then you send your contractor to do EXACTLY and ALL of the remedial work specified by Mr. Dickson, INCLUDING removal of affected drywall and studs, then your workmen will be allowed through the North entrance to the basement area to do said work, FULLY AND EXACTLY, during which the Prices will NOT vacate the premises, which are the home you have rented to them at an exorbitant rental rate. THAT IS WHERE THEY LIVE !!!

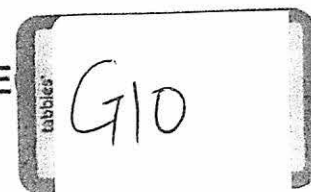
This is my final word on the subject. There is no need for me to repeat, several times daily, what the conditions are for your compliance under the Fit Premises Act. If you need help understanding my language, I suggest you consult with your attorney.

Bill Bradford

On Sat, Dec 1, 2012 at 6:15 PM, danielle sprague <[daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)> wrote:  
See attachment.

Date: Sat, 1 Dec 2012 12:59:30 -0700  
Subject: Re: FW: URGENT NOTICE  
From: [rwblbe@gmail.com](mailto:rwblbe@gmail.com)  
To: [daniellesprague@hotmail.com](mailto:daniellesprague@hotmail.com)  
CC: [jeffprice3399@msn.com](mailto:jeffprice3399@msn.com); [aprice3399@msn.com](mailto:aprice3399@msn.com)

Mrs. Sprague -





## NOTICE UNDER UTAH FIT PREMISES ACT

Bill Bradford

Reply

danielle sprague <daniellesprague@hotmail.com>; JEFF PRICE <j...

Thu 12/6/2012 1:39 AM

PRICE - NOTICE OF VIO...

Mr. & Mrs. Sprague:

Attached is my clients' NOTICE, which is self-explanatory.

They will be home this evening between 8:00 and 9:00 p.m. to receive your check in the amount of \$3,500.00. Failing that, legal action will be filed against you to recover the same, plus damages for breach of the VACATION RENTAL HOME AGREEMENT, AND FOR , in the alternative, for rescission and restitution of and from the said Agreement.

Bill Bradford

G13

# EXHIBIT H

## Bad Faith

- H1- Ann Price's Email for 4 Months Rental Change to 9 Months
- H2 - Bill Bradford's Email for Their Plan of Breach the Contract and Call Mrs. Sprague Name on November 25, 2012
- H3-North Salt Lake Police Confirm Prices' Plan of Breach Contract on December 1, 2012

**RE: NSL home rental agreement**

From: **Ann Price** (aprice3399@msn.com) You moved this message to its current location.

Sent: Thu 8/02/12 9:53 PM

To: daniellesprague@hotmail.com

Danielle,

I had Jeff read the lease over. Sorry he is at work and didn't get back to me as soon as I thought he would. We would like to rent the house until the end of the school year instead of just until January. Also, we do have five in our family with extended family that come to visit. I would like to make sure that it is okay for family to visit. Also, if you would like to talk to our landlady from last year if you have concerns about us or our dog, Sam, her name and number are: Julie McConkie 801-726-2741.

Thank you

Jeff and Ann Price

160 Hidden Valley Rd

Three Forks, MT 59752

406-285-9010

801-244-2487 (ann)

801-554-8726 (jeff)

---

From: daniellesprague@hotmail.com

To: aprice3399@msn.com

Subject: NSL home rental agreement

Date: Thu, 2 Aug 2012 17:07:20 +0000

Ann,

Here is the rental agreement. Please let me know if you have any question.

Thanks,

Danielle

EXHIBIT 6

PRICE000

H1



Search email

Re: Key

Bill Bradford

Folders

To see messages related to this one, group them together in a folder.

More folders

Inbox

Bill Bradford (rwblbe@gmail.com) 11/15/11

Junk 2

To: daniellesprague

Drafts 68

Sent

How do you want me to respond to the \_itch? What did you decided about flying this week?

Deleted 46

Quick views

I had a voice message from a gal at the mediation outfit. She said I represent you, but that she's not comfortable going forward without speaking to you. I suppose I could 1) "ignore her call," or 2) answer her and tell her to stand by or 3) tell her there will be no mediation, (given the mold developments and your statement that you plan to "get the hell out of there.")

Documents 1

Flagged

Photos 3

Call me.

Shipping updates

b

2 at 8:50 AM, Bill Bradford <rwblbe@gmail.com> wrote:

Hey, Jeff and Ann -

How was your Thanks Giving? Mine was great!.

Here's another missive from TGWWOTE. Isn't it interesting? Not - "Would Wednesday at four o'clock work for you?," but "We'll be

SPRAGUE

H2

# NORTH SALT LAKE POLICE

## CRIME REPORT

Incident: I1027800

Report: R1817845

Page: 1 of 2

Case: 2012-002355

### OFFENSES

#### CIVIL PROBLEM (9999IS.11)

Activity Codes: 504-Civil Standby  
Loc. of Crime: 591 E OAK VIEW CT North Salt Lake, UT 84054  
Case Disposition: Inactive  
Occurred on: 12/01/2012 From: 08:48 To: 09:27  
Officer Activity on: 12/01/2012 From: 08:48 To: 09:27

### PEOPLE INVOLVED

Name: **PRICE, JEFF ROBERT**  
Age at Incident: 51 DOB: 08/23/1961 Race: White Mobile: (801) 554-8268  
RP Ethnicity: non Hispanic Hair: Ht:  
Sex: Male Eyes: Wt:  
Residence Addr: 591 E OAK VIEW CT North Salt Lake, UT 84054

Name: **SPRAGUE, DANIELLE TING**  
Alias:  
IO Age at Incident: 43 DOB: 04/15/1969 Race: Asian Mobile: (801) 485-0951  
Ethnicity: non Hispanic Hair: Black Ht: 5' 2"  
Sex: Female Eyes: Brown Wt: 110 lbs.  
Residence Addr: 591 E OAK VIEW CT North Salt Lake, UT 84054

Name: **SPRAGUE, RYAN GAYLEN**  
IO Age at Incident: 38 DOB: 06/11/1974 Race: White Mobile: (801) 485-0951  
Ethnicity: non Hispanic Hair: Brown Ht: 6' 4"  
Sex: Male Eyes: Blue Wt: 275 lbs.  
Residence Addr: 511 W 500 N Salt Lake City, UT 84116

### NARRATIVE

Officer T.DeCarlo  
12/01/2012  
Case#2012-002355

#### Narrative:

On December 1st, 2012, at 08:48 hours, I was notified by Bountiful dispatch to meet Jeff Robert Price at 591 East Oak View in North Salt Lake City. Bountiful dispatch advised me that Jeff wanted a civil stand by.

When I arrived I met with Jeff at the front door of his residence. Jeff advised me that he is renting the property from Danielle Ting Sprague and her husband, Ryan Gaylen Sprague.

He said he and his wife have had on going problems with the homeowners/landlords. He said he had to call the police before because of an argument that ensued from a prior inspection of the home. North Salt Lake Police Case number #2012-002239 (Officer Tyler Winslow).

Jeff said he wanted me there while the home owners and a home inspector were present. He just wanted a police officer on scene to make sure that no further problems or arguments occurred with the home owners/landlords.

Jeff said he is in the process with his attorney on breaking his renters contract with Danielle and Ryan over expectation of privacy violations and a mold issue.

After the homeowners/landlords and the home inspector were done assessing the mold issue in the downstairs utility room they left the residence without incident.

I waited for Danielle, Ryan, and the home inspector to leave in their vehicle before I left the scene at 09:27 hours.

No further action was taken.

This report is for documentation and for further reference.

End report.

# EXHIBIT I

Walkers -Small Court Judgement

NORTH SALT LAKE JUSTICE COURT  
DAVIS COUNTY, STATE OF UTAH

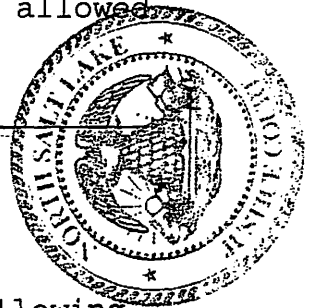
RYAN AND DANIELLE SPRAGUE, :  
Plaintiff, : SMALL CLAIMS JUDGMENT  
vs. : Case No: 128000036  
EAGLE VISION ENTERPRISE et al, : Judge:  
Defendant. : Date: November 20, 2012

The Court Orders Judgment as Follows:

Judgment 1 of 1: RYAN AND DANIELLE SPRAGUE  
Debtor(s): EAGLE VISION ENTERPRISE, DAVID AND KATHLEEN WALKER  
\$ 3,383.94 Total Judgment, with 2.120 percent interest as allowed  
by section 15-1-4 UCA until paid.

Date: 11-20-12

  
Justice Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of this document was sent to the following  
people for case 128000036 by the method and on the date specified.

BY HAND: EAGLE VISION ENTERPRISE  
BY HAND: DAVID AND KATHLEEN WALKER  
BY HAND: RYAN AND DANIELLE SPRAGUE

Date: 11-20-12

  
Justice Court Clerk

# EXHIBIT J

Defendant Spragues Amended Answer to  
Complaint and Amended CounterClaim

Sara E. Bouley, #7818  
Bradley L. Tilt, #7649  
ACTION LAW LLC  
2825 E. Cottonwood Pkwy., Suite 500  
Salt Lake City, UT 84121  
Telephone: (801) 990-3262  
Fax: (866) 949-6489  
sara@actionlawutah.com  
brad@actionlawutah.com  
*Attorneys for Defendants Rufus and Danielle Sprague*

IN THE SECOND DISTRICT COURT  
DAVIS COUNTY, STATE OF UTAH

JEFF PRICE and ANN PRICE,  Plaintiffs/Counterclaim Defendants,  vs.  RUFUS SPRAGUE and DANIELLE SPRAGUE,  Defendants/Counterclaim Plaintiffs.	<b>AMENDED ANSWER TO COMPLAINT AND AMENDED COUNTERCLAIM</b>  (Tier 1)  Civil No. 120701157  Judge David Hamilton
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Defendants Rufus Sprague and Danielle Sprague ("**Defendants**") answer Plaintiffs Jeff Price's and Ann Price's Amended Complaint as follows:

**RESPONSE TO SPECIFIC ALLEGATIONS**

1. In responding to paragraph 1 of the Amended Complaint, Defendants admit that Plaintiffs are husband and wife, admit that Defendants are husband and wife, and admit that Defendants live in Bountiful, Davis County, Utah. Defendants do not have sufficient information or knowledge to either admit or deny the remaining allegations in paragraph 1 of the Amended Complaint and therefore deny the same.
2. In responding to paragraph 2 of the Amended Complaint, Defendants admit that

the subject property (the “**Leased Premises**”) was advertised for rent on KSL.com. Defendants admit that Danielle Sprague spoke to Plaintiff Ann Price, but not Jeff Price, about her desire to rent the Leased Premises for an extended period of time—at least nine months—as opposed to a few days to a week for a typical vacation rental. Defendants deny the remaining allegations of paragraph 2 of the Amended Complaint and affirmatively state that Ann Price refused to give Danielle Sprague permission or information sufficient to allow Mrs. Sprague to run a credit check and indicated her husband’s credit was better than hers. Mr. Price never supplied any documents showing that he had good credit either.

3. In responding to paragraph 3 of the Amended Complaint, Defendants admit that Plaintiffs explained that they wanted to move to Utah for the school year. Specifically, Plaintiffs represented that the primary reason for their desire to live in Utah temporarily was to allow their daughter to try out for and be a part of a performing group at Woods Cross High School. Later, but prior to November 2012, the Prices represented that their daughter had either not been selected to be part of the performing group, did not get the part she wanted, and/or that she was no longer with the performing group. Defendants admit that Plaintiffs toured the Leased Premises in late July 2012, before they signed the Lease Agreement with a 9-month term, and that the Leased Premises were fully furnished when Plaintiffs toured them and were in the same condition when Plaintiffs took possession of them. Defendants deny the remaining allegations of paragraph 3 of the Amended Complaint.

4. In responding to paragraph 4 of the Amended Complaint, Defendants deny that Rufus Sprague entered into the Lease Agreement or any other contract with Plaintiffs. Defendants admit that a copy of the Lease Agreement is attached to the Amended Complaint as “Exhibit A” and affirmatively state that the Lease Agreement speaks for itself. Defendants admit

that the Lease Agreement was entered into on or about August 7, 2012. Defendants deny any and all remaining allegations of paragraph 4 of the Amended Complaint.

5. In responding to paragraph 5 of the Amended Complaint, Defendants admit that Plaintiffs paid the \$3,500 security deposit due under the Lease Agreement on August 3, 2012.

6. In responding to paragraph 6 of the Amended Complaint, Defendants admit that Plaintiffs moved into the Leased Premises on September 3, 2012 and paid the first month's rent of \$3,000. Defendants admit that Danielle Sprague supplied a move in checklist to Plaintiffs for them to fill out. Defendants affirmatively allege that Plaintiffs refused to pay and did not pay the \$150 cleaning fee in advance that was expressly provided for in the Lease Agreement. Defendants deny any remaining allegations of paragraph 6 of the Amended Complaint.

7. In responding to paragraph 7 of the Amended Complaint, Defendants admit that Danielle Sprague and Ann Price walked through the Leased Premises on September 7, 2012. Defendants deny the remaining allegations of paragraph 7 of the Complaint.

8. Defendants deny the allegations of paragraph 8 of the Amended Complaint.

9. Defendants deny the allegations of paragraph 9 of the Amended Complaint.

10. Defendants deny the allegations of paragraph 10 of the Amended Complaint.

11. Defendants deny the allegations of paragraph 11 of the Amended Complaint.

12. In responding to paragraph 12 of the Amended Complaint, Defendants admit that copy of a document entitled, "Notice of Deficient Conditions," among others, is attached to the Amended Complaint as "Exhibit B" and affirmatively allege that the document speaks for itself. Defendants deny the remaining allegations of paragraph 12.

13. In responding to paragraph 13 of the Amended Complaint, Defendants admit that copy of a document entitled, "Notice of Violation" is attached to the Amended Complaint as



“Exhibit C” and affirmatively allege that the document speaks for itself. Defendants deny the remaining allegations of paragraph 13.

14. In responding to paragraph 14 of the Amended Complaint, Defendants admit that Danielle Sprague testified in court in a small claims court case she brought against her former tenants, David and Kathi Walker—and won —about a water leak under the sink in the kitchen, not the furnace room in the basement, of the Leased Premises during the prior tenants’ occupancy that was fully remedied prior to Plaintiffs’ entering into the Lease Agreement. Defendants deny the remaining allegations of paragraph 14 of the Complaint.

15. In responding to paragraph 15 of the Amended Complaint, Defendants admit that copy of a document entitled, “Notice of Violation” is attached to the Amended Complaint as “Exhibit C” and affirmatively allege that the document speaks for itself. Defendants deny the remaining allegations of paragraph 15.

16. Defendants deny the allegations of paragraph 16 of the Amended Complaint.

17. Defendants deny the allegations of paragraph 17 of the Amended Complaint.

18. In responding to paragraph 18 of the Amended Complaint, Defendants admit that an eviction notice was served on Plaintiffs and that a copy of a document entitled, “Notice of Eviction” is attached to the Amended Complaint as “Exhibit D” and affirmatively allege that the document speaks for itself. Defendants deny the remaining allegations of paragraph 18.

19. In responding to paragraph 19 of the Amended Complaint, Defendants admit that an eviction notice was served on Plaintiffs and that a copy of a document entitled, “Notice of Eviction” is attached to the Amended Complaint as “Exhibit E” and affirmatively allege that the document speaks for itself. Defendants deny the remaining allegations of paragraph 19.

20. Defendants deny the allegations of paragraph 20 of the Amended Complaint.

21. Defendants deny the allegations of paragraph 21 of the Amended Complaint.

FIRST CLAIM  
(Utah Fit Premises Act)

22. In responding to paragraph 22 of the Amended Complaint, Defendants incorporate by reference their responses to the corresponding numbered paragraphs of the Amended Complaint as though fully set forth herein.

23. Defendants deny paragraph 23 of the Amended Complaint.

24. Defendants deny paragraph 24 of the Amended Complaint.

25. Defendants deny paragraph 25 of the Amended Complaint.

26. Defendants deny paragraph 26 of the Amended Complaint.

SECOND CLAIM  
(Damages for Breach of Contract)

27. In responding to paragraph 27 of the Amended Complaint, Defendants incorporate by reference their responses to the corresponding numbered paragraphs of the Amended Complaint as though fully set forth herein.

28. Defendants deny the allegations of paragraph 28, including all of its subparts, of the Amended Complaint.

THIRD CLAIM  
(Rescission and Restitution for Fraud in the Inducement)

29. In responding to paragraph 29 of the Amended Complaint, Defendants incorporate by reference their responses to the corresponding numbered paragraphs of the Amended Complaint as though fully set forth herein.

30. Defendants deny the allegations of paragraph 30, including all of its subparts, of the Amended Complaint.

31. Defendants deny the allegations of paragraph 31 of the Amended Complaint.
32. Defendants deny the allegations of paragraph 32 of the Amended Complaint.
33. Defendants deny the allegations of paragraph 33 of the Amended Complaint.
34. Defendants deny the allegations of paragraph 34 of the Amended Complaint.
35. Defendants deny the allegations of paragraph 35 of the Amended Complaint.
36. Defendants deny the allegations of paragraph 36 of the Amended Complaint.
37. Defendants deny the allegations of paragraph 37 of the Amended Complaint.
38. Defendants deny that Plaintiffs are entitled to the relief prayed for in their Amended Complaint.
39. Defendants deny each and every allegation in Plaintiffs' Amended Complaint not specifically and expressly admitted in this Answer.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiffs' Amended Complaint fails to state a claim upon which relief can be granted.
2. The alleged claims of Plaintiffs' Amended Complaint are or may be barred by the doctrines of release, estoppel, laches, and waiver.
3. The alleged claims of Plaintiffs' Amended Complaint are barred by conditions precedent and/or subsequent.
4. The alleged claims of Plaintiffs' Amended Complaint are barred by the Parol Evidence Rule.
5. Plaintiffs' claims are barred by their own breaches of contract.
6. The alleged claims of Plaintiffs' Amended Complaint fail due to a lack of privity,

including without limitation any privity of contract with Defendant Rufus Sprague.

7. The alleged claims of Plaintiffs' Amended Complaint are not asserted in good faith, are not well grounded in fact, and not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law as against Defendants. Defendants are entitled to an award of their attorneys' fees and costs incurred herein, including without limitation pursuant to Utah Code § 78B-5-825.

8. Plaintiffs' claims are barred by the doctrine of unclean hands.

9. Plaintiffs' claims are barred because they have failed to comply with numerous provisions of the Utah Fit Premises Act, Utah Code Ann. § 57-22-1, *et seq.*, and are therefore not entitled to the remedies set forth in the Act (Utah Code § 57-22-6(1)), including but not limited to the facts that the Prices:

(a) were not current on all payments owed under the lease agreement when they initiated proceedings as required by the Act (Utah Code § 57-22-5(1)(g));

(b) negligently and/or intentionally caused the conditions that led to the mold by tampering with the water softener and/or water heater and causing the leaks, including so that they could then as a pretext wrongfully bring a claim under the Act in an effort to be relieved from their obligations for the remaining term of the lease agreement (Utah Code § 57-22-5(2)(a));

(c) failed to notify Defendant Danielle Sprague of the water leaks in the furnace room as soon as they began and failed in each instance to clean up the water to mitigate the damage that would result therefrom or allow Mrs. Sprague access to do the same, thereby allowing mold to form (Utah Code § 57-22-5(1)(b), (d), (e));

(d) unreasonably refused Danielle Sprague and her contractor access to the Leased Premises to rectify the water leaks and resulting mold and going so far as to repeatedly call the police when Mrs. Sprague would attempt to access the Leased Premises, including with contractors, to inspect and remedy the water leaks and resulting mold belatedly reported by the Prices (Utah Code § 57-22-5(2)(c));

(e) unreasonably interfered with Danielle Sprague's inspection of the Leased Premises in connection with making repairs and ensuring that the Leased Premises were being maintained in a clean and sanitary condition and not being damaged by the Prices, including but not limited to Jeff Price calling the police each and every time Mrs. Sprague came to the Leased Premises at prearranged times to inspect and/or repair reported problems despite there being no threat and repeatedly being told by the police that it was a "civil matter," Ann Price physically blocking Mrs. Sprague in attempts to prevent her from inspecting the Leased Premises and performing repairs, and both Prices refusing to allow Mrs. Sprague to take photographs to document the condition of the Leased Premises, including alleged areas needing repair (Utah Code § 57-22-3(2) & § 57-22-5(2)(c));

(f) purported to initiate proceedings under the Act when their own contractor indicated that the mold discovered in November 2012 did not pose any health hazard and that the level of mold spores inside the Leased Premises was less than the naturally occurring levels present in the outdoor environment (Utah Code § 57-22-3(3) & § 57-22-5(2)); and

(g) served Danielle Sprague with a purported “Notice of Violation of Fit Premises Act and Notice of Termination of Agreement” on December 5, 2012, in violation of Utah Code § 57-22-6 after Mrs. Sprague had given advance notice and tried twice to access the Leased Premises with a contractor to remedy the mold issues during the three calendar day period (consisting of a Saturday, December 1, Sunday, December 2, and Monday, December 3) provided to her in the purported “Notice of Deficient Conditions” served on November 30, 2012, and was refused access by Plaintiffs. *See Id.* § 57-22-5(2)(c) & 57-22-6(2)(b)(iv).

10. Plaintiffs’ claims are barred for their failure to comply with the Utah Fit Premises Act, entitling the Spragues to attorney’s fees and costs incurred in this action pursuant to Utah Code § 57-22-6(5)(c) & (d).

11. Plaintiffs’ claims are barred because Danielle Sprague had no duty to rectify any condition caused by the inappropriate use, misuse, or abuse of the water softener and/or water heater by the Prices under the Utah Fit Premises Act, Utah Code § 57-22-3(2) & § 57-22-5(2)(a).

12. Plaintiffs’ claims are barred because they have failed to mitigate their damages, if any.

13. Plaintiffs’ claims are barred because the Spragues have fully complied with the Utah Fit Premises Act, Utah Code § 57-22-1, *et seq.*

14. Plaintiffs’ claims are barred because the Utah Fit Premises Act, Utah Code § 57-22-1, *et seq.*, is inapplicable. *See* Utah Code § 57-22-3(3).

15. Plaintiffs’ claim for fraud is barred because it has not been pled with particularity.

16. Plaintiffs' claims are barred because Plaintiffs have materially breached the Lease Agreement.

17. Plaintiffs' claims are barred, in whole or in part, in that the matters complained of in Plaintiffs' Amended Complaint, and in each purported cause of action therein, were proximately caused by the acts or omissions of Plaintiffs, and not the Spragues.

18. Defendants are not obligated and/or indebted to Plaintiffs and the fair value of any obligation or indebtedness should be setoff or reduced by way of recoupment against any obligation of Plaintiffs that is found to be valid or enforceable in this action.

19. As a separate affirmative defense, Defendants reallege and incorporate by reference all of the allegations of the Amended Counterclaim herein.

20. Defendants have acted reasonably and in good faith at all times herein, based on all the relevant facts and circumstances known to them at the time they so acted. Accordingly, Plaintiffs are barred from any recovery in this action.

21. Plaintiffs' claims are barred by the doctrine of unjust enrichment.

22. Defendants reserve the right to raise other affirmative defenses that may become available through further investigation of and discovery in this matter.

WHEREFORE, Defendants pray that Plaintiffs' Amended Complaint be dismissed with prejudice and on the merits, with Defendants to be awarded attorney's fees and costs incurred in this action, including without limitation pursuant to Utah Code § 78B-5-825 & § 57-22-6(5)(c), (d).

### **AMENDED COUNTERCLAIM**

Counterclaim Plaintiffs Danielle and Rufus Sprague counterclaim against Counterclaim Defendants Jeff and Ann Price and allege as follows:

#### **PARTIES, JURISDICTION, AND VENUE**

1. On information and belief, Jeff and Ann Price are individuals who reside in North Salt Lake, Davis County, Utah.
2. Danielle and Rufus Sprague are individuals who reside in Davis County, Utah.
3. Jurisdiction and venue are proper in this Court.

#### **GENERAL ALLEGATIONS**

4. The Prices and Danielle Sprague entered into the "Vacation Home Rental Agreement" (the "**Lease Agreement**") on August 6, 2012, for the lease of the real property located at 591 E. Oak View Ct., North Salt Lake, UT 84054, owned by the Spragues (the "**Leased Premises**").
5. The minimum term of the Lease Agreement was nine months, beginning September 1, 2012 and ending June 10, 2013.
6. The Lease Agreement provided that rent shall be \$3,000 per month, payable in advance ("**due date**"). The Lease Agreement also provides that if rent is not paid within five days after its due date, a late fee of \$50 per day would be incurred.
7. The Lease Agreement also provided that rent included gas, water, garbage, electricity (up to \$250 per month, any amount over which is the tenants' responsibility), dishwasher, covered parking, washer, dryer, and all furniture.



8. The rent did not include the cost of cable or internet, which was not listed in the Lease Agreement as being covered by the \$3,000 monthly rent payment, and which the parties verbally agreed the Prices would pay separate and apart from, and in addition to, the monthly rent and utilities.

9. The Lease Agreement provided that a basic cleaning fee of \$150 was payable in advance of move in.

10. The Lease Agreement provided that the Prices had to pay a refundable security deposit of \$3,500.

11. Under the Lease Agreement, the Prices agreed, among other things, to: (a) keep the Leased Premises as clean and sanitary as the condition of the Leased Premises permitted; (b) properly use and operate all electrical, gas, and plumbing fixtures and keep them as clean and sanitary as their condition permitted; (c) not, nor permit anyone on the Leased Premises within his/her control to, willfully or wantonly destroy, deface, damage, impair, alter, or remove any part of the structure, facilities, or equipment; and (d) leave the Leased Premises in the same condition as when possession was given to them, reasonable wear and tear excepted.

12. Before the Prices moved into the Leased Premises, the parties conducted a walk-through inspection on September 7, 2012, during which no water leaks or water damage was observed or noted. At the end of the walk-through inspection, Mr. Price refused to sign the move in check list because he wanted his signature notarized, even though there is absolutely no requirement under Utah law that a signature be notarized on a move in check list for it to be a valid or binding document. Only Mrs. Price signed the move in check list.

13. On September 18, 2012, Mrs. Price informed Mrs. Sprague that the microwave was not working. Mrs. Sprague arranged to have a repair person come to the Leased Premises to fix the microwave the next day. It was brand new and still under warranty.

14. On September 20, 2012, the parties met in person. At that meeting, Ann Price complained that the dishwasher front door was leaking and that the garage door was off its track and would not open over 10 inches. Mr. Price indicated that their daughter had not gotten the main role in Woods Cross High School's production that she had wanted to get and that they may wish to terminate the Lease Agreement early because there was no purpose for them to stay in Utah.

15. The Spragues arranged for repairs right away and had the garage fixed on September 21, 2012 and the dishwasher replaced on September 24, 2012. The contractor who repaired the garage door remarked that a strong force must have hit the garage rail in order to bend it the way he found it.

16. On September 25, 2012, Mrs. Price and Mrs. Sprague were at the Leased Premises while the wood floor in the kitchen was being repaired due to damage caused by the prior tenants, David and Kathi Walker. Mrs. Price kept inappropriately asking Mrs. Sprague's handyman questions, taking pictures, and following him and Mrs. Sprague around everywhere they went.

17. On Saturday, October 13, 2012, Mrs. Sprague, with two days' prior notice to the Prices, conducted the first inspection of the Leased Premises during which time the water softener in the basement furnace room was discovered to have been leaking. The furnace room was soaking wet. The water manifold on the water heater also had a very slow leak. At no time

prior to October 13th did the Prices complain that the water softener or anything else in the basement furnace room was leaking. Mr. Price represented at that time that he had turned off the water to the water softener to prevent it from leaking.

18. Ann Price recorded the October 13th inspection and inappropriately told the Spragues that they could not speak in a “foreign language” to one another. That “foreign language” is Chinese, and specifically Cantonese. Mrs. Sprague is from Hong Kong and her native language is Chinese, which she and her husband, who served a mission in Hong Kong for the LDS Church, speak fluently, including to one another. Mrs. Sprague also speaks fluent English, but it is her second language.

19. On October 16, 2012, Jeff Price sent an email to Mrs. Sprague informing her that water was leaking in the furnace room.

20. On October 17, 2012, because by that time she had been told not to contact the Prices directly, Mrs. Sprague contacted R. William (“Bill”) Bradford, the Prices’ attorney, to seek permission to gain access to the Leased Premises so that she could arrange to have repairs made to the water softener and water heater. Mr. Bradford told her to contact Mr. Price directly about access to the Leased Premises.

21. The Prices left town from October 18 through 22, 2012, for Davis School District’s Fall Break, and forbade the Spragues from entering the Leased Premises while they were gone. Mr. Price wrote in an email dated October 18, 2012, to Mrs. Sprague: “I remind you that you do not have permission to enter the premises with out [sic] us present. I will give you one other option, If [sic] you choose to contact our lawyer, Mr. Bradford, and reimburse us for his fee, he would come and supervise.” Mr. Price claimed that the water softener had stopped

leaking, but the water softener had not been inspected by a contractor to determine the reason for the leak and had not been repaired. In fact, the water softener continued to leak, as the Prices themselves acknowledged the following month.

22. On October 22, 2012, Mr. Price emailed Mrs. Sprague to inform her that the water softener had leaked a great deal while they were out of town. That same day, Pond's Plumbing inspected the water softener and water manifold and the Prices paid for the \$65 service fee and purported to deduct that amount from the monthly rent. Pond's Plumbing cleaned up the water that had flooded the furnace room during the Prices' absence and dried it out. Pond's Plumbing indicated that the water manifold should be repaired but it was not an emergency situation. The leak was slow and very minor.

23. Mrs. Sprague was present for Pond's Plumbing's service call on October 22, 2012. Ann Price, in a threatening manner that made Mrs. Sprague very uncomfortable, followed closely on Mrs. Sprague's heels the entire time that Mrs. Sprague was at the Leased Premises that day for the repairs.

24. On October 26, 2012, Mrs. Sprague paid for the \$419 repair to the water manifold performed by Pond's Plumbing that day.

25. On November 7, 2012, Mrs. Sprague sent written notice of her intent to inspect the Leased Premises a week later, including to ensure that the water softener was no longer leaking and that the repairs to the water manifold were successful in stopping its leaking, and that, given the Prices had made frequent complaints about costly repairs that needed to be made to various parts of the Leased Premises since they had moved in, to ensure that the Leased Premises were being maintained in a clean and sanitary manner and were not being damaged by

the Prices.

26. Mr. Price initially objected to the inspection but then informed Mrs. Sprague that there was water leaking in the furnace room again.

27. On November 14, 2012, Mrs. Sprague went to the Leased Premises to conduct the inspection and to be present while Ponds Plumbing worked on the water heater again.

28. The Prices unreasonably interfered with the November 14, 2012 inspection, including by refusing to allow Mrs. Sprague to document the Leased Premises' condition with photographs and insisting she could only take notes, refusing to allow her full access to the Leased Premises, having Mr. Price follow her extremely closely in an intimidating manner wherever she went, insisting that she leave before she had had adequate time to inspect, and Mr. Price calling the police in advance to be present, as Mr. Price had done before and continued to do thereafter, disturbing what is otherwise a quiet and peaceful upscale neighborhood, even though Mr. Price was repeatedly told by the police it was a civil matter.

29. Also while Mrs. Sprague was on the Leased Premises that day, Mr. Price threatened to lock her in the furnace room while she was waiting there for a few minutes for the Ponds Plumbing contractor to return from his vehicle to finish the repair of the water heater. Mr. Price wanted her to leave the Leased Premises during this brief interlude instead of waiting by the basement furnace room.

30. While there was evidence of water leaking and a wet area in the furnace room, no mold was observed or reported by the Prices or Ponds Plumbing during the Leased Premises inspection on November 14, 2012. Mrs. Sprague also discovered that the wall of the furnace room was damaged by a hole that had been cut in it that was not present prior to the Prices'

taking possession.

31. During the November 14, 2012 inspection, Mr. Price asked Mr. Sprague if the Prices could get out of the Lease Agreement, to which Mr. Sprague replied, "No."

32. On November 16, 2012, Mr. Bradford sent an email to Mrs. Sprague in which he claimed the wet area observed during the inspection on November 14, 2012, was mold.

33. On November 20, 2012, Mr. Bradford sent an email to Mrs. Sprague stating that the Prices had given him a key to the Leased Premises and if Mrs. Sprague needed to access the Leased Premises she would have to arrange to meet Mr. Bradford at the Leased Premises and would have to pay him for his "time away from [his] law practice, at [his] \$175 per hourly billing rate, plus applicable mileage."

34. On November 23, 2012, Mrs. Sprague informed Mr. Bradford that she intended to be at the Leased Premises on November 28, 2012, with a contractor, to finish the inspection that was interrupted by the Prices and not completed on November 14, 2012, and to perform any necessary work.

35. On November 25, 2012, Mr. Bradford sent an email to Mrs. Sprague in which he referred to her as a "\_itch" and indicated that there had been "mold developments" at the Property and that the Prices planned to "'get the \_ell out of'" the Leased Premises (quoting Mr. Price).

36. On November 28, 2012, Mr. Price sent an email to Mrs. Sprague in which he called her a "dumb \_ss."

37. The Prices refused to allow the Spragues and their contractor access to the Leased Premises on November 28, 2012, December 1, and December 3, 2012, to remedy the mold

problems, even though they had the necessary cleaning materials. Ann Price also wrongfully physically blocked Mrs. Sprague from inspecting parts of the Leased Premises.

38. On November 29, 2012, Environmental Solutions Inc., after testing the Leased Premises for the presence of mold, sent a letter to Mr. Price in which it stated that the results of the air samples showed that “[a]ll types of indoor mold are less than 200 spores per meter cubed or less than the outside environment.” In other words, the mold in the basement furnace room posed no health hazard.

39. Nonetheless, on Friday, November 30, 2012, the Prices purported to serve the Spragues with a “Notice of Deficient Conditions” pursuant to the Utah Fit Premises Act allowing them three calendar days to remedy the presence of the mold even though their own expert’s report indicated it posed no health risks.

40. Mrs. Sprague attempted to arrange for access to the Leased Premises to remedy the mold on both Saturday, December 1, 2012, and Monday, December 3, 2012, but the Prices either refused to allow her and her contractor to enter or refused to allow them to perform the necessary remedial work. Mr. Price also called the police again.

41. Mr. and Mrs. Price often attempted to intimidate Mrs. Sprague, treating her with disrespect and contempt, following her very closely around the Leased Premises—just inches away, communicating with her in a condescending manner, including making fun of her imperfect English and making outlandish and untrue statements about her, such as that she is a violent, aggressive, or abusive individual, with no basis whatsoever for such statements, which are false; and calling the police for no other reason than to harass and embarrass Mrs. Sprague.

42. Mr. Price told Mrs. Sprague to send her husband, Rufus Sprague, who is not even

a party to the Lease Agreement, to supervise repair work and for Mrs. Sprague to stay out of the Leased Premises, when it is she who is the landlord.

43. After the Prices vacated the Leased Premises on December 9, 2012, Mrs. Sprague was able to access the Leased Premises with a contractor who repaired all of the water and mold damage caused by the Prices' actions and inaction.

44. On December 18, 2012, Shamrock Plumbing, LLC inspect the water softener and concluded, as stated on the Invoice: "water softener in house tampered with by tenant requiring softener to be replaced. The nut on softener was loosened up and caused water damage to wall" (emphasis added). The cost to replace the water softener was \$1,495.00.

45. On January 3, 2013, the results of air sample tests of the Leased Premises designed to check for the presence of mold was negative and detected no mold spores in the Leased Premises, indicating that Mrs. Sprague's contractor successfully remedied the mold and water damage caused by the Prices' actions and inactions after the Prices vacated the Leased Premises.

**FIRST CAUSE OF ACTION**  
**(Breach of Contract – Nonpayment of Amounts Owed)**

46. The Spragues incorporate and reallege paragraphs 1 through 45 of this Amended Counterclaim as if fully set forth herein as well as all of their affirmative defenses set forth in their foregoing Amended Answer.

47. The Prices have continually made late payments or no payments at all of amounts owed under the Lease Agreement, including the initial cleaning fee, monthly rental payments, and utility services fees provided for in the Lease Agreement, and accruing late fees on the overdue rent amounts. The Prices have also failed to pay for cable and internet for the Leased



Premises, which the parties verbally agreed they would pay and which is not the landlord's responsibility under the Lease Agreement.

48. The Prices' payments have not covered the amounts due and owing for past due rent, utility services fees, cable and internet, and late fees sufficient to then also cover the rent due for each month's regular rental payment, continually putting the Prices further and further in arrearages on their rent payments.

49. The Prices have breached the Lease Agreement by failing to pay past due rent, amounts for utilities, cable and internet fees, and late fees owed under the Lease Agreement for November and December 2012.

50. The Prices have wrongfully deducted expenses from the rent payments owed that they claim to have incurred for repairs to the Leased Premises, which constitutes a breach of the Lease Agreement.

51. Danielle Sprague is entitled to interest on the amounts that the Prices owe for past due rent, utilities, cable and internet, and late fees at the statutory rate.

52. Danielle Sprague served a "Notice of Eviction - Three Day Notice to Pay or Quit" on the Prices at the Leased Premises on December 6, 2012.

53. The Prices vacated the Leased Premises on December 9, 2012, without paying the arrearages due under the Lease Agreement.

54. Danielle Sprague has been damaged as a result of the Prices' breach of the Lease Agreement and failure to pay the amounts due thereunder in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**(Breach of Contract – Damage to Leased Premises)**

55. The Spragues incorporate and reallege paragraphs 1 through 54 of this Amended Counterclaim as if fully set forth herein as well as all of their affirmative defenses set forth in their foregoing Amended Answer.

56. The Prices breached the Lease Agreement by negligently and/or intentionally causing the conditions that led to the mold by tampering with the water softener and/or water heater and causing the leaks; failing to notify Danielle Sprague of the water leaks as soon as they began; failing to clean up the water to mitigate the damage that would result therefrom or to allow Mrs. Sprague access to do the same, thereby allowing mold to form; and unreasonably refusing Danielle Sprague and her contractor access to the Leased Premises to rectify the water leaks in a timely manner; and going so far as to repeatedly call the police when Mrs. Sprague would attempt to access the Leased Premises, including with contractors, to inspect and remedy the water leaks and resulting mold belatedly reported by the Prices.

57. Aside from the cost to replace the water softener, the Spragues incurred costs and expenses to rectify the water and mold damage done to the Leased Premises by the Prices.

58. The Spragues are entitled to recover the costs and expenses for the repair and replacement costs they incurred to remedy the damages to the Leased Premises caused by the Prices in an amount to be determined at trial.

**THIRD CAUSE OF ACTION**  
**(Breach of the Implied Covenant of good Faith and Fair Dealing)**

59. The Spragues incorporate and reallege paragraphs 1 through 58 of this Amended Counterclaim as if fully set forth herein as well as all of their affirmative defenses set forth in their foregoing Amended Answer.

60. Pursuant to Utah law, implied in each agreement (including the Lease Agreement at issue) is a covenant of good faith and fair dealing.

61. The Prices have breached the implied covenant of good faith and fair dealing with their conduct as described above by, among other things, negligently and/or intentionally causing the conditions that led to the mold by tampering with the water softener and/or water heater and causing the leaks, including so that they could then as a pretext wrongfully bring a claim under the Utah Fit Premises Act in an effort to be relieved from their obligations for the remaining lease term; failing to notify Mrs. Sprague of the water leaks in the furnace room as soon as they began and failing to clean up the water to mitigate the damage that would result therefrom or allow Mrs. Sprague access to do the same, thereby allowing mold to form; unreasonably refusing Mrs. Sprague and her contractor access to the Leased Premises to rectify the water leaks in a timely manner and going so far as to repeatedly call the police when Mrs. Sprague would attempt to access the Leased Premises, including with contractors, to inspect and remedy the water leaks belatedly reported by the Prices; unreasonably interfering with Mrs. Sprague's inspection of the Leased Premises in connection with making repairs and ensuring that the Leased Premises were being maintained in a clean and sanitary condition and not being damaged by the Prices; and purporting to initiate proceedings under the Utah Fit Premises Act when their own contractor

indicated that the mold discovered in November 2012 did not pose any health hazard and that the level of mold spores inside the Leased Premises was less than the naturally occurring levels present in the outdoor environment.

62. As a direct and proximate result of the Prices' breach of the covenant of good faith and fair dealing, the Spragues have been damaged in an amount as will be shown at the trial of the case.

**FOURTH CAUSE OF ACTION**  
**(Waste)**

63. The Spragues incorporate and reallege paragraphs 1 through 62 of this Amended Counterclaim as if fully set forth herein as well as all of their affirmative defenses set forth in their foregoing Amended Answer.

64. The Prices have committed waste with their unreasonable or improper use of, abuse of, mismanagement of, and omission of duty regarding the Leased Premises that resulted in material damage to the Leased Premises, including but not limited to in the form of water leaks and later mold formation in the furnace room.

65. The Prices are also responsible for the damage caused to the wall in the furnace room that was not present when they took possession of the Leased Premises.

66. The Prices' commission of waste on the Leased Premises was intentional, willful, and malicious and done for wrongful purposes, namely as a pretext to attempt to get out of the Lease Agreement with months left on the term without having to pay damages for their breach of contract.

67. As a direct and proximate result of the Prices' waste, the Spragues have been damaged in an amount as will be shown at the trial of the case.

**PRAYER FOR RELIEF**

WHEREFORE, the Spragues pray for relief against the Prices as follows:

1. For judgment against the Prices for the amount of past due rent, utilities, cable and internet, and late fees, plus interest thereon at the statutory rate, owed under the parties' Lease Agreement in an amount to be determined at trial;
2. For judgment against the Prices in the amount of the costs and expenses that the Spragues incurred to remedy the damages that the Prices caused to the Leased Premises above and beyond reasonable wear and tear;
3. For judgment against the Prices for damages, including exemplary damages, for their waste of the Leased Premises;
4. For costs and attorney's fees incurred as a result of this action pursuant to Utah Code § 78B-5-825 and Utah Code § 57-22-6(5)(c), (d); and
5. For such other relief as this Court deems just and equitable.

DATED May 23, 2013.

ACTION LAW LLC

/s/Sara E. Bouley

Sara E. Bouley

*Attorneys for Defendants Rufus and Danielle Sprague*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 23, 2013, I caused a true and correct copy of **AMENDED ANSWER TO AMENDED COMPLAINT AND AMENDED COUNTERCLAIM** to be served in the manner indicated to the following party at the address listed below:

<p>R. William Bradford 4820 S. Three Fountains Dr., #176 Salt Lake City, UT 84107 <i>Attorney for Plaintiffs and Counterclaim Defendants Jeff and Ann Price</i></p>	<p><input type="checkbox"/> Hand Delivery <input type="checkbox"/> First Class, United States Mail, Postage Prepaid <input type="checkbox"/> E-filing via GreenFiling <input checked="" type="checkbox"/> E-filing via CM/ECF <input type="checkbox"/> Email <input type="checkbox"/> Other: _____</p>
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/s/Sara E. Bouley

# EXHIBIT K

- K1- Memorandum in Opposition to Motion to Amend Scheduling Order
- K2- Addendum to Memorandum in Opposition to Motion to Amend Scheduling Order

Jeffery J. Owens, #10973  
OWENS LAW FIRM, PLLC  
299 South Main St., Suite 1300  
Salt Lake City, Utah 84111  
Telephone: (801) 535-4600  
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*Attorneys for Defendants*

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**IN THE SECOND JUDICIAL DISTRICT COURT,  
IN AND FOR DAVIS COUNTY, STATE OF UTAH**

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JEFF PRICE and ANN PRICE

Plaintiffs,

vs.

RUFUS SPRAGUE and DANIELLE  
SPRAGUE.

Defendants,

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**MEMORANDUM IN OPPOSITION TO  
MOTION TO AMEND SCHEDULING  
ORDER**

Civil No.: 120701157 (Tier 1)

Judge: David R. Hamilton

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Plaintiffs Rufus Sprague and Danielle Sprague, by and through counsel Owens Law Firm, PLLC hereby submit their Memorandum in Opposition to Plaintiff's Motion to Amend Scheduling Order.

**PROCEDURAL HISTORY AND FACTS**

1. Plaintiffs originally filed this case on or about December 7, 2012.
2. Plaintiffs original Complaint sought damages in the amount of \$3,500, with two other claims seeking unspecified damages. As a result, this case was designated as a Tier 1 case under the Utah Rules of Civil Procedure.



3. Defendant Danielle Sprague was out of state when she received the three day summons. The short time period permitted very little time for Defendants to search for counsel, so they hired the first attorney they could find that was willing and able to meet the three day deadline.

4. The Court initially sent out an advisory notice establishing a fact discovery deadline of May 31, 2013, and expert discovery deadline of September 5, 2013, and a deadline to file a Certificate of Readiness for Trial of September 5, 2013.

5. Shortly thereafter, original counsel for Defendants withdrew on December 17, 2012.

6. Plaintiff's filed a Notice to Appear or Appoint Counsel, and new counsel for Defendants entered an appearance on or about January 24, 2013.

7. In the meantime, while Defendants were in the process of seeking new counsel. Plaintiffs filed a Reply to Counterclaim, issued a Subpoena, and sent harassing emails to Defendants on Christmas morning, all in apparent violation of Rule 74 of the Utah Rules of Civil Procedure.

8. After Defendants' new counsel had appeared, the Court again sent an advisory notice containing the same dates as the original notice.

9. Nothing happened for approximately two months because Defendants were informed by Plaintiffs' counsel that Plaintiffs intended to file an Amended Complaint. When nothing was forthcoming, Defendants' counsel filed a stipulated motion for entry of scheduling order on April 24, 2013. It proposed to change the fact discovery deadline to September 6, 2013.

and stated that the case should be ready for trial by November 22, 2013. The Court entered the order as proposed.

10. On May 3, 2013, Plaintiffs filed their Amended Complaint, which differed significantly from their original Complaint.

11. On May 23, 2013, Defendants filed their Amended Answer and Counterclaim.

12. On or about July 27, 2013, Plaintiffs served their initial disclosures, more than two months late.

13. Thereafter, on September 6, 2013, the very day that was supposed to be the fact discovery deadline under the initial scheduling order, counsel for both parties agreed to again extend discovery deadlines, though Defendants assert that they were never consulted by their counsel about extending any deadlines, and would not have agreed had they been informed. Nevertheless, the deadlines were extended until December 6, 2013 for fact discovery, December 13, 2006 for expert witness designation, and January 31, 2014 to be ready for trial.

14. To this point, a full nine months after the case had originally been filed, no discovery had been completed, and Plaintiffs had not even filed an answer to Defendant's Amended Counterclaim that had been filed three and a half months earlier.

15. Plaintiffs did not file their reply to Defendants' Amended Counterclaim until Oct. 13, 2013, over four months late.

16. Upon learning that their counsel had extended deadlines without authorization, and when their counsel refused to file a motion for default judgment, Defendants fired their counsel

and retained new counsel on October 3, 2013. A substitution of counsel was filed, and no time passed during which Defendants were not represented.

17. Defendants submitted their initial disclosures on October 11, 2013.

18. On November 4, 2013, counsel for Defendants withdrew due to a conflict of interest that was discovered.

19. On November 11, 2013, present counsel for Defendants entered an appearance. Only total of 7 days passed during which Defendants were not represented by counsel.

20. That same day, on November 11, 2013, Defendants submitted their First Set of Requests for Production of Documents and Requests for Admissions.

21. On November 12, 2013, Plaintiffs submitted a set of Requests for Admissions to Defendants, and amended their requests on November 13, 2013.

22. Defendants responded to Plaintiffs' requests for admission two days later on November 15, 2013.

23. Plaintiffs have not responded to Defendants' discovery requests, which were served nearly two months ago.

24. Since this case was filed more than 13 months ago, Defendants have been without counsel for a total of 45 days, none of which spanned any significant deadlines.

25. Contrary to what was asserted in Plaintiffs' motion, trial is not currently scheduled for January 31, 2014. That is the deadline for the parties to submit a certificate of readiness for trial. Therefore, Plaintiffs' travel plans over that date will not be interrupted.

### **ARGUMENT**

Rule 26 of the Utah Rules of Civil Procedure was amended in 2011 to make discovery more proportional and to generally shorten the time for discovery. *See*, Utah R. Civ. P. 26 advisory committee notes. For Tier 1 cases, each side is allowed three hours for depositions, five requests for production of documents, and five requests for admissions. Utah R. Civ. P. 26(c)(5). Additionally, for Tier 1 cases, all fact discovery is to be completed within 120 days after the due date for Defendants' initial disclosures. *Id.* Pursuant to Utah R. Civ. P., 26(a)(2)(b), Defendants' initial disclosures should have originally been due 42 days after their Answer and Counterclaim was filed, or January 23, 2013 (Defendants' Answer and Counterclaim was filed December 14, 2012). Thus, under the rules, discovery should have been completed on May 22, 2013 (120 days).

Instead, the parties stipulated to a scheduling order that pushed fact discovery out to September 6, 2013 (an additional 108 days), and then again to December 6, 2013 (an additional 92 days). The result is that this case has been pending and unnecessarily delayed for more than one year. During that year, Plaintiffs put forth very little effort in pushing the case forward and pursuing their claims which they brought this legal action to against Defendants who insist they are really for the trial any time after this legal action be filed to against them. Surely during the entirety of 2013, Plaintiffs could have found the time to conduct three hours' worth of depositions, propound five requests for production, and five requests for admission. In fact, Plaintiffs propounded thirty requests for admission on November 11, 2013. Defendants responded to them only four days later, in order to give Plaintiffs adequate time to schedule a deposition if they felt it was necessary. Plaintiffs never sent any requests for production of documents, but Plaintiffs

have had all relevant documents from Defendants since at least October 11, 2013 nearly two months before the close of fact discovery. Furthermore, most of Defendants' documents consisted of emails between Plaintiffs and their counsel. Plaintiffs and their counsel already had in their possession most of the relevant documents even before they filed their Complaint. Plaintiff made no effort to conduct additional discovery or to schedule depositions prior to the December 6, 2013 deadline, nor did they request to extend any deadlines prior to the deadline itself.

Rule 26(c)(6) also provides a procedure for seeking extraordinary discovery in the event a party feels that the allowed discovery limits are inadequate. However, such a request must be made "before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules. . . ." *Id.* Such a motion is required to set forth the reasons why the extraordinary discovery is necessary and proportional. *Id.* Plaintiffs' motion was not made prior to the discovery deadline, Plaintiffs have not reached the limits of standard discovery, and their motion fails to explain why additional time is necessary. More directly, Plaintiffs have failed to show why they could not have conducted adequate discovery during the entire year that has passed since their original Complaint was filed. Plaintiffs attempt to cast blame for all of the delay on Defendants and their changes of counsel, but as set forth in the procedural history recited above, there was more than adequate time for Plaintiffs to conduct the minimal discovery permitted by Rule 26, and most of the delays were due to their own inattention to their case.

Litigation is stressful, emotional, and expensive for all parties involved. Defendants should not be subjected to endless delays, and they are entitled to have their case heard. After more than one year, it is beyond time that this case proceeded to trial. Defendants hereby request that

Plaintiffs' motion to amend scheduling order be denied, and that Defendants be awarded their attorney fees incurred in responding thereto.

DATED this 7th day of January, 2014.

OWENS LAW FIRM, PLLC

/s/ Jeffery J. Owens

Jeffery J. Owens

*Attorneys for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 2014, a true and correct copy of the foregoing **MEMORANDUM IN OPPOSITION TO MOTION TO AMEND SCHEDULING ORDER** was served by the method indicated below, to the following:

R. William Bradford  
4820 South Three Fountains Drive #176  
Salt Lake City, Utah 84107

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ E-Filing

*s/ Jeffery J. Owens*

Jeffery J. Owens, #10973  
OWENS LAW FIRM, PLLC  
299 South Main St., Suite 1300  
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[www.owenslf.com](http://www.owenslf.com)  
*Attorneys for Defendants*

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**IN THE SECOND JUDICIAL DISTRICT COURT,  
IN AND FOR DAVIS COUNTY, STATE OF UTAH**

---

JEFF PRICE and ANN PRICE

Plaintiffs,

vs.

RUFUS SPRAGUE and DANIELLE  
SPRAGUE,

Defendants,

**ADDENDUM TO MEMORANDUM IN  
OPPOSITION TO MOTION TO AMEND  
SCHEDULING ORDER**

Civil No.: 120701157 (Tier 1)

Judge: David R. Hamilton

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Defendants<sup>1</sup> Rufus Sprague and Danielle Sprague, by and through counsel Owens Law Firm, PLLC hereby submit their Addendum to Memorandum in Opposition to Plaintiff's Motion to Amend Scheduling Order. Defendants wish to amend a portion of the Procedural History and Facts section of their Memorandum in Opposition to Motion to Amend Scheduling Order. Specifically, Defendants wish to amend Paragraphs 13-16 of their Memorandum to read as follows:

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<sup>1</sup> Defendants were incorrectly identified as Plaintiffs in Defendants' Memorandum in Opposition to Motion to Amend Scheduling Order. This was a mere scrivener's error.



*13. Thereafter, on September 6, 2013, counsel for both parties agreed to extend discovery deadlines. Counsel for both parties agreed and understood that this would be the last extension of the deadlines, and that there would be no more delays. The deadlines were extended until December 6, 2013 for fact discovery, December 13, 2006 for expert witness designation, and January 31, 2014 to be ready for trial.*

*14. To this point, a full nine months after the case had originally been filed, no discovery had been completed, and Plaintiffs had not even filed an answer to Defendant's Amended Counterclaim that had been filed three and a half months earlier.*

*15. Plaintiffs did not file their reply to Defendants' Amended Counterclaim until Sept. 13, 2013, over three months late.*

*16. Defendants obtained substitute counsel on October 3, 2013.*

All other portions of Defendants Memorandum in Opposition to Motion to Amend Scheduling Order remain unchanged.

DATED this 10th day of January, 2014.

OWENS LAW FIRM, PLLC

/s/ Jeffery J. Owens  
Jeffery J. Owens  
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 2014, a true and correct copy of the foregoing **ADDENDUM TO MEMORANDUM IN OPPOSITION TO MOTION TO AMEND SCHEDULING ORDER** was served by the method indicated below, to the following:

R. William Bradford  
4820 South Three Fountains Drive #176  
Salt Lake City, Utah 84107

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ E-Filing

/s/ Jeffery J. Owens

# EXHIBIT L

- L1 - Defendant – Reply Memorandum in Support of Motion for Summary Judgment (without Exhibits)
- L2 - Findings of Fact and Conclusions of Law
- L3 -Request to Submit (Oral argument was request to the District Court)

Jeffery J. Owens, #10973  
OWENS LAW FIRM, PLLC  
299 South Main St., Suite 1300  
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[www.owenslf.com](http://www.owenslf.com)  
*Attorneys for Defendants*

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**IN THE SECOND JUDICIAL DISTRICT COURT,  
IN AND FOR DAVIS COUNTY, STATE OF UTAH**

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JEFF PRICE and ANN PRICE

Plaintiffs,

vs.

RUFUS SPRAGUE and DANIELLE  
SPRAGUE.

Defendants.

**REPLY MEMORANDUM IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT**

Civil No.: 120701157 (Tier I)

Judge: David R. Hamilton

---

Defendants/Counterclaim Plaintiffs Rufus Sprague and Danielle Sprague (the "Spragues").  
by and through counsel Owens Law Firm hereby submit their Reply Memorandum in Support of  
Motion for Summary Judgment.

**ARGUMENT**

- I. PLAINTIFFS DO NOT DISPUTE THAT THEY WERE NOT IN COMPLIANCE WITH THE RENTER'S DUTIES SET FORTH AT UTAH CODE ANN. § 57-22-5(1)-(2).**

The Utah Fit Premises Act (the "Act"), codified at Utah Code Ann. § 57-22-1 et seq. provides that "[a] renter is not entitled to a renter remedy if the renter is not in compliance with

all requirements under Section 57-22-5.” Utah Code Ann. § 57-22-6 (emphasis added). Plaintiffs were not in compliance with Section 57-22-5 in at least three respects: (1) they were not current on all payments required by the Lease Agreement; (2) they unreasonably denied access to the Leased Premises for the purpose of making repairs; and (3) they intentionally or negligently destroyed, damaged, or defaced a portion of the Leased Premises or its appurtenant fixtures.

**A. Plaintiffs Were Not Current on Rent Obligations.**

Section 5 of the act provides specifically that “Each renter shall . . . be current on all payments required by the rental agreement. Utah Code Ann. § 57-22-5(g). In other words, failure to pay all amounts due under the Lease Agreement is an absolute bar to a claim under the Act. The simple undisputed fact is that in multiple respects Plaintiffs were not current on their obligations under the Lease Agreement, and this is an absolute bar to their claims under the Act. In their Memorandum in Opposition to Motion for Summary Judgment, Plaintiffs attempt to explain or offer excuses for their failure to be current on all obligations, but the fact of the matter is that it is undisputed that they were not “current on all payments required by the rental agreement.” *Id.*

For example, Plaintiffs had not paid all of the charges for utilities required by the Lease Agreement. Pursuant to the Lease Agreement attached as Exhibit B to the Spragues’ Memorandum in Support of Motion for Summary Judgment and attached hereto as Exhibit A, Plaintiffs were required to pay any amount exceeding \$250 per month in utility charges. Plaintiffs failed to make the utility payments as required. Plaintiffs attempt to excuse their failure to pay by arguing that they should not be required to pay any amounts not supported by actual invoices from

the utility company. However, the Lease Agreement does not require the Spragues to supply Plaintiffs with actual invoices from the utility companies. An invoice from the Spragues is sufficient under the Lease Agreement. Nevertheless, invoices were provided nonetheless, as can be seen by the invoices attached hereto as Exhibit B, which were produced by Plaintiffs' counsel. Not only that, but the Spragues offered to allow Plaintiffs to review the invoices at any time if they wished. See Exhibit C. A full accounting was also available to Plaintiffs at any time they wished. Plaintiffs simply refused to pay utility charges, and their excuses are plainly contradicted by the evidence. They also refused to pay late fees associated with their failure to pay the utilities. This is an absolute bar to Plaintiffs' claims.

In addition, Plaintiffs failed to pay late fees imposed due to their failure to pay the cleaning deposit on time. Plaintiffs attempt to explain this away by arguing that the cleaning deposit is not rent, and that the late fee should not apply, and furthermore, that because a cleaning deposit is traditionally used to clean the premises after the tenants move out, that it should not matter when it was paid. All of these arguments simply ignore the plain language of the Lease Agreement, and amount to nothing more than a diversion.

In paragraph 1 of the Lease Agreement very clearly states that "Rent shall be **\$3000.00** per month for 5 people with minimum term of 9 months (September 1, 2012 to June 10, 2013), and the basic cleaning fee of \$150.00 **payable in advance before move in.**" See Exhibit A (emphasis added). It is clear from the face of the Lease Agreement that the cleaning fee was intended to be part of the rent. In addition, utilities and the security deposit were also intended to be components of the "Rent." The Lease Agreement is equally clear about the late fees imposed

for failure to timely pay rent. "If rent is not paid within five (5) days after due date Renter agrees to pay a charge of \$50 per day (not more than one day's rent) for late rent fee and/ or each dishonored bank check, unless waived by written agreement." See Exhibit A. This provision on its face is not ambiguous. If any component of the rent was not paid within five days of its due date, a late fee would be imposed. It is undisputed that there was no written agreement waiving the late fee for Plaintiffs' failure to timely pay the cleaning deposit timely. Therefore, it is undisputed that Plaintiffs did not pay the late fee associated with their failure to timely pay the cleaning deposit. Their excuse that cleaning deposits are normally used after the tenant moves out is entirely irrelevant. Plaintiffs were not current on all of their obligations under the Lease Agreement, and are therefore absolutely barred from recovering under the Act.

In addition, Plaintiffs failed to pay the full amount of the rent due for the month of November, 2012. Plaintiffs unilaterally deducted the \$65 cost of a Ponds Plumbing service call from the rent for November. While this is relatively minor in importance, they were not authorized to unilaterally deduct that amount from the rent, and did not follow the proper procedure for the so-called "repair and deduct" remedy under the Act. Plaintiffs served on Defendant the Notice of Deficient Conditions, which purported to elect the rent abatement remedy on November 30, 2012. However, Plaintiffs were not entitled to any renter remedy under the Act because were not current on all payments required by the rental agreement at that time.

**B. Plaintiffs Unreasonably Denied Access to the Spragues**

Section 5 of the Act also states that "[a] renter may not . . . unreasonably deny access to, refuse entry to, or withhold consent to enter the residential rental unit to the owner . . . for the

purpose of making repairs to the unit. *Id.* This is likewise an absolute bar to recovery under the Act. Each time the Spragues attempted to inspect the premises or correct any alleged deficient condition, Plaintiffs either called the police or threatened to call the police. They also demanded that the Spragues comply with their ridiculous demands and “ground rules” during inspections (such as no photographs, etc.). In addition, while Danielle Sprague was entering the hallway, Ann Price physically blocked her from following behind Rufus Sprague and Jeff Price while they were inspecting the Leased Premises. *See* Exhibit E (email from Jeff Price admitting that Ann Price physically blocked Danielle Sprague from inspecting the Leased Premises). This point is more fully argued in the Spragues’ principal Memorandum in Support of Motion for Summary Judgment. *See also*, Exhibits Y and Z attached thereto.

**II. CERTAIN EVIDENCE OFFERED BY PLAINTIFFS IN RESPONSE TO THE SPRAGUES’ MOTION IS INADMISSIBLE AND SHOULD THEREFORE NOT BE CONSIDERED.**

In response to the Spragues’ Motion for Summary Judgment, Plaintiffs attached various exhibits they offer as evidence of a dispute of material fact. However, some of the exhibits attached by Plaintiffs are inadmissible as evidence, and should not be considered by the Court.

**A. Exhibits G and H Have Not Been Previously Produced and are Therefore Inadmissible.**

Some of the exhibits attached to Plaintiffs Memorandum in Opposition to the Spragues’ Motion for Summary Judgment have not been previously produced to the Spragues’ counsel, and are therefore inadmissible. Rule 37(h) of the Utah Rules of Civil Procedure makes it clear that undisclosed documents and witnesses may not be used to defeat a motion for summary judgment. Exhibit G contains medical records purportedly showing that the Prices visited the doctor about



the time they moved out of the Leased Premises. These records have not been previously produced to counsel, even though the doctor visits occurred in December, 2012, and presumably, the records would have been available to Plaintiffs at any time thereafter. In addition, the records contain inadmissible hearsay. The Spragues therefore object to the admissibility of Exhibit G and ask that Exhibit G be stricken from the record.

Not only is Exhibit G inadmissible pursuant to Rule 37, but even if it were admitted, the medical records have very little probative value. They show nothing remarkable that would suggest that the Prices suffered any verifiable adverse consequences of their alleged exposure to mold in any event. The records themselves contain no opinions of the doctor (who has not been designated as an expert anyway), no diagnosis, and contains no findings of damages of any sort. All it shows is that the Prices showed up to the doctor on the advice of their counsel complaining of a "persistent cough" that could be explained by any number of causes (the least of which is that it was December in Utah). Thus, the probative value of the medical records is questionable at best, and should be excluded.

Exhibit H has likewise never been produced to counsel for the Spragues. It purports to be a note written by Plaintiffs to the Spragues explaining why they were paying less than the full amount of the November, 2012 rent. This should also be excluded pursuant to Rule 37 because it was previously undisclosed. Nevertheless, its probative value is very limited as well. It makes no difference why Plaintiffs failed to pay the full amount of the rent corresponding to the month of November, 2012. It is undisputed that they did not pay the full amount, and that is all that matters

in this case. Therefore, it is undisputed that they did not in fact pay the full amount, and the Spragues' motion for summary judgment should be granted.

**B. Exhibits B, D, and L to Plaintiffs' Memorandum in Opposition to Motion for Summary Judgment Contain Inadmissible Hearsay, Lack Foundation, and Have Not Been Properly Authenticated.**

Exhibits B, D, and L to Plaintiff's Memorandum in Opposition to Motion for Summary Judgment contain a collection of photographs that purport to depict the Leased Premises. On each of the photos appear hand-written notations purporting to explain what is seen in the photos. However, the hand-written notes constitute inadmissible hearsay. In addition, the photographs completely lack foundation. We are not told who took the photos, when they were taken, where they were taken, what they depict, whether they are an accurate representation of what they purport to show. The dates stamped on some of the photos predates the date on which Plaintiffs ever contacted the Spragues, or moved into the Leased Premises. There is likewise no foundation or authentication establishing that the Leased Premises looked anything like what the photographs appear to depict, or even that the photographs depict anything in the Leased Premises at all. The photographs are therefore inadmissible, and should not be considered by the Court.

**C. Jeff Price's Affidavit is Self-Serving and is Contradicted by Other Evidence Without Explanation.**

Plaintiffs attached to their Memorandum in Opposition to Motion for Summary Judgment an affidavit from Jeff Price. However, many of Mr. Price's affidavit contains self-serving assertions are directly contradicted by other evidence. His story seems to change to suit the situation. For example, Mr. Price asserts that he told the Spragues of the water leak on September

7, 2012, when in fact documents produced by him clearly show that he first told the Spragues about the water leak on September 20. *See* Exhibit F (email from Jeff Price to his attorney dated November 16, 2012).

Mr. Price also says that he was not made aware of the planned December 1, 2012 inspection. This is demonstrably false. *See* Exhibit N to the Spragues Memorandum in Support of Motion for Summary Judgment. Also, he asserts that he told the Spragues of a mold problem in September, 2012, when the evidence clearly shows that mold was never discussed prior to November 16, 2012. *See* Exhibit L to the Spragues' Memorandum in Support of Motion for Summary Judgment. In addition, whenever water leaked, they failed to clean it up, and allowed the floor to remain wet, thereby likely contributing to any alleged mold problem. *See* Exhibit G (photo taken by Danielle Sprague on November 14, 2012 showing the furnace room floor, which was noticeably wet).

In addition, Mr. Price states that mold was visible during the October 12 inspection, but photos taken during that inspection show no mold. *See* Exhibit H. Plaintiffs say that there was a corroded pipe and a mold problem prior to the time they moved in, but photographic evidence produced by Plaintiffs themselves shows otherwise. *See* Exhibit I. In fact, the photo attached as Exhibit I shows a dry floor and no mold. The Spragues would have nothing to gain from hiding mold from their tenants. In fact, the house was inspected by a professional home inspector in June, 2012, and no mold was found during that inspection. *See* Exhibit J. No previous tenant ever complained about a water leak, mildew, or mold.

Mr. Price's affidavit does not create any *genuine* issue of material fact, and does not preclude summary judgment. The test as to whether a genuine issue of material fact has been created is whether a reasonable fact finder could find in favor of the non-moving party. *See, e.g., IHC Health Services, Inc. v. D&K Management, Inc.*, 2008 UT 73, 196 P.3d 588 (Utah 2008). Mr. Price's affidavit is self-serving and demonstrably inconsistent with documentary evidence, and should therefore be considered a sham affidavit and be disregarded as failing to create a genuine issue of material fact. *See Harnicher v. University of Utah Med. Ctr.*, 962 P.2d 67, 71 (Utah 1998). It cannot stand on its own to defeat summary judgment, in the face of overwhelming documentary evidence that suggests otherwise.

### CONCLUSION

All of Plaintiffs' claims fail as a matter of law, as there are no material facts in dispute and the Spragues are entitled to judgment as a matter of law. Therefore, the Spragues' motion for summary judgment should be granted as to all of Plaintiffs' claims against them. Furthermore, there are material facts in dispute with regard to the Spragues' counterclaims against Plaintiffs. and the Spragues' motion for summary judgment should be granted as to those claims.

DATED this 5th day of June, 2014.

OWENS LAW FIRM, PLLC

/s/ Jeffery J. Owens

Jeffery J. Owens

*Attorneys for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2014, a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** was served by the method indicated below, to the following:

Matthew N. Evans  
A.J. Green  
36 South State Street, Suite 1400  
PO Box 45385  
Salt Lake City, Utah 84145-0385

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ E-Filing

/s/ Jeffery J. Owens

The Order of Court is stated below:

Dated: July 27, 2015  
02:22:13 PM

/s/ David Hamilton  
District Court Judge



MATTHEW N. EVANS (7051)  
A.J. GREEN (14661)  
RAY, QUINNEY & NEBEKER P.C.  
36 South State Street, Suite 1400  
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[mevans@rqn.com](mailto:mevans@rqn.com)  
[ajgreen@rqn.com](mailto:ajgreen@rqn.com)

*Counsel for Plaintiffs Jeff and Ann Price*

IN THE SECOND JUDICIAL DISTRICT COURT, FARMINGTON DISTRICT,  
IN AND FOR DAVIS COUNTY, STATE OF UTAH

JEFF PRICE and ANNE PRICE,  
  
Plaintiffs/Counterclaim Defendants,  
  
v.  
  
RUFUS SPRAGUE and DANIELLE  
SPRAGUE,  
  
Defendants/Counterclaim Plaintiffs.

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Case No.: 120701157

Judge David R. Hamilton

This matter came before the Court via bench trial on March 16 and 17, 2015. Plaintiffs Jeff Price and Anne Price (the "Prices") were represented by Matthew N. Evans. Defendants Rufus Sprague and Danielle Sprague (the "Spragues") were represented by Jeffrey Owens. Based upon the facts presented at trial, the Court hereby makes the following Findings of Fact and Conclusions of Law.

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### **FINDINGS OF FACT**

1. Danielle Sprague and Jeff Price entered into a Lease Agreement on or around August 6, 2012 to lease a home located at 591 East Oak View Court, North Salt Lake, Utah 84054 (the "Leased Premises"). Anne Price signed the Lease Agreement on September 20, 2012.

2. On or around August 3, 2012, the Prices paid a refundable security deposit of \$3,500 to Danielle Sprague in accordance with the Lease Agreement.

3. The Prices moved into the Leased Premises on September 3, 2012.

4. The Prices paid the agreed upon \$150.00 cleaning fee for the Leased Premises on September 20, 2012.

5. The Prices timely paid rent for September and October of 2012.

6. With regard to November 2012 rent, the Prices timely notified Mrs. Sprague that they intended to deduct \$65.00 from the rent for a service call from Pond's Plumbing regarding issues related to the malfunctioning water softener in the utility room in the Leased Premises.

7. Mrs. Sprague never objected to the deduction.

8. The Prices timely paid November 2012 rent in the amount of \$2,935.00 (\$3,000-\$65.00 service charge).

9. The Lease does not contain any provision obligating the Prices to pay for internet and cable for the Leased Premises.

10. The Lease Agreement unambiguously states that \$250.00 of the utilities is included in the \$3,000 monthly rent payment.

11. The amount for utilities for September 2012 was less than \$250.00

12. Defendant Danielle Sprague presented evidence of utility costs above \$250.00 for October in the amount of \$10.33

13. The late fee provision in the Lease Agreement only relates to late payment of rent and not utilities or the cleaning fee.

14. On November 30, 2012, the Prices served on Danielle Sprague a Notice of Deficiency Conditions in accordance with Utah's Fit Premises Act Utah Code § 57-22-1 *et seq.*

15. The Prices presented evidence of leaking water in the water manifold in the utility room as well as the water softener and the water heater.

16. On the morning of December 3, 2012, Danielle Sprague delivered via e-mail, and hand delivery a letter to the Prices stating that she believed the water problems were caused by the Prices.

17. Danielle Sprague explained in the letter dated December 2, 2012 and attached as Defendants' Exhibit No. 22 that she and her husband (Rufus Sprague) "both clearly saw the mold in the utility room on the bottom of the wall next to the purple room. As by your family concern and by protecting our property, we request that you to have a license mold clean up contractor remove all the mold, and repair all the damages that the leaking water caused which you refused to clean up in a timely manner. If you fail to do such repairs states above within three business days, you will be subject to eviction."

18. Later that day on December 3, 2012, Jeff Price emailed Danielle Sprague asking her to confirm that she would not take any action to fix the problems as identified in his Notice of Deficient Conditions dated and served on Mrs. Sprague on November 30, 2012. Mrs. Sprague responded in an email that Mr. Price was correct and that she would not fix the problems.



19. Consistent with her letter dated December 3, 2012, Mrs. Sprague on December 6, 2012 served on the Prices a three day "Notice to Vacate for Committing a Criminal Act on the Premises" (the "Notice") claiming that the Prices improperly used the water softener to cause damage and water leaking, failed to clean up the water and keep the premises in a sanitary manner and refused property owner access to the premises to do the inspection and repairs.

20. The Spragues failed to present sufficient evidence establishing that the Prices caused the water damages and/or water leaking or failed to allow the property owner access to inspect and repair.

21. The Notice required the Prices to vacate the Leased Premises within three days. There is nothing in the Notice requiring the Prices to continue to pay rent in accordance with the Lease Agreement nor is there any provision in the Lease Agreement requiring the Prices to pay rent in the event they are evicted by Mrs. Sprague.

22. On December 7, 2012, the Prices vacated the Leased Premises.

#### **CONCLUSIONS OF LAW**

1. The Lease Agreement was drafted by Danielle Sprague and therefore any ambiguities in the Lease Agreement shall be construed against her.

2. It is unclear from the Lease Agreement what the due date is for payment of rent. Construing the document most favorable to the Prices, the due for rent date is September 5, 2012 and every 5<sup>th</sup> day of the month after September.

3. The Prices timely paid rent for September, October and November of 2012 and did not breach the Lease Agreement by not paying rent. No late fee payment under the Lease Agreement is applicable to these payments.

4. The late fee provision in the Lease Agreement is not applicable to any other obligation other than rent.

5. The Prices failed to pay utilities in the amount of \$10.33 for October and that was the only invoice that was submitted to the Prices prior to them being evicted from the Leased Premises by Mrs. Sprague.

6. The Court finds that Danielle Sprague evicted the Prices from the Leased Premises on December 6, 2012. As a result, she has no legal right or basis under the Lease Agreement or law to seek the remainder of any payments under the Lease Agreement subsequent to that time. The Lease Agreement does not contain any provision requiring the Prices to pay the remainder of the lease payments in the event they are evicted.

7. The Court finds that Danielle Sprague is equitably estopped seeking any additional lease payments after she evicted the Prices from the Leased Premises on December 6, 2012.

8. The Court also finds that Danielle Sprague waived any right to collect further lease payments from the Prices after evicting them from the Leased Premises on December 6, 2012.

9. Utah Code Ann § 57-22-5(h) provides that a renter must be current on all payments required by the rental agreement.

10. The Court finds that the Prices were not in complete compliance with the Lease Agreement because they failed to pay for utilities in the amount of \$10.33. While the Court finds that amount is not a material breach of the Lease Agreement, it was still not paid and the availability of a remedy under the Utah Fit Premises Act is not available to the Prices. That

claim is dismissed with prejudice.

11. The Prices did not pay rent for seven days in which they were in the Leased Premises in December which amount is equal to \$677.42.

12. The Prices moved out of the Leased Premises before any late fee applied for December rent under the Lease Agreement.

13. The Court finds that Danielle Sprague has breached the Lease Agreement by not refunding to the Prices the remainder of the refundable security deposit and cleaning fee in the amount of \$2,799.25 exclusive of prejudgment interest and court costs. The amount of \$2,799.25 is calculated by adding the refundable security deposit and cleaning fee (\$3,650.00) and then subtracting the seven days of rent for December 10 the amount of \$677.42, utilities of \$10.33 and cleaning and shampooing fees, for the Leased Premises after the Prices moved out in the amount of \$163.00.

14. The Court finds the Prices did not materially breach of the Lease Agreement and that claim brought by Mrs. Sprague is dismissed with prejudice.<sup>1</sup>

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<sup>1</sup> The Court dismissed the Prices' claim for fraud and recession via directed verdict after the Prices closed presentation of the evidence in support of their case. The Court also dismissed Rufus Sprague as a plaintiff for the breach of contract action via directed verdict after the Spragues closed presentation of their evidence in support of their counterclaims. The Court also dismissed via directed verdict the Sprague's waste claim after they closed presenting evidence in support of their counterclaims.

In accordance with the Utah State District Courts E-filing Standard No. 4, and  
URCP Rule 10(e), this Order does not bear the handwritten signature of  
the Judge, but instead displays an electronic signature at the upper  
right-hand corner of the first page of this Order.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15<sup>th</sup> day of July, 2015, I caused the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** to be electronically filed with the Clerk of the Court using the Utah Trial Court/ECF system, which sent notification of such filing electronically to the following:

Jeffery J. Owens (10973)  
Owens Law Firm, PLLC  
299 South Main St., Suite 1300  
Salt Lake City, Utah 84111  
[jeff@owenslf.com](mailto:jeff@owenslf.com)

/s/Angelica Torres

1322251

Michael D. Zimmerman (3604)  
Julie J. Nelson (9943)  
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mzimmerman@zjbappeals.com  
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(801) 924-0200

*Attorneys for Danielle Sprague*

SECOND JUDICIAL DISTRICT COURT

DAVIS COUNTY, FARMINGTON DEPARTMENT, STATE OF UTAH

JEFF PRICE and ANNE PRICE,

Plaintiffs/Counterclaim  
Defendants,

v.

DANIELLE SPRAGUE,

Defendant/Counterclaim Plaintiff.

**REQUEST TO SUBMIT**

(Motion to Reconsider or in the Alternative  
Rule 52 Motion to Make Further Findings and  
to Alter or Amend the Judgment)

Case No. 120701157  
Honorable David R. Hamilton

Pursuant to Utah Rule of Civil Procedure 7(d), Defendant and Counterclaim Plaintiff Danielle Sprague, by counsel, hereby gives notice that her Motion to Reconsider or in the Alternative Rule 52 Motion to Make Further Findings and to Alter or Amend the Judgment is fully briefed and ready for decision. Oral argument is requested. The following have been submitted to the court in connection with this motion:

1. Motion to Reconsider or in the Alternative Rule 52 Motion to Make Further Findings and to Alter or Amend the Judgment, filed and served April 17, 2015.

L3

2. Memorandum in Support of Danielle Sprague's Motion to Reconsider or in the Alternative Rule 52 Motion to Make Further Findings and to Alter or Amend the Judgment, filed and served April 17, 2015.
3. Opposition Memorandum to Danielle Sprague's Motion to Reconsider or in the Alternative Rule 52 Motion to Make Further Findings and to Alter or Amend the Judgment, filed and served May 1, 2015.
4. Reply in Support of Danielle Sprague's Motion to Reconsider or in the Alternative Rule 52 Motion to Make Further Findings and to Alter or Amend the Judgment, filed and served May 15, 2015.

DATED this 15th day of May, 2015.

ZIMMERMAN JONES BOOHER LLC

/s/ Julie J. Nelson

Michael D. Zimmerman

Julie J. Nelson

*Attorneys for Danielle Sprague*

CERTIFICATE OF SERVICE

This is to certify that on the 15th day of May, 2015, I caused the foregoing to be electronically filed and served on the following via a court-approved e-filing service provider:

Matthew N. Evans  
A.J. Green  
Ray, Quinney & Nebeker P.C.  
P.O. Box 45385  
Salt Lake City, UT 84145-0385

Jeffrey J. Owens  
Owens Law Firm, PLLC  
299 South Main St., Suite 1300  
Salt Lake City, UT 84111

/s/ Julie J. Nelson



# EXHIBIT M

## Defendant Preserve the Claim of Violation of Implied Covenant of Good Faith and Fair Dealing Through Out the Trial

- M1 – Defendant Opening Statement about Plaintiffs' Violation of Implied Covenant of Good Faith and Fair Dealing
- M2 – Mrs. Sprague Testimony about Plaintiffs' Violation of Implied Covenant of Good Faith and Fair Dealing
- M3 – Defendant Closing Argument about Plaintiffs' Violation of Implied Covenant of Good Faith and Fair Dealing

SECOND JUDICIAL DISTRICT COURT, FARMINGTON

DAVIS COUNTY, STATE OF UTAH

**FILED**

SEP 24 2015

SECOND  
DISTRICT COURT

JEFF R. PRICE and ANN K. PRICE, : Case No. 120701157

Plaintiffs,

: Volume I of II

v

RUFUS SPRAGUE and DANIELLE  
SPRAGUE,

Defendants.

: With Keyword Index

BENCH TRIAL MARCH 16 & 17, 2015

BEFORE

JUDGE DAVID HAMILTON

CAROLYN ERICKSON, CSR  
CERTIFIED COURT TRANSCRIBER

1775 East Ellen Way  
Sandy, Utah 84092  
801-523-1186

1 | escalated. And when it was discovered that there was still  
2 | some leaking, even after the Pond's Plumbing service call,  
3 | the Spragues again noticed up an inspection to come and have  
4 | a look and see, you know, what they would need to do to fix  
5 | the problem, and the Prices responded by calling the police,  
6 | and the police came. It was very disruptive to the  
7 | neighborhood. They basically did nothing, other than stand  
8 | by, but this - the Prices made it very, very difficult for  
9 | the Spragues to come in, inspect the property, see what  
10 | needed to be fixed, and actually fix the problem. At various  
11 | intervals, they even physically blocked the Spragues from  
12 | entering the property.

13 |               Ultimately, the dispute escalated until November  
14 | 30<sup>th</sup>, 2012. The Prices served a notice of deficient  
15 | conditions electing to abate rent and move out. The Spragues  
16 | immediately tried to correct the problem. At that point,  
17 | they served a urgent notice saying, "Hey, we want to come  
18 | tomorrow morning to fix this problem." They came that  
19 | morning - the very next day with a contractor. The  
20 | contractor came. They went - as soon as they came into the  
21 | house, Mr. Price started grilling the contractor on his  
22 | qualifications, on what he planned to do, and whether they  
23 | plan to comply with the very specific demands that Mr.  
24 | Bradford had sent to the Spragues.

25 |               The contractor decided he didn't want to be

1 involved in the - in this dispute. It was obvious that there  
2 were problems. That police were there. He decided he didn't  
3 want any part of it. So Danielle Sprague arranged for  
4 another contractor to come later that day. The Prices were  
5 then gone and sent emails to Danielle Sprague saying, "If you  
6 come, you will be trespassing. Do not come." So they tried  
7 to make additional arrangements to come on the 3<sup>rd</sup>, and Mr.  
8 Bradford emailed Danielle Sprague saying, "Do not come. If  
9 you're not going to comply exactly with our demands, do not  
10 come."

11 At that point, the Spragues felt like, Hey, we  
12 can't fix this thing. They're not allowing us to make  
13 reasonable efforts to fix this thing. And not only that by  
14 this time, they were late on the rent, and so they served the  
15 three day notice to evict them, and the Prices ultimately  
16 moved out.

17 The evidence will show that the Prices failed to  
18 pay the cleaning fee timely, that they paid - failed to pay  
19 any late fees associated therewith, that they failed to pay  
20 utilities for the months of September, October, and November,  
21 and that they failed to pay rent for the month of December.  
22 All of those are prior breaches of the contract. They  
23 breached their contract before the Spragues ever allegedly  
24 served them with any three-day notice to vacate the premises,  
25 and that's what the evidence will show.

1           A     Yes.

2           MR. EVANS: Objection as to foundation.

3           THE COURT: I think we've had a day and a half of

4 foundation.

5           MR. EVANS: All right. I'll withdraw it.

6           THE COURT: Overruled.

7           Q     (BY MR. OWENS) How many times did the Prices call

8 the police on you?

9           MR. EVANS: Objection,

10          THE WITNESS: Five.

11          MR. EVANS: - form of the question.

12          MR. OWENS: Okay, let me rephrase.

13          Q     (BY MR. OWENS) Did the Prices ever call the police

14 on you?

15          MR. EVANS: Objection as to -

16          THE WITNESS: Yes.

17          MR. EVANS: - hearsay and foundation as to who

18 called the police.

19          THE COURT: Why don't you indicate whether the

20 police arrived at the scene or something -

21          MR. OWENS: Okay.

22          THE COURT: - of that nature.

23          Q     (BY MR. OWENS) Did the police ever arrive at the

24 scene while you were at the house?

25          A     Yes -

1 Q Do you have -  
2 A - many times.  
3 Q - any idea who called them?  
4 A Jeff.  
5 Q You didn't call them?  
6 A No.  
7 Q How many times did they come to the scene while you  
8 were there?  
9 A Five time - oh, three - one, two. Three times.  
10 Q Did you have the ManaBloc replaced?  
11 A Yes.  
12 Q When?  
13 A October 26<sup>th</sup>.  
14 Q Did you pay for that?  
15 A Yes.  
16 Q Did you ask the Prices to pay for that?  
17 A No.  
18 Q Was the water heater ever discovered to be leaking?  
19 A Not until they report on the November 14.  
20 Q What did you do when you heard that the water  
21 softener was leaking?  
22 A I called the Pond's right away, and we went there  
23 and fix the pipe. The water heater has no problem. He just  
24 say that relieve the pressure would being trick. So he said  
25 in the future, it happen just need a pipe drain to the ground

1 closure, and so we paid for it.

2 Q Let me have you look at Plaintiffs' Exhibit 6,  
3 0089? You went through this with Mr. Evans a moment ago.  
4 Did you ever consent or give permission to the Prices to  
5 deduct the service call amount from the rent?

6 A No.

7 Q Let me have you turn to Defendants' Exhibit 20?  
8 Can you see - this is an email from Mr. Bradford to you; is  
9 that correct?

10 A Yes.

11 Q In the third paragraph of the email toward the end  
12 of that, he says, - actually, that whole third paragraph. I  
13 just want you to look at that, and then I'm going to ask you  
14 a question about it. He says there, "If you don't" - in  
15 essence, if you don't come and do - and if you do anything  
16 other than or less than exactly and completely what Mr. Dixon  
17 states in his letter, then do not come. You will not be  
18 admitted.

19 MR. EVANS: I object to the form of the question as-

20 MR. OWENS: I'm getting to the question, Your -  
21 Your-

22 THE COURT: You know what, you need to let him  
23 finish his objection.

24 MR. OWENS: I'm sorry.

25 THE COURT: Whether - what I'm going to do with it

1 is to be determined.

2 MR. OWENS: Okay.

3 THE COURT: - and I'm - and I'm just going to tell  
4 counsel, I'm tired of you talking over each other, talking  
5 over the witnesses. The lack of courtesy that's being  
6 exhibited is distressing, and I've had it. For both of you,  
7 no more.

8 Mr. Evans, please stand and state your objection,  
9 sir?

10 MR. EVANS: Your Honor, that waa a leading question  
11 to this witness. He's testifying.

12 THE COURT: Objection, sustained. Ask you question  
13 again.

14 MR. OWENS: Okay. My - that was just a lead up to  
15 my question.

16 Q (BY MR. OWENS) My question was, did you feel that  
17 you were welcome to come to the property to fix any problem  
18 that was there?

19 A No.

20 Q Did you feel that the Price's were giving you  
21 reasonable access to the property?

22 A No.

23 Q Did you feel like Mr. Bradford's demands were  
24 reasonable?

25 A No.



1 Q Prior to the time that the Prices moved in, did you  
2 ever see water near the water softener or ManaBloc in the  
3 home?

4 A Prior to?

5 Q Prior to the time the Prices moved in - September  
6 of 2012 - had you ever seen any water leaking or on the floor  
7 anywhere near the water softener or ManaBloc?

8 A No.

9 Q Had you ever seen any substance on the wall?

10 A No.

11 Q Did any prior tenants ever report any type of  
12 growth or suspected mold or anything like that in the utility  
13 room?

14 A No.

15 Q Was the water softener turned on and functioning at  
16 the time the Prices moved in?

17 A Yes.

18 Q I'm sorry. That was a two-part question. Let me  
19 split that up. Was the water softener turned on when the  
20 Prices moved in?

21 A No.

22 Q Was it functioning when the Prices moved in, as far  
23 as you know?

24 A I believe so.

25 Q To your knowledge, did Jeff or Ann Price ever ask

1 permission to turn it on?

2 A No.

3 Q After the inspection on October 13<sup>th</sup>, did you take  
4 any action to more permanently fix the apparent leaking?

5 A After October 13, we don't feel there's any problem  
6 - leaking problem anymore, because there's no leaking.

7 Q Okay. But did you take any action to - you - let  
8 me rephrase this. When you left on the 13<sup>th</sup>, was there any  
9 water currently leaking at that point?

10 A No.

11 Q But did you take any action thereafter to ensure  
12 that there wouldn't be any further water leaking later?

13 A After they report it is still leaking, then yes, I  
14 called Pond's right away.

15 Q You called Pond's right away? Did you communicate  
16 that to the Prices?

17 A No. They - because they instruct me not talk to  
18 them. Talk to their lawyer.

19 Q Did you communicate it to their lawyer, Mr.  
20 Bradford?

21 A Yes.

22 Q Did you receive a response from him?

23 A No.

24 Q At that time, did you believe this to be an  
25 emergency situation?

1           A     No.

2           Q     Did you hear anything from the Prices?

3           A     They told us - when I call Pond's, I left a message  
4     and say we need to schedule a time to inspect the leaking,  
5     and then I think -

6           MR. EVANS: Hearsay, Your Honor, on Pond's.

7           THE COURT: Sustained. You can't say what Pond's  
8     told you.

9           THE WITNESS: Oh, okay. Sorry.

10          THE COURT: Mr. Owens? You're all right. Let's go.

11          MR. OWENS: It's okay.

12          THE WITNESS: Do you want me to finish -

13          THE COURT: No.

14          MR. OWENS: Just a minute. I'll ask you a question  
15     in just a second.

16          THE WITNESS: Okay.

17          Q     (BY MR. OWENS) Did you - I think my question was -  
18     and I think we got off track, but my question was, did you  
19     hear anything from the Prices?

20          A     Yes.

21          MR. OWENS: After - after - let me put some context  
22     as to time, Your Honor, and lay some foundation as to time.

23          Q     (BY MR. OWENS) After you had called Pond's  
24     Plumbing, and communicated that to Bradford, and you didn't  
25     hear back -

1           A     I didn't hear back from the lawyer.

2           Q     You didn't hear back from Bradford. Did you hear  
3 anything from the Prices?

4           A     Yes.

5           Q     What did they say?

6           A     Right after the same day I call Pond's, he email me  
7 and say while he already arrange Pond's on the 22<sup>nd</sup> to come,  
8 and they are leaving town for the weekend - four days - and  
9 you don't come. If you come, you will be - how - trespass.

10           MR. OWENS: Nothing further, Your Honor.

11           THE COURT: Mr. Evans?

12           MR. EVANS: I just have one line of questioning, and  
13 I'll be brief.

14                               RECROSS EXAMINATION

15           BY MR. EVANS:

16           Q     Your counsel asked you about cable or internet  
17 bills. Could you turn to Plaintiffs' Exhibit 1?

18           A     The thick one?

19           Q     Yeah, the big one.

20           A     Okay.

21           Q     I want you to look at the first paragraph there.  
22 It says, "Rent includes the following."

23           A     Yes.

24           Q     "Gas, water, garbage, electricity, dishwasher,  
25 covered parking, washer, dryer, and all furniture, etcetera."

1 impossible for the Spragues to come in and actually fix this  
2 problem while the Prices were there. Every time the Spragues  
3 came, they - the Prices called the police. The police came.  
4 Every time that the Spragues were in the house, the Prices  
5 would follow them around and intimidate them. This was a  
6 very difficult situation for the Spragues, Your Honor.

7           They came and they tried to fix it. As soon as the  
8 notice of deficient conditions was served, they took  
9 immediate action. They sent them the notice that, Hey, we  
10 want to come in the morning and fix it. They came in the  
11 morning. The police were there. It was acrimonious. They  
12 ended up - their guy looked at the situation, decided he  
13 didn't want to have any part of it, walked out. They get  
14 another contractor and come back later that day. The Prices  
15 aren't home. They say, "If you come in, you're going to be  
16 trespassing."

17           That's always the message that the Prices were  
18 sending to the Spragues. "If you come without us being  
19 present, you'll be trespassing." "If you aren't going to  
20 comply with our demands exactly, don't come. You won't be  
21 admitted."

22           They didn't provide reasonable access for the  
23 Sprague's to come in. There was no evidence presented, Your  
24 Honor, of what those mitigating - or what the requirements  
25 should have been for them to correct the problem. There was

1 no evidence submitted of that whatsoever.

2 For them to say that it's our way or the highway,  
3 that's not proper, Your Honor. They have to allow plaintiff  
4 - or they have to allow the Spragues to come in and mitigate  
5 the problem. There is nothing in the statute that requires  
6 the Spragues to comply with their every demand.

7 In addition, the statute very clearly states that  
8 it's only applicable to conditions affecting the physical  
9 health or safety of the renters. There was no evidence  
10 presented whatsoever at the trial that this in any way  
11 affected the physical health and safety of the Prices.

12 There was no evidence that any of the black  
13 substance on the wall was dangerous in any way. There was no  
14 evidence that it was toxic in any way, that it was harmful in  
15 any way to the Prices. There was nothing presented, and I  
16 don't think it's proper for the Court to make that leap.

17 Also, you know, there was evidence presented that  
18 there was leaking, but there was still no evidence that it in  
19 any affected the physical health or safety. There was no  
20 evidence that the water was not running. There was no  
21 evidence that their hot water was not available at all times  
22 to the Prices. There was absolutely no evidence that the  
23 Prices suffered any kind of adverse consequences of any kind  
24 related to the alleged deficient condition.

25 I just don't think that there was any evidence

# EXHIBIT N

## Reasons of Changing Attorneys

- N1 -The Attorney Mrs. Sara Bouley's Threat to the Trial Lawyer and Interference of the Case
- N2 -The Law Firm of Attorney Mr. Tee Spjute had Conflict of Interest With the Case

Sara E. Bouley

**Reply:**

To:

Jeffery Owens <Jeff@owenslf.com>;

Cc:

danielle sprague <daniellesprague@hotmail.com>;

Wed 1/8/2014 6:39 PM

I will not let that memorandum stand, Jeff. I suggest you file a correction before this goes further. Sara

**Sara E. Bouley | Attorney | Action Law LLC**

2825 E. Cottonwood Pkwy., Suite 500, Salt Lake City, UT 84121

T: (801) 990-3262 | Fax: (866) 949-6489 | Cell: (801) 309-0915

email: [sara@actionlawutah.com](mailto:sara@actionlawutah.com) | <http://www.actionlawutah.com>

*We make no disclaimers about this email. We're actually quite proud of it.*

**From:** Jeffery Owens [mailto:Jeff@owenslf.com]

**Sent:** Wednesday, January 08, 2014 11:12 AM

**To:** Sara E. Bouley

**Cc:** danielle sprague

**Subject:** Danielle Sprague

Sara:

Thank you for your telephone call this morning and your follow-up email. I am certainly familiar with the standards of professionalism and civility, and resent any implication from you that I am not. You really didn't need to send them to me. I have my own copy. While I don't appreciate the tone or the implication, I assure you that I would not, without an adequate factual basis, attribute to you or any other counsel improper motives, purpose, or conduct.

That said, I have spoken to Danielle, and carefully reviewed the emails I have attached hereto, and considered them in light of what you told me. It is my view that there is an adequate factual basis for the statements we made in our memorandum. You clearly did not consult with Danielle about the September 9, 2013 extension in advance, and she clearly expressed her displeasure about the extension when she found out. Whether you agree or not, you had more than enough time to prepare the initial disclosures and get them in before the September 9 deadline. In fact, you had discussed with Danielle filing the initial disclosures as early as July 15, 2013. You again discussed them in early August. You were apparently too busy to get them to Danielle until she was out of the country at the very end of August, and with very little time to spare before the deadline. I understand that the deadline was looming, that you were busy, and that Danielle was unable to give you her revisions until she got back. However, given that Bradford had missed multiple deadlines to that point, and that you had been very accommodating with his illness and computer problems, you certainly could have asked Bradford for a few extra days without extending all of the deadlines. Additionally, you and I both know that had you not asked for and received an extension, there is very little chance the Spragues would have

N1



suffered any adverse consequences from filing their initial disclosures a few days late, especially given the history of the case.

As to the default issue, Danielle asked you at least as early as April, 2013 whether it was possible to default the Prices due to their failure to meet deadlines. Your response was no. She asked you again in July, and your answer was essentially the same.

Please don't misunderstand. I have not said anywhere that you necessarily did anything wrong. Your reasoning for granting delays and refusing to file for default may be perfectly sound. I recognize that lawyers have the right to grant accommodations and extensions, and routinely grant them myself. I am, however, saying that Danielle was clearly unhappy about this, and it is the explanation given to me for why you were ultimately replaced. In his motion to amend, Mr. Bradford specifically pointed to the Spragues' frequent counsel changes as justification for requesting the delay. Our response is to explain why, and explain that the changes did not delay proceedings.

So, at this time, I am going to decline to change anything included in our memorandum, and hope that I have given you an adequate explanation as to why. It is certainly not my goal to cast stones at other attorneys, but I will defend my client's interests to the best of my ability, and don't feel that I have violated the standards of professionalism and civility. I invite you to explain to me why I am wrong.

Regards,

**Jeffery J. Owens, Esq.**

Owens Law Firm, PLLC

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F: (801) 734-8950

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# RE: Prices v. Spragues- Discovery Requests

R. Tee Spjute

## Reply

To:

danielle sprague <daniellesprague@hotmail.com>;

Wed 10/23/2013 11:38 PM

He may try to get a different judge, but I know most of the judges, or their law clerks, in Davis County, if they move to another judge it would just make it worse for them. To speed things up I said we should just call the judge and see what he would like to do.

**From:** danielle sprague [mailto:daniellesprague@hotmail.com]

**Sent:** Wednesday, October 23, 2013 5:21 PM

**To:** R. Tee Spjute

**Subject:** RE: Prices v. Spragues- Discovery Requests

Robert,

Did you already told Bill Bradford about the lawyer in your office relate to the Judge of our case? If you did, what action will Bill Bradford take for this information?

Danielle

---

**From:** Tee@shumwayvan.com

**To:** daniellesprague@hotmail.com

**Subject:** RE: Prices v. Spragues- Discovery Requests

**Date:** Wed, 23 Oct 2013 22:52:19 +0000

Okay, take some rest. I will need to get the discovery requests out at the beginning of next month, but it can wait till then.

N2